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Turkish Steel Pipe Maker Challenges Anti-Dumping Duties

By **Tiffany Hu**

Law360 (May 6, 2019, 7:15 PM EDT) -- A Turkish producer has filed a complaint with the U.S. Court of International Trade over the methodology the U.S. Department of Commerce used to calculate tariffs on its pipe imports, telling the court that Commerce went against its usual practice for determining when the pipes at issue were sold in the U.S.

Borusan Mannesmann Boru Sanayi ve Ticaret AS on Friday told the CIT that Commerce's decision to impose a dumping rate of 5.11% on its imported large-diameter welded pipes was based on a number of mistakes in its margin calculation.

Notably, Commerce had strayed from its typical approach to determining the date of sale for pipes that were sold under long-term contracts known as purchase orders, according to the complaint. BMB said that it had sold pipes for two pipeline projects, and the contracts covered several shipments of the pipe imports over a certain period of time.

But instead of using the date of the purchase order, as is "established practice," Commerce had improperly relied on the invoice date of individual pipe shipments in calculating the anti-dumping duties for BMB, the producer said.

"Commerce used the invoice date, rather than the purchase order date, despite verified record evidence showing that all material terms of sale were established in the purchase orders for the two pipeline projects investigated by Commerce and that the prices and all other material sales terms for the individual shipments were in strict conformity with the terms of those purchase orders," the complaint reads. "Correction of that error results in a negative dumping margin."

Commerce further failed to "fully adjust" its calculation for a penalty fee paid by BMB over a late pipe delivery to one of its customers in Turkey, despite an express agreement that "established BMB's responsibility for this penalty," according to the complaint. Fixing this mistake would also lead to a finding of negative dumping, BMB said.

The department also improperly found that a so-called particular market situation existed in Turkey in light of subsidies on hot-rolled steel coil — the primary raw material needed for the pipes at issue — that "distorted" the market, the producer said.

"Commerce made this determination despite the fact that Commerce has determined in multiple countervailing duty determinations, including the countervailing duty investigation of [large-diameter welded pipes] from Turkey conducted concurrently with the instant anti-dumping investigation, that there was no distortion in the market for [hot-rolled coil]," the complaint reads.

BMB urged the CIT to reverse Commerce's finding that the producer had sold the imported pipes at less than fair value, adding that this would also exclude it from the anti-dumping duty order published May 2 on large-diameter welded pipes from Turkey.

Counsel for BMB did not immediately respond to a request for comment Monday.

Last February, Commerce announced investigations into large-diameter welded pipes imported from four countries, including Turkey, following petitions filed in January 2018 by Alabama's American Cast Iron Pipe Co., Florida's Berg Steel Pipe Corp., Pennsylvania's Dura-Bond Industries, New Jersey's Skyline Steel and Louisiana's Stupp Corp.

According to the petitions, the products were being sold at unlawfully low prices and were being unfairly subsidized through efforts such as tax incentives, export subsidies, subsidized loans and inputs for less than adequate remuneration.

In April, the U.S. International Trade Commission determined many of the targeted imports were injuring or threatening domestic production and greenlit tariffs outlined by Commerce in February.

After amending its final results to increase BMB's margin from 4.55% to 5.11%, Commerce published the anti-dumping duty order on the Turkish pipes, leading to the present appeal.

BMB is represented by Donald B. Cameron, Julie C. Mendoza, R. Will Planert, Brady W. Mills, Mary S. Hodgins, Eugene Degnan, Sabahat Chaudhary and Ragan W. Updegraff of Morris Manning & Martin LLP.

Counsel for the government was not immediately available Monday.

The case is *Borusan Mannesmann Boru Sanayi ve Ticaret AS v. US*, case number 19-00056, before the U.S. Court of International Trade.

--Additional reporting by Alex Lawson. Editing by John Campbell.