

Toscelik Profil ve Sac Endustrisi A.S. v. United States
Consol. Court No. 17-00018, Slip Op. 19-166 (CIT December 18, 2019)

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

I. SUMMARY

The Department of Commerce (Commerce) has prepared these final results of redetermination pursuant to the third remand order of the U.S. Court of International Trade (the Court) issued on December 18, 2019.¹ These final results of redetermination concern the final results in the administrative review of welded carbon steel standard pipe and tube products (Pipe and Tube) from the Republic of Turkey (Turkey).² In the *Third Remand Order*, the Court remanded and ordered Commerce to recalculate normal value (NV) without making a circumstance-of-sale adjustment related to the duty drawback adjustment made to the U.S. price.³

As set forth in detail below, pursuant to the *Third Remand Order*, Commerce has, under respectful protest,⁴ granted *Toscelik Profil ve Sac Endustrisi A.S.* (*Toscelik*) a duty drawback adjustment as claimed and reported by *Toscelik* in its U.S. sales data. Additionally, Commerce

¹ See *Toscelik Profil ve Sac Endustrisi A.S. v. United States*, Consol. Ct. No. 17-00018, Slip Op. 19-166 (CIT December 18, 2019) (*Third Remand Order*).

² See *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Administrative Review; 2014-2015*, 81 FR 92785 (December 20, 2016) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM), amended by *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Amended Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 11002 (February 17, 2017) (*Amended Final Results*).

³ See *Third Remand Order*.

⁴ See *Viraj Group, Ltd. v. United States*, 343 F. 3d 1371 (Fed. Cir. 2003) (*Viraj*)

has added an imputed cost for import duties to the cost of production (COP). This amount is based on Toscelik's period of review (POR) cost of manufacturing (COM) for pipe and tube and was calculated as the ratio of the total amount of Toscelik's exempted or forgiven import duties and Toscelik's reported COM for the POR. The amount of this imputed import duty cost added to Toscelik's COP is equal to the product of the resultant ratio and the control number-specific COM. Lastly, as directed by the Court, Commerce has made no circumstance-of-sale adjustment to account for the imbalance between the U.S. duty drawback adjustment and the amount of import duties reflected in NV.

II. BACKGROUND

On December 20, 2016, Commerce published the *Final Results* pertaining to mandatory respondent Toscelik.⁵ The POR is May 1, 2014 through April 30, 2015. On February 17, 2017, Commerce published the *Amended Final Results* after correcting ministerial errors present in the *Final Results*.⁶

On June 6, 2018, the Court remanded two issues and directed Commerce to: (1) reconsider the calculation of plaintiff Toscelik's duty drawback adjustment; and (2) provide further explanation for granting Toscelik a circumstance-of-sale adjustment for warehousing expenses.⁷ On October 4, 2018, Commerce submitted its final results of redetermination, recalculating Toscelik's duty drawback adjustment, under respectful protest and providing further explanation for granting a circumstance-of-sale adjustment for warehousing expenses.⁸

⁵ See *Final Results*, and accompanying IDM.

⁶ See *Amended Final Results*.

⁷ See *Toscelik Profil ve Sac Endustrisi A.S. v. United States*, 321 F. Supp. 3d 1270 (CIT 2018) (*First Remand Order*).

⁸ See *Final Results of Redetermination Pursuant to Court Remand, Toscelik Profil ve Sac Endustrisi A.S. v. United States*, Court No. 17-00018, Slip Op. 18-66 (CIT June 6, 2018) (*First Remand Redetermination*).

On April 1, 2019, the Court remanded the calculation of Toscelik’s duty drawback adjustment, finding that Commerce’s “action on remand... negates the statutory duty drawback adjustment that Toscelik earned by exporting its finished product to the United States and impinges on the agency’s ability to make a fair comparison” and concluded that the First Remand Redetermination was “not in accordance with law.”⁹ On May 30, 2019, Commerce submitted its final results of redetermination, under respectful protest, recalculating Toscelik’s duty drawback adjustment, including a circumstance-of-sale adjustment to account for the imbalance between the amount of import duties included in U.S. price as a result of the duty drawback adjustment and the amount of import duties reflected in NV.¹⁰

On December 18, 2019, the Court ordered Commerce to recalculate NV without making a circumstance-of-sale adjustment related to the duty drawback adjustment made to U.S. price.¹¹ On February 18, 2020, the Court granted Commerce an extension until March 17, 2020 for filing these results of redetermination.¹² On February 24, 2020, we released our Draft Results of Redetermination to interested parties.¹³ On February 28, 2020, Toscelik filed its comment on the Draft Results of Redetermination.¹⁴ We respond to Toscelik’s comment below. Based upon the results of our analysis, the margin calculation for these final results of redetermination continues to be 0.00 percent.

⁹ See *Toscelik Profil ve Sac Endustrisi A.S. v. United States v. United States*, Consol. Ct. No. 17-00018, Slip Op. 19-41 (CIT April 1, 2019) (*Second Remand Order*) at 7.

¹⁰ See Final Results of Redetermination Pursuant to Court Remand, *Toscelik Profil ve Sac Endustrisi A.S. v. United States*, Court No. 17-00018, Slip Op. 19-41 (CIT April 1, 2019) (*Second Remand Redetermination*).

¹¹ See *Third Remand Order*.

¹² See *Toscelik Profil ve Sac Endustrisi A.S. v. United States*, Consol. Ct. No. 17-00018, Slip Op. 19-166 Court Order (February 18, 2020).

¹³ See *Toscelik Profil ve Sac Endustrisi A.S. v. United States*, Consol. Court No. 17-00018, Slip Op. 19-166 (CIT December 18, 2019), dated February 24, 2020 (*Draft Results of Redetermination*).

¹⁴ See Toscelik Letter, “Welded Carbon Steel Standard Pipe and Tube from Turkey: Toscelik comments on draft results of third remand,” dated February 28, 2020 (*Toscelik Draft Comments*).

III. ANALYSIS

Pursuant to the Court's instructions, Commerce, under respectful protest, has recalculated Toscelik's NV without making a circumstance-of-sale adjustment related to the duty drawback adjustments made to U.S. price.¹⁵ We have added to Toscelik's reported COP an amount reflecting the import duties forgiven or exempted, which were never recorded in Toscelik's books and records, pursuant to the Federal Circuit's opinion in *Saha Thai Steel Pipe (Public) Co. Ltd. v. United States*, 635 F. 3d 1335 (Fed. Cir. 2011).¹⁶

IV. ANALYSIS OF COMMENTS RECEIVED

On February 24, 2020, we released our Draft Results of Redetermination to interested parties.¹⁷ On February 28, 2020, Toscelik submitted its comment on the Draft Results of Redetermination.¹⁸ No other interested party submitted comments.

Issue 1: Correct Caption for the POR

Toscelik Comment:

- Toscelik notes that Commerce incorrectly captioned its third results draft redetermination as "POI: 07/01-2015." Toscelik states that the caption should have noted that this redetermination concerns the August 1, 2014 through July 1, 2015 administrative review period.

Commerce's Position: We agree with Toscelik. This third redetermination concerns the August 1, 2014 through July 1, 2015 period of review, and we have corrected the caption for these final results of redetermination.

¹⁵ See Memorandum, "*Toscelik Profil ve Sac Endustrisi A.S. v. United States* Consol. Court No. 17-00018, Slip Op. 19-166 (CIT December 18, 2019) -- Analysis for the Draft Third Results of Redetermination," dated February 24, 2020 (Draft Analysis Memorandum).

¹⁶ *Id.*

¹⁷ See Draft Redetermination.

¹⁸ See Toscelik Draft Comments.

V. FINAL RESULTS OF REDETERMINATION

In accordance with the Remand Order, and consistent with the instructions of the Court, Commerce has under respectful protest: (1) granted Toscelik a duty drawback adjustment as claimed and reported by Toscelik in its U.S. sales data, (2) added an imputed cost for import duties COP, and (3) made no circumstance-of-sale adjustment to account for the imbalance between the amount of import duties included in U.S. price as a result of the duty drawback adjustment made to U.S. price and the amount of import duties reflected in NV. Based on these changes, the weighted-average dumping margin for Toscelik has changed from the 3.33 percent calculated in the Second Remand Redetermination to 0.00 percent.¹⁹

Upon a final and conclusive decision in this litigation, Commerce will instruct U.S. Customs and Border Protection to collect cash deposits consistent with these final results of redetermination.

3/13/2020

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

¹⁹ See Draft Analysis Memorandum. We have made no changes to the Draft Analysis Memorandum for these final results of redetermination.