December 30, 2002

Case No.: A-485-805
Total Pages: 2
Review for the Period 2/4/00 - 7/31/01

PUBLIC DOCUMENT

BY HAND DELIVERY
The Honorable Donald L. Evans
Secretary of Commerce
U.S. Department of Commerce
Import Administration
Central Records Unit, Room 1870
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Attn: George Smolik Room 3708
Lawrence Norton Room 1579

Re: Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania

Dear Secretary Evans:

On November 8, 2002, on behalf of United States Steel Corporation,[1] Bethlehem Steel Corporation, and National Steel Corporation (the "Domestic

[1]United States Steel Corporation is a petitioner in the above-captioned review.

Steel Producers"), we submitted comments to the Department of Commerce (the "Department") on whether Romania's status as a non-market economy under the U.S. antidumping law should be revoked.[2] The Department for Foreign Trade of the Government of Romania has also submitted comments to the Department on that issue.[3] On behalf of the Domestic Steel Producers, we hereby submit the attached memorandum rebutting that submission.

Respectfully submitted,

____

Robert E. Lighthizer
John J. Mangan
Stephen J. Narkin
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-7000

____

Alan Wm. Wolff
Thomas R. Howell
Dewey Ballantine LLP
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 862-1000

On behalf of United States Steel Corporation, Bethlehem Steel Corporation, and National Steel Corporation

[2] Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe From Romania, 67 Fed. Reg. 57388, 57390 (Dep't Commerce Sept. 10, 2002) (prelim. results).

[3] See Comments of the Government of Romania (Oct. 23, 2002).

PUBLIC DOCUMENT

Case No.: A-485-805
Total Pages: 10
Administrative Review for the Period
2/4/00 - 7/31/01

BEFORE THE UNITED STATES DEPARTMENT OF COMMERCE
INTERNATIONAL TRADE ADMINISTRATION

IN THE MATTER OF

CERTAIN SMALL DIAMETER CARBON
AND ALLOY SEAMLESS STANDARD, LINE,
AND PRESSURE PIPE FROM ROMANIA

REBUTTAL COMMENTS REGARDING THE NON-MARKET ECONOMY STATUS OF ROMANIA FILED ON BEHALF OF UNITED STATES STEEL CORPORATION, BETHLEHEM STEEL CORPORATION, AND NATIONAL STEEL CORPORATION

Skadden, Arps, Slate, Meagher
& Flom LLP
1440 New York Avenue, N.W.
Washington, D.C.
(202) 371-7000

Dewey Ballantine LLP
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 862-1000

December 30, 2002

TABLE OF CONTENTS

LIST OF EXHIBITS

Tab	Document
A	"2001 Regular Report on Romania's Progress Towards Accession," Commission of the European Communities (Nov. 13, 2001) at 37
B	"Report Details Romanian Government's Economic Failures, 'Abuses'," Bucharest Romania Libera (July 4, 2002)
C	C. Popescu-Bogdanesti, "Corruption, a National 'Asset'?" Bucharest Tribuna Economica (Dec. 4, 2002)
D	"2001 Regular Report on Romania's Progress Towards Accession," Commission of the European Communities (Nov. 13, 2001) at 38
E	"Presidency Conclusions, Copenhagen European Council, 12 and 13 December 2002"
F	"Eastern Approaches: Romania's fresh wind," United Press International (Nov. 4, 2002)
G	"Enlargement: Q&A," European Union in the US, http://www.eurunion.org.legislat/extrel/enlarge.htm
H	Results of World Bank "Data Query" of World Development Indicators, http://devdata.worldbank.org/data-query/SMResult.asp

EXECUTIVE SUMMARY

In comments submitted on November 8, 2002, United States Steel Corporation, Bethlehem Steel Corporation, and National Steel Corporation (the "Domestic Steel Producers") explained in detail why the Department of Commerce (the "Department") should continue to treat Romania as a non-market economy ("NME") under the U.S. antidumping duty law. The Department for Foreign Trade of the Government of Romania has also submitted comments to the Department on that issue (the "GOR Submission").[1]

These rebuttal comments will be brief, as the GOR Submission does not require extended discussion. These comments will address only three broad issues. First, the GOR Submission in many respects supports the arguments made by the Domestic Steel Producers in their November 8, 2002 submission. Second, despite the arguments of Romania to the contrary, Romania's relationship with the European Union provides no indication that Romania has, or will develop, a market economy. Third, and finally, certain macroeconomic data cited in the GOR Submission are wholly irrelevant to the Department's analysis.

[1]Comments of the Government of Romania (Oct. 23, 2002).

I. THE SUBMISSION BY THE GOVERNMENT OF ROMANIA CONFIRMS THAT ROMANIA HAS NOT DEVELOPED A MARKET ECONOMY

Summary of the Comment

The GOR Submission contains information showing that Romania has not made meaningful progress in privatizing state-owned enterprises, in creating an environment in which significant foreign direct investment is possible, or in relinquishing control over the banking sector of the economy.

Discussion

For the reasons explained in the Domestic Steel Producers' November 8, 2002 submission, under each of the factors that the Department considers under 19 U.S.C. § 1677(18(B), Romania remains an NME. For three of those factors, the GOR Submission contains information that actually strongly reinforces the Domestic Steel Producers' arguments. These three factors are:

- "The extent of government ownership or control of the means of production";
- "The extent to which joint ventures or other investments by firms of other countries are permitted in the foreign country"; and
- "The extent of government control over the allocation of resources and over the price and output decisions of enterprises."

A. Privatization

The GOR Submission argues that there is a new legislative proposal in Romania that would facilitate the privatization of state-owned enterprises. However, as the European Commission observed in its 2001 report on Romania's progress towards its possible accession to the European Union, new legislation is not what is needed. In the Commission's words, "{m}ost of the legal framework of a market economy is already in place; however, the institutions to implement and enforce it are either weak or have not yet been established." [2]

The GOR Submission also points to certain statistics compiled by the government purporting to show that a large part of the economy is controlled by the private sector.[3] As a threshold matter, the Department should be highly skeptical of these data. A recent report flatly accused the government of lying in the statistics that it reports.[4] The report stated that Romania's National Institute of Statistics - - the source of information upon which the GOR Submission relies - - is "{c}ompletely subordinated politically," and that many specialists have left that organization because of the political pressure to which they have been subjected.[5]

Beyond that, in comparison to other countries which the Department has decided to continue to treat as an NME, the statistics cited by the GOR by no means indicate that Romania has developed a market economy. The GOR claims that, as of 2000, 57.5

---

[2]"2001 Regular Report on Romania's Progress Towards Accession," Commission of the European Communities (Nov. 13, 2001) at 37, set forth as Exhibit A.

[3]See GOR Submission at 28-29.

[4]"Report Details Romania Government's Economic Failures, 'Abuses'," Bucharest Romania Libera (July 4, 2002), attached as Exhibit B.

[5]Id.

percent of the industrial economy was in private hands. In the case of Vietnam - - which the Department recently decided to continue to treat as an NME - - the comparable percentage was a strikingly similar 58 percent.[6]

B. Foreign Direct Investment

In discussing the extent to which there is foreign direct investment in Romania, the GOR likewise argues that recently-enacted legislation will lead to significant foreign direct investment in the future. In particular, the GOR points to laws passed in 2001 and 2002 that it claims "are certain to have a positive effect on investment inflows."[7] The passage of these laws simply recognizes that Romania's performance in this area to date has been nothing short of dismal.

As the Domestic Steel Producers explained in their November 8, 2002 submission, in practice, Romania is not open to significant foreign investment.

Irrespective of laws that may ostensibly welcome foreign direct investment, in truth, corruption, arbitrary and unpredictable government actions, and a weak legal system have all combined to make the business environment in Romania one of the most toxic towards foreign direct investment in Europe, or anywhere else for that matter.[8]

---

[6] Memorandum for Faryar Shirzad, Assistant Secretary, Import Administration, from Office of Policy, Import Administration Regarding Anitdumping Duty Investigation of Certain Frozen Fish Filets from the Socialist Republic of Vietnam - - Determination of Market Economy Status at 29.

[7] GOR Submission at 23.

[8] Domestic Steel Producers' November 8, 2002 submission at 10-16.

Corruption is so massive and so pervasive that objective Romanian observers have noted that it has prevented market forces from working. As a recent editorial in a leading Romania economic weekly journal recently put it:

> Observing the golden rule of inefficiency, according to which any step (forward?) creates more problems than it solves, our transition to a market economy has acquired a "millstone" around its neck that it cannot get rid of: corruption. There has been a lot of talk in various political circles and conclaves of the civil society about the expansion of this scourge . . . Ironically and perfidiously, this devastating disease of the Romanian business environment was made stronger and more immune to known treatments, and is now increasingly destructive . . . {W}hat we call corruption hinders the full establishment of market forces, of loyal competition, and of a real market economy with its mechanisms that create value, wealth, and prosperity.[9]

Not surprisingly, the Economist Intelligence Unit ranked Romania's business environment for the period 1977-2001 52nd out of the 60 countries studied by that publication. In large part for this reason, Romania has trailed far behind other Eastern European countries, such as Poland, Hungary, and the Czech Republic, in attracting foreign direct investment.[10]

C. Government Control Over the Allocation of Resources and the Price and Output Decisions of Enterprises

In their November 8, 2002 submission, the Domestic Steel Producers argued that state-owned banks account for half of all Romania's banking assets, and that this provides

---

[9] C. Popescu-Bogdanesti, "Corruption, a National 'Asset'?" Bucharest Tribuna Economica (Dec. 4, 2002), set forth as Exhibit C.

[10] Domestic Steel Producers' November 8, 2002 submission at 9-10, Exhibit H.

an indirect, but powerful means for the GOR to control the means of production.[11] The GOR Submission essentially confirms this, stating that the European Communities have found that state-owned banks account for "only" 46 percent of total bank assets.[12] By any objective measure, the government therefore controls a very high percentage of the banking sector. Furthermore, the GOR Submission notes that the "strongest Romanian bank," Banca Comerciala Romana, will be privatized, but goes on to say that it is only beginning to take "preparatory" steps towards this end.[13]

II. ROMANIA'S RELATIONSHIP WITH THE EUROPEAN UNION PROVIDES NO INDICATION THAT ROMANIA HAS, OR WILL DEVELOP, A MARKET ECONOMY

Summary of the Comment

Contrary to the claims made in the GOR Submission, Romania's status vis-a-vis the European Union does not demonstrate that Romania has made, or will make, significant progress in developing a market economy.

Discussion

The GOR Submission argues that Romania's relationship with the European Union (the "EU") is evidence that Romania has a market economy, and that it is "irreversibly

[11] Id. at 19.

[12] GOR Submission at 40.

[13] Id. at 39.

committed" to market reforms.[14] This relationship consists of the fact that Romania is an associate member of the EU, and a candidate for accession to the EU.[15]

In truth, Romania's relationship with the EU provides no indication that Romania has a market economy, or that it is committed to developing one. Indeed, the EU's treatment of Romania's application for accession to the EU indicates that the EU is not at all confident that Romania either has, or will develop, a market economy.

In its 2001 regular report on the progress of Romania towards accession, the European Commission stated that "{t}he absence of a functioning market economy has hampered the development of economic activity, particularly the development of the private sector."[16] No doubt in significant part for that reason, while deciding to enlarge the EU massively by approving the accession of ten countries earlier this month,[17] the EU Council declined to approve Romania's application for accession.[18] While the Council stated that it has the “objective" to welcome Romania as an EU member in 2007, it made clear that this depends on further progress in meeting the EU's membership criteria.[19]

---

[14]Id. at 2-3, 44-45.

[15]Id.

[16]"2001 Regular Report on Romania's Progress Towards Accession," Commission of the European Communities (Nov. 13, 2001) at 38, set forth as Exhibit D.

[17]See "Presidency Conclusions, Copenhagen European Council, 12 and 13 December 2002" ("Presidency Conclusions") at 1, set forth as Exhibit E.

[18]Id. at 4-5.

[19]Id. at 4.

The reality is that Romania falls far short of meeting those criteria. As one press account from Romania recently put it:

> According to the latest enlargement-candidate scorecard from Brussels, the Bucharest government of President Ion Iliescu and Premier Adrian Nastase has failed to adequately reform its judicial system, enact laws that harmonize with the West, give parliament enough legislative power, reform public spending or even create what Brussels calls a "functioning market economy."
>
> Bucharest is also infested with institutional crime. The EU report has said "corruption remains a very serious concern . . . money-laundering, piracy, and counterfeiting remain serious problems . . (and) corruption within the customs administration has to be reduced."[20]

Furthermore, objective Romanian voices do not disagree with this assessment. In commenting on Romania's exclusion from the recently-announced EU enlargement, Romania's Ambassador to the Czech Republic stated that "{w}e do not feel this is discrimination," and that "{w}e have to become more serious . . . {w}e have to change."[21]

As for the notion that Romania's interest in joining the EU proves that it is "irreversibly committed" to market reforms, two observations are in order. First, even if that were true, it is beside the point. The simple fact is that Romania has not yet undertaken the reforms necessary to make it a true market economy. Second, Romania's interest in joining the EU is long-standing. It applied for EU membership in June 1995 - - before six of the ten countries recently accepted for EU membership filed their applications.[22] There is no

---

[20]"Eastern Approaches: Romania's fresh wind," United Press International (Nov. 4, 2002), set forth as Exhibit F.

[21]Id.

[22]"Enlargement: Q&A," European Union in the US,

(continued...)

reason for the Department to believe that the prospect of EU membership will lead Romania to undertake now the reforms that it could have, and should have, undertaken earlier to achieve that end.

III. RECENT MACROECONOMIC DEVELOPMENTS IN ROMANIA ARE IRRELEVANT TO THE DEPARTMENT'S ANALYSIS

Summary of the Comment

Recent improvements in macroeconomic conditions in Romania are not, as Romania contends, relevant to the Department's NME analysis.

Discussion

The GOR Submission argues that the Department should consider as part of its analysis the fact that Romania's macroeconomic environment has improved somewhat in recent years.[23] These modest changes - - including the fact that Romania experienced 1.6 percent economic growth in 2000, and 5.5 percent in 2001, and inflation is declining (although it remains at very high levels, at 20 percent) - - are wholly irrelevant to the Department's NME analysis.

For example, at the risk of stating the obvious, a country can perform strong economically even if it does not have a market economy. Vietnam, which the Department

---

[22](...continued)
http://www.eurunion.org.legislat/extrel/enlarge.htm, at 1, set forth as Exhibit G.

These six countries are Slovakia, Latvia, Estonia, Lithuania, the Czech Republic, and Slovenia. See Presidency Conclusions, supra, at 1.

[23]GOR Submission at 41.

recently determined is an NME, recorded economic growth of 5 percent or more during each of the last five years, over the period 1997-2001.[24]

IV. CONCLUSION

For the reasons stated herein, and in the Domestic Steel Producers' submission of November 8, 2002, the Department should continue to treat Romania as an NME for purposes of the U.S. antidumping duty law.

Respectfully submitted,

Robert E. Lighthizer
John J. Mangan
Stephen J. Narkin
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-7000

Alan Wm. Wolff
Thomas R. Howell
Dewey Ballantine LLP
1775 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 862-1000

On behalf of United States Steel Corporation, Bethlehem Steel Corporation, and National Steel Corporation

[24] See results of World Bank "Data Query" of World Development Indicators, http://devdata.worldbank.org/data-query/SMResult.asp., set forth as Exhibit H.