

***Toscelik Profil ve Sac Endustrisi AS v. United States***  
**Court No. 14-211; Slip Op. 15-144 (CIT 2015)**

**FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND**

**A. SUMMARY**

The Department of Commerce (the Department) prepared these final results of remand redetermination pursuant to the remand order of the U.S. Court of International Trade (CIT or the Court), issued on December 21, 2015, in *Toscelik Profil ve Sac Endustrisi AS v. United States*, Court No. 14-00211; Slip Op. 15-144 (CIT 2014) (*Opinion and Remand Order*). This final remand redetermination concerns *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Rescission of Countervailing Duty Administrative Review, in Part*, 79 FR 51140 (August 27, 2014) (*2012 Final Results*) and the accompanying Issues and Decision Memorandum (2012 Final IDM).

In the 2012 review the Department selected Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (the Borusan Companies) for individual examination as the sole mandatory respondent; Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan AS) and Toscelik Profil ve Sac Endustrisi A.S. (Toscelik) remained as producers under review but not subject to individual examination, *i.e.*, “non-selected” respondents.<sup>1</sup> Toscelik participated in the proceeding by filing comments concerning respondent selection matters.<sup>2</sup>

Pursuant to litigation, and subsequent to the issuance of the *2012 Final Results*, the Department amended Toscelik’s net subsidy rate for the 2011 review from 0.83 percent to *de*

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<sup>1</sup> See May 28, 2013, Respondent Selection Memorandum at from Jolanta Lawska to Eric Greynolds at 4-5.

<sup>2</sup> See Toscelik’s May 13, 2013, Letter to the Department regarding Respondent Selection.

*minimis*.<sup>3</sup> In the instant litigation, Toscelik argued before the Court that the Department must adjust the net subsidy rate assigned to Toscelik in the *2012 Final Results* in accordance with the firm's revised net subsidy rate assigned as part of the 2011 final remand redetermination. Thus, argued Toscelik, the Department should "pull forward" the redetermined *de minimis* rate for Toscelik from the 2011 review for use as the non-selected rate for Toscelik in the 2012 review.

As set forth in detail below, in these final remand results, pursuant to the Court's *Opinion and Order*, we have determined to implement the Court's decision under respectful protest.

## **B. BACKGROUND**

In the underlying administrative review covering calendar year 2012 (2012 review), the Department selected the Borusan Companies as the sole mandatory respondent and designated the Erbosan Companies and Toscelik as non-selected respondents. Because the Department calculated a *de minimis* rate for the Borusan Companies, the Department, consistent with its practice concerning non-selected respondents in countervailing duty (CVD) administrative reviews, "pulled forward" the rates calculated for the Erbosan Companies and Toscelik in the most recent proceeding in which the Department individually examined these firms, the administrative review covering 2011 (2011 review).<sup>4</sup> In the 2012 administrative review, Toscelik did not file an administrative case brief or otherwise challenge the "pulled forward" rate of 0.83 percent from the 2011 review. In the *2012 Final Results*, the Department assigned the

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<sup>3</sup> See *Circular Welded Carbon Steel Pipes and Tubes From Turkey: Notice of Court Decision Not in Harmony With Final Results of Countervailing Duty Administrative Review and Notice of Amended Final Results of Countervailing Duty Administrative Review*; 2011, 80 FR 43709 (July 23, 2015) (*2011 Amended Final Results*); See *Final Results of Redetermination Pursuant to Court Remand, Toscelik Profil ve Sac Endustrisi AS v. United States*, Court No. 13-00371; Slip Op. 14-126 (CIT 2014) (Feb. 13, 2015) (2011 final remand redetermination), which can be found attached to Memorandum to the File from John Conniff, "Placement of 2011 Final Redetermination on 2012 Remand Record," dated April 15, 2016, and released concurrently with the issuance of this remand.

<sup>4</sup> See 2012 Final IDM at 3-4, referencing *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916, 64917 (October 30, 2013) (*2011 Final Results*) and accompanying Issues and Decision Memorandum (2011 Final IDM).

Erbosan Companies a *de minimis* non-selected rate and assigned Toscelik a non-selected rate of 0.83 percent.<sup>5</sup>

The Department published the *2011 Final Results* on October 30, 2013, assigning Toscelik a subsidy rate of 0.83 percent.<sup>6</sup> Toscelik challenged the *2011 Final Results* at the Court, arguing that certain deficiencies in the calculation of a land benchmark rendered the 2011 subsidy rate invalid.<sup>7</sup> On April 23, 2014, the Department published its preliminary results of the 2012 review<sup>8</sup> and calculated a *de minimis* rate for Borusan.<sup>9</sup> However, in accordance with its practice, the Department did not assign Toscelik a *de minimis* rate as well; rather, the Department assigned Toscelik the subsidy rate of 0.83 percent that Toscelik had received in the most recent administrative review in which Toscelik was individually examined, *i.e.*, from the *2011 CVD Final Results*.<sup>10</sup> Pursuant to its regulations, the Department provided 30 days for interested parties to submit case briefs and five days thereafter to submit rebuttal briefs on the 2012 Preliminary Results.<sup>11</sup>

Toscelik did not file case or rebuttal briefs, nor did Toscelik comment upon the *2012 Preliminary Results* in some other form or request an extension to submit arguments. On August 27, 2014, in the *2012 Final Results*, the Department continued to apply the 0.83 percent subsidy

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<sup>5</sup> See 2012 Final IDM at 3-4.

<sup>6</sup> See *2011 Final Results*, 78 FR at 64917.

<sup>7</sup> See generally *Toscelik Profil ve Sac Endustrisi A.S. v. United States*, Court No. 13-00371, Slip Op. 14-126 (CIT) (October 29, 2014).

<sup>8</sup> See *Circular Welded Carbon Steel Pipe and Tube Products From Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Intent To Rescind Countervailing Duty Administrative Review, in Part*, 79 FR 22625 (Apr. 23, 2014) (*2012 Preliminary Results*), and accompanying preliminary decision memorandum (2012 PDM).

<sup>9</sup> See 2012 PDM at 1.

<sup>10</sup> *Id.* at 7.

<sup>11</sup> See *2012 Preliminary Results*, 79 FR at 22627.

rate to Toscelik.<sup>12</sup> The Department did not evaluate or address arguments regarding the subsidy rate Toscelik received because the record contained no challenges to that rate.<sup>13</sup>

Thereafter, on February 13, 2015, in its final remand results pursuant to the Court decision concerning the 2011 review, the Department revised the land benchmark used to calculate Toscelik's 2011 subsidy rate, lowering Toscelik's calculated subsidy rate for the 2011 period of review from 0.83 percent to 0.44 percent.<sup>14</sup> Accordingly, the Department re-assigned Toscelik a *de minimis* rate for the 2011 review.<sup>15</sup> Those results were sustained on April 1, 2015.<sup>16</sup>

In its briefs before the Court, the Department argued that Toscelik had failed to exhaust its administrative remedies in the underlying 2012 review regarding the proper "pull forward" rate to assign to the company. However, in its holding, the Court disagreed. The Court held that Toscelik did not need to present its argument during the 2012 review because such presentation would have proven futile. Specifically, absent the administrative record underlying the 2011 subsidy rate (pulled forward to 2012), the Court found that Toscelik lacked an argument "that could have resulted in redress of the error in the eleventh review."<sup>17</sup> The Court further held that the 2012 determination with regard to Toscelik represented a "derivative action" that "turns wholly on the lawfulness *vel non* of the {2011 review}."<sup>18</sup> The Court, thus, considered that in this case the law did not require Toscelik to file an administrative brief merely to preserve the

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<sup>12</sup> See 2012 Final results, 79 FR at 51141.

<sup>13</sup> *Id.*; see also 2012 Final IDM at 3-4.

<sup>14</sup> See Memorandum to the File from John Conniff, Case Analyst, "Placement of 2011 Final Redetermination on 2012 Remand Record," dated April 15, 2016, and issued concurrently with the redetermination, to which is attached the final redetermination for the 2011 administrative review.

<sup>15</sup> *Id.*

<sup>16</sup> See *Toscelik Profil Ve SAC Endustrisi A.S. v. United States*, Court No. 13-00371, Slip. Op. 15-28 (CIT April 1, 2015), 2011 Amended Final Results, 80 FR at 43709.

<sup>17</sup> *Opinion and Remand Order*, at 10.

<sup>18</sup> *Id.* at 11.

right to appeal and directed Commerce to consider in its remand the amended final results of the 2011 review.

### **C. DRAFT RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND**

On March 21, 2016, the Department issued the Draft Results of Redetermination Pursuant to Court Remand and provided parties until April 4, 2016, to comment. The Department received no comments from interested parties.

### **D. ANALYSIS**

Based on the Court's holding that the law did not require Toscelik to file an administrative case brief under the circumstances described above, the Court's analysis, and its order that the Department consider the application of the amended net subsidy rate determined for the 2011 review for the 2012 review, we have "pulled forward" Toscelik's amended *de minimis* rate from the 2011 review remand for use as the non-selected rate in the 2012 review. However, we do so under respectful protest.<sup>19</sup>


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<sup>19</sup> See *Viraj Group v. United States*, 343 F.3d 1371 (Fed. Cir. 2003).

**E. RESULTS OF FINAL REDETERMINATION**

As discussed above, pursuant to the Opinion and Remand Order, the Department has considered the application of the amended net subsidy rate determined for the 2011 review in this redetermination concerning the 2012 review. Consequently, in these results of remand redetermination, the Department is applying Toscelik’s amended net subsidy rate from the 2011 review under respectful protest.

Therefore, Toscelik’s rate for the 2012 review is revised from 0.83 percent to *de minimis*.

  
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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

14 APRIL 2016  
Date