70 FR 62097, October 28, 2005

C-489-502
Sunset Review
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MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of Expedited Sunset Review of the Countervailing Duty Order on Welded Carbon Steel Standard Pipe from Turkey

Summary

We have analyzed the substantive response of the domestic interested parties in the sunset review of the countervailing duty ("CVD") order covering welded carbon steel standard pipe from Turkey.[1] We recommend that you approve the positions we have developed in the Discussion of Issues section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response.

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

History of the Order

The Department of Commerce ("the Department") published its final affirmative countervailing duty determination on welded carbon steel pipe and tube from Turkey in the Federal Register on January 10, 1986 (51 FR 1268). See Final Affirmative Countervailing Duty Determination: Certain Welded Carbon Steel Pipe and Tube Products from Turkey, 51 FR 1268 ("Final Determination"). In the final determination, the Department found an estimated net subsidy, for all manufacturers/producers/exporters of welded carbon steel pipe and tube from

[1] The Department did not receive a substantive response from any government or respondent interested party to this proceeding.

Turkey, of 17.80 percent ad valorem.[2] In the investigation, the Department found that the following programs conferred countervailable subsidies on Turkish producers/exporters of the subject merchandise: (1) Export Tax Rebate and Supplemental Tax Rebate; (2) Preferential Export Financing;[3] (3) Deduction from Taxable Income for Export Revenues; and (4) Resource Utilization Support Fund.

On April 3, 2000, after conclusion of the first sunset review, the Department published a notice of continuation of the CVD order on welded carbon steel pipe and tube from Turkey.[4] See Welded Carbon Steel Pipe and Tube From Turkey: Final Results of Full Sunset Review, 64 FR 17486 (April 3, 2000) ("Turkey Final Sunset 2000"). We found that countervailable subsidies would likely continue to be conferred on Turkish producers/exporters through the following programs: (1) Pre-Shipment Export Credits; (2) Deduction from Taxable Income for Export Revenues; (3) Foreign Exchange Loan Assistance; (4) Investment Allowance under the General Incentives Program; and (5) Value-Added Tax ("VAT") Support Program (Incentive Premium on Domestically Obtained Goods). We determined that revocation of the CVD order would likely lead to continuation or recurrence of countervailable subsidies at the following levels:

Producer/Exporter	Net Countervailable Subsidy (percent)
Bant Boru[5]	0.00
Borusan Group[6]	0.68
Erbosan[7]	2.89
Yucel Boru Group[8]	0.84
All Others	2.90

[2] We initially calculated a country-wide CVD rate of 18.81 percent. However, after taking into account several program-wide changes, we established a duty deposit rate of 17.80 percent.

[3] Short-term export financing under Decree 84/7557 was abolished by Decree 84/8861, which became effective on January 1, 1985. We verified that all such loans were repaid prior to the preliminary determination, and excluded the program from the calculation of the duty deposit rate.

[4] The Department completed four administrative reviews prior to the 2000 sunset review. For the final results of those reviews, see 53 FR 9791 (03/25/88) (POR: 10/28/85 - 12/31/86), 62 FR 43984 (08/18/97) (POR: calendar year 1995), 63 FR 18885 (04/16/98) (POR: calendar year 1996), and 64 FR 44496 (08/16/99) (POR: calendar year 1997).

[5] Bant Boru Sanayi ve Ticaret A.S.

[6] Borusan Group is Borusan Birlesik Boru Fabrikalari A.S. ("BBBF") and Borusan Ihracat Ithalat ve Dagitim A.S. ("Borusan Dagitim").

[7] Erciyas Boru Sanayii ve Ticaret A.S.

[8] Yucel Boru and its affiliated companies: Cayirova Boru Sanayi ve Ticaret A.S. and Yucelboru Ihracat Ithalat ve Pazarlama A.S.

Subsequent to the final results of the sunset review, the Department completed an administrative review for the period January 1, 1998, through December 31, 1998. See Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results of Countervailing Duty Administrative Review, 65 FR 49230 (August 11, 2000) ("Final Results 1998"). The respondent, Borusan Boru Birlesik Fabrikalari Mannesmann Boru, requested an administrative review for the period January 1, 2001, through December 31, 2001, but later withdrew its request for a review. See Certain Welded Carbon Steel Pipe and Tube from Turkey: Rescission of Countervailing Duty Administrative Review, 67 FR 42541 (June 24, 2002). On April 15, 2005, the Department initiated an administrative review of the Borusan Group covering the period January 1, 2004, through December 31, 2004. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 70 FR 20862 (April 22, 2005). The preliminary results of that administrative review are currently due on December 1, 2005.

Discussion of Issues

In accordance with section 751(c)(1) of the Tariff Act of 1930, as amended ("the Act") the Department is conducting this review to determine whether revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the ITC") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide information to the ITC concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("SCM").

Below we address the substantive response of the domestic interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

The domestic interested parties state that because there has been no administrative review of the CVD order since the first sunset review, the Department should rely on its findings in that review.

Department's Position

Since the final results of the first sunset review, the Department completed an administrative review of the CVD order. See Final Results 1998. No evidence was submitted to the Department in that proceeding which demonstrated that the programs found to confer countervailable subsidies to Turkish producers/exporters of the subject merchandise had been terminated. Moreover, the Department did not receive a response from the Government of Turkey ("GOT") and/or any respondent interested party in this review. Under these circumstances, it is reasonable to determine that countervailable subsidy programs continue to exist and are being utilized. Because countervailable programs continue to exist and be used, the Department concludes that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The domestic interested parties state that termination of the CVD order would likely lead to recurrence of subsidized imports of Turkish subject merchandise into the U.S. market at margins equal to or greater than those found in the prior sunset determination. Therefore, the Department should find that revocation of the CVD order would lead to continued subsidization at the levels determined in the final results of the first sunset review.

Department's Position

As discussed above, in the 1998 administrative review, we did not find that substantive changes (e.g., termination or program-wide changes) had been made to the programs found to be countervailable. In determining the subsidization levels likely to prevail if the CVD order were revoked, we have taken into account our findings from the 1998 review as well as the first sunset review. Therefore, since there is no evidence that changes have been made to the Turkish subsidy programs, and absent any argument and evidence to the contrary, the Department determines that the net countervailable subsidy levels that would be likely to prevail in the event of revocation of the order are the same rates as calculated in the 2000 sunset review. See Turkey Final Sunset 2000. The subsidy rates are:

Producer/Exporter	Net Countervailable Subsidy (percent)
Bant Boru	0.00
Borusan Group	0.68
Erbosan	2.89
Yucel Boru Group	0.84
All Others	2.90

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the SCM. We note that Article 6.1 of the SCM expired effective January 1, 2000.

The following are export subsidies as described in Article 3 of the SCM.

Pre-Shipment Export Credit: The Export Credit Bank of Turkey ("Eximbank") provides short-term pre-shipment export loans, denominated in Turkish Lira, to exporters through intermediary commercial banks. Loans are generally extended for a period of up to 180 days, and cover up to 100 percent of the Free On Board ("FOB") export value. The interest rate charged on these pre-shipment loans is established by the Eximbank. See Final Results of Countervailing Duty Review: Certain Welded Carbon Steel Pipe and Tube Products from Turkey, 65 FR 49230, 49231 (August 11, 2000).

Deduction from Taxable Income for Export Revenues: In 1995, the Ministry of Finance amended the Income Tax Law to allow companies that export goods or services to deduct 0.5 percent of their hard currency income derived from these export activities from their corporate income taxes. See Final Results and Partial Rescission of Countervailing Duty Reviews: Certain Welded Carbon Steel Pipe and Tube and Welded Carbon Steel Line Pipe from Turkey, 63 FR 18885, 18886 (April 16, 1998).

Foreign Exchange Loan Assistance: Resolution Number 94/5782 (Article 4) concerns the encouragement of exportation, allowing commercial banks to exempt certain fees provided that the loans are used in the financing of exportation and other foreign exchange earning activities. The exempted fees include a Resource Utilization Stabilization Fund fee of six percent of the loan principle, a Banking Insurance Tax equal to five percent of the interest paid, and a stamp tax equal to 0.6 percent of the principal. See Id.

The following programs do not fall within the meaning of Article 3.1 of the SCM. However, they could be subsidies described in Article 6.1 of the SCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM. They also could fall within the meaning of Article 6.1 if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review in order for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions.

Investment Allowance under GIP: The purpose of the *General Incentives Program* ("GIP") is to increase investment and expand the Turkish economy. Under the GIP, companies may apply for investment incentive certificates which entitle them to a number of specified benefits, such as allowances related to an investment project. The investment allowance provides companies with a corporate tax exemption of between 30 and 100 percent of their total fixed investment depending upon the geographical location, sector, and the value of the investment.

VAT Support Program (Incentive Premium on Domestically Obtained Goods): Companies holding investment incentive certificates under the GIP are eligible for a rebate of 15 percent VAT paid on locally-sourced machinery and equipment. Imported machinery and equipment are subject to the VAT and are not eligible for the rebate.

Final Results of Review

We determine that revocation of the CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

Producer/Exporter	Net Countervailable Subsidy (percent)
Bant Boru	0.00
Borusan Group	0.68
Erbosan	2.89
Yucel Boru Group	0.84
All Others	2.90

Recommendation

Based on our analysis of the substantive response received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of review in the Federal Register.

AGREE: _____ DISAGREE: _____

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Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

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(Date)