

March 16, 2017

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Administrative Review for the POR
7/18/2014 – 8/31/2015
AD/CVD Operations, Office VI
**Contains No Business Proprietary
Information**
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VIA ELECTRONIC FILING

The Honorable Wilbur L. Ross, Jr.
Secretary of Commerce
U.S. Department of Commerce
Attn: Enforcement & Compliance
APO/Dockets Unit, Room 18022
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: ***Certain Oil Country Tubular Goods from the Republic of Korea***: Comments on
the Department's March 8, 2017 and March 13, 2017 Memoranda

Dear Secretary Ross:

On behalf of Maverick Tube Corporation, TMK IPSCO, Vallourec Star, L.P., Welded Tube USA, and United States Steel Corporation ("Petitioners"), we hereby submit comments on the documents placed on the record by the Department of Commerce (the "Department") on March 8, 2017 and March 13, 2017. These comments are timely filed pursuant to the Department's March 13, 2017 letter.¹

As an initial matter, Petitioners note that the email attached in the Department's March 8, 2017 memorandum is a pre-decisional, inter-agency communication from within the executive

¹ See Letter from Erin Kearney, Program Manager, Antidumping and Countervailing Duty Operations, Office VI, to All Interested Parties re: *Schedule for Submission of Comments on the March 8, 2017 and March 13, 2017 Memoranda to the File* (Mar. 13, 2017).

branch of government that is expressly covered by the deliberative process privilege.² In any event, the Department has placed this email on the record. As further discussed below, Petitioners believe that the issues raised in this email are important and should be taken under consideration in this review as the Department vigorously enforces the law.

I. MARCH 8, 2017 MEMORANDUM

In the Department's March 8, 2017 memorandum, the agency attaches an email dated March 2, 2017 from Peter Navarro of the National Trade Council, Executive Office of the President, concerning the application of the new particular market situation provision in this case.³ Mr. Navarro's email represents his view on whether the new particular market situation provision could be applied in this case and recommends that the Secretary consider the broader implications of the new law.⁴ This is consistent with Petitioners' position in this proceeding and with the purpose of the law.⁵

² See 5 U.S.C. § 522(b)(5) (providing that an agency need not disclose "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency"); *Renegotiation Bd. v. Grumman Aircraft Engineering Corp.*, 421 U.S. 168, 184 (1975) (stating that "both Exemption 5 and the case law which it incorporates distinguish between predecisional memoranda prepared in order to assist an agency decisionmaker in arriving at his decision, which are exempt from disclosure, and postdecisional memoranda setting forth the reasons for an agency decision already made, which are not"); *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (stating that "{t}he point {of 5 U.S.C. § 522(b)(5)}, plainly made in the Senate Report, is that the 'frank discussion of legal or policy matters' in writing might be inhibited if the discussion were made public; and that the 'decisions' and 'policies formulated' would be the poorer as a result" (internal citations omitted)) *Dudman Commc'ns. Corp. v. Dep't of the Air Force*, 815 F. 2d 1565, 1567 (D.C. Cir. 1987) (providing that the deliberative process privilege "protects the deliberative and decisionmaking processes of the executive branch, rests most fundamentally on the belief that were agencies forced to operate in a fishbowl, . . . the frank exchange of ideas and opinions would cease and the quality of administrative decisions would consequently suffer").

³ See Memorandum from Deborah Scott, Int'l Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office VI, through Scot Fullerton, Director, Antidumping and Countervailing Duty Operations, Office VI to the File, re: *Certain Oil Country Tubular Goods from the Republic of Korea* (Mar. 8, 2017) ("March 8, 2017 Memorandum").

⁴ *Id.*

⁵ See generally Letter from Wiley Rein LLP to Sec'y of Commerce, re: *Oil Country Tubular Goods from South Korea: Particular Market Situation Case Brief* (Mar. 2, 2017) ("Maverick PMS Case Brief").

In his email, Mr. Navarro accurately points out that the new particular market situation “{e}xpanded” the Department’s power and is a “measuring tool” through which the Department now has the ability to adjust reported costs of production “to stop both diversionary dumping by non-market economies like China and an undervaluation of Korean subsidies under the guise that it is a market economy.”⁶ This is precisely right. And as Mr. Navarro indicates, the new particular market situation provision is consistent with WTO law and the United States’ WTO obligations, as it provides the Department with the authority to adjust costs where, as here, home market costs are plainly distorted by a reliance on dumped Chinese hot-rolled coil and highly-subsidized domestically-produced hot-rolled coil, with subsidy margins of nearly 60 percent.⁷ Petitioners urge the Department to account for these distortions in its final determination.

We believe that the issues raised in Mr. Navarro’s letter are important, and we seek that the Department consider the issues raised in it as the agency vigorously enforces the law. The President was elected on a commitment to strong trade law enforcement, and this includes all of the elements available to the Department, including the new particular market situation provision, the application of adverse facts available, self-initiation, and the taking of actions against transshipment, circumvention, and export control violations. Throughout this proceeding, Petitioners have raised issues that include some of those listed and we are confident that when the Department carefully applies the facts and the law, it will find that a particular market situation exists and that corresponding cost adjustments are warranted.

Petitioners also note that the Department often receives congressional letters in investigations and reviews requesting that the Department carefully examine the facts and the

⁶ March 8, 2017 Memorandum.

⁷ *Id.*; see also Maverick PMS Case Brief at 10-11, 16-17.

law when making its final determination. We are confident that the Department will continue to do so here. Mr. Navarro's email on behalf of the National Trade Council is likewise a request that the Department carefully consider the application of the new law in this case.

II. MARCH 13, 2017 MEMORANDUM

In the Department's March 13, 2017 memorandum, the agency provides an email from the Korean government requesting the Department's "general opinion and stance" on Mr. Navarro's email from March 2, 2017.⁸ However, the Department does not owe the Korean government any special explanation in terms of its "general opinion and stance" on the new law or its applicability in this case. Over the course of the original investigation, Korean government officials met with Department officials numerous times, in Korea and in Washington, D.C., in an extensive effort to exert political influence. As was the case then, the Department is under no obligation to explain to the Korean government how it intends to consider the inquiries of those within the executive branch. Moreover, the Department does not typically comment on its views of letters received in AD/CVD proceedings and there is no reason why it should start now. Like any other similar submission, the Department should take the Korean government's submission under advisement and grant it no more weight than any other such letter.

For these reasons, when the Department takes all views into account, and when it applies the facts to the law in accordance with Secretary Ross's public statements to "aggressively enforce strong trade policies," "vigorously protect the interests of the United States," and pay attention to "the anti-dumping requirements that {the United States} should impose on the steel industry," Petitioners are confident that the Department will affirmatively enforce the law on all

⁸ See Memorandum from Deborah Scott, Int'l Trade Compliance Analyst, Antidumping and Countervailing Duty Operations, Office VI, through Scot Fullerton, Director, Antidumping and Countervailing Duty Operations, Office VI, to the File, re: *Certain Oil Country Tubular Goods from the Republic of Korea* (Mar. 13, 2017).

the issues raised in Petitioners' briefs.⁹ If you have any questions with regard to this submission, please do not hesitate to contact the undersigned.


/s/ Paul W. Jameson

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Respectfully submitted,



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⁹ See, e.g., *Secretary of Commerce Wilbur L. Ross, Jr. Announces \$1.19 Billion Penalty for Chinese Company's Export Violations to Iran and North Korea*, Commerce.gov (Mar. 7, 2017) (last visited Mar. 15, 2017), available at <https://www.commerce.gov/news/press-releases/2017/03/secretary-commerce-wilbur-l-ross-jr-announces-119-billion-penalty>; Commerce Secretary Confirmation Hearing, C-SPAN.org (Jan. 18, 2017) (last visited Mar. 15, 2017), available at <https://www.c-span.org/video/?421257-1/commerce-secretary-nominee-wilbur-ross-testifies-confirmation-hearing&start=3296>.

REPRESENTATIVE CERTIFICATION

I, Robert E. DeFrancesco, III, with Wiley Rein LLP, counsel to Maverick Tube Corporation, certify that I have read the attached submission of Comments on the Department's March 8, 2017 and March 13, 2017 Memoranda, filed March 16, 2017, pursuant to the 7/18/2014 – 8/31/2015 administrative review under the antidumping duty order on *Certain Oil Country Tubular Goods from the Republic of Korea*, Case No. A-580-870. In my capacity as counsel of this submission, I certify that the information contained in this submission is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the U.S. Department of Commerce may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: 
Robert E. DeFrancesco, III

Date: March 16, 2017

Certification

I, Paul W. Jameson, counsel to TMK IPSCO, Vallourec Star, L.P., and Welded Tube USA, certify that I have prepared or otherwise supervised the preparation of the attached *Comments on the Department's March 8, 2017 and March 13, 2017 Memoranda* pursuant to the 2014-2015 administrative review of the antidumping duty order on Certain Oil Country Tubular Goods from Korea, case number A-580-870.

In my capacity as counsel of this submission, I certify that the information contained in this petition is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. § 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.

Signature: _____

Paul W. Jameson

Date: _____

March 16, 2017

CERTIFICATION

I, Matthew J. McConkey, counsel to Untied States Steel Corporation, certify that I have prepared or otherwise supervised the preparation of the attached *Comments on the Department's March 8, 2017 and March 13, 2017 Memoranda* pursuant to the 2014-2015 administrative review of the anti dumping duty order on *Certain Oil Country Tubular Goods from Korea*, case number A-580-870.

In my capacity as counsel of this submission, I certify that the information contained in this petition is accurate and complete to the best of my knowledge. I am aware that U.S. law (including, but not limited to, 18 U.S.C. § 1001) imposes criminal sanctions on individuals who knowingly and willfully make material false statements to the U.S. Government. In addition, I am aware that, even if this submission may be withdrawn from the record of the AD/CVD proceeding, the Department may preserve this submission, including a business proprietary submission, for purposes of determining the accuracy of this certification. I certify that a copy of this signed certification will be filed with this submission to the U.S. Department of Commerce.



Matthew J. McConkey

Dated: March 16, 2017

CERTIFICATE OF SERVICE


PUBLIC SERVICE

Oil Country Tubular Goods from South Korea

A-580-870

Administrative Review 7/18/14 – 8/31/15

I certify that a copy of this document was served on the following parties, via first class mail and hand delivery where indicated (*), on March 16, 2017.



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