



A-489-501

Administrative Review


POR: 5/1/14-4/30/15

Public Document

AD/CVD Operations, OVI: MJH, SH

June 6, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
for Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Welded Carbon Steel Standard Pipe
and Tube Products from Turkey; 2014-2015 Administrative
Review

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on welded carbon steel standard pipe and tube products (welded pipe and tube) from Turkey.¹

¹This review covers the following companies: Borusan Istikbal Ticaret T.A.S. and Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (collectively, Borusan); Toscelik Profil ve Sac Endustrisi A.S. and Tosal Dis Ticaret A.S. (collectively, Toscelik); Toscelik Metal Ticaret A.S. (Toscelik Metal);¹ Borusan Birlesik Boru Fabrikalari San ve Tic (Borusan Birlesik); Borusan Gemlik Boru Tesisleri A.S. (Borusan Gemlik); Borusan Ihracat Ithalat ve Dagitim A.S. (Borusan Ihracat); Borusan Ithicat ve Dagitim A.S. (Borusan Ithicat); Tubeco Pipe and Steel Corporation (Tubeco); Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan); and Yucel Boru ve Profil Endustrisi A.S., Yucelboru Ihracat Ithalat ve Pazarlama A.S., and Cayirova Boru Sanayi ve Ticaret A.S. (collectively, the Yucel Group).

We note that in prior segments of this proceeding, we treated Toscelik Profil ve Sac Endustrisi A.S., Tosal Dis Ticaret A.S., and Toscelik Metal as the same legal entity. See, e.g., Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2012-2013, 79 FR 71087, 71088 n.8 (December 1, 2014). However, in a prior review, we found that Toscelik Metal has ceased to exist. Id. There is no record evidence for altering this treatment. Therefore, for these preliminary results, we are treating Toscelik and Tosal as the same legal entity, and continue to find that Toscelik Metal no longer exists. Additionally we note that in prior segments of this proceeding, we treated Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. as the same legal entity. See, e.g., Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014, 80 FR 76674, 76674 n.2 (December 10, 2015). We preliminarily



The period of review (POR) is May 1, 2014, through April 30, 2015. We preliminarily find that Borusan did not make sales below normal value (NV), that Toscelik made sales below NV, and that Erbosan and Yucel Group had no reviewable shipments during the POR. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on all appropriate entries of subject merchandise during the POR. We invite interested parties to comment on these preliminary results. Unless otherwise extended, we intend to issue final results of this review no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

Background

Pursuant to section 751(a)(1) of the Act, and in accordance with 19 CFR 351.213(b)(1), on May 29, 2015, petitioner Wheatland Tube Company (petitioner) requested reviews of various firms, including Borusan and Toscelik.² In accordance with 19 CFR 351.213(b)(2), Borusan requested an administrative review of its own exports on June 1, 2015.³ On July 1, 2015, the Department published a notice of initiation of administrative review of the antidumping duty order on welded pipe and tube from Turkey for the period May 1, 2014, through April 30, 2015.⁴

In the Initiation Notice, we stated our intention, in the event we limited the number of respondents for individual examination, to select respondents based on CBP data.⁵ We selected

determine that there is no evidence on the record for altering our treatment of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S., as the same legal entity.

Also, as noted above, we initiated a review of 1) Borusan Birlesik; 2) Borusan Gemlik, 3) Borusan Ihracat, 4) Borusan Ithicat, and 5) Tubeco. See Initiation Notice. Although the Department may have treated these companies as part of a “Borusan Group” entity in prior segments, the current record does not support treating these companies as part of the Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. entity. Accordingly, as discussed infra, each of these five companies will be assigned the rate applicable to companies not selected for individual examination in this review.

² See Letter to the Department from petitioner entitled “Circular Welded Carbon Steel Pipes And Tubes from Turkey: Request for Antidumping Duty Administrative Review,” dated May 29, 2015. On June 1, 2015, petitioner issued a clarification concerning the spelling of several entities named in petitioner’s May 29, 2015 letter. See, Letter to the Department from petitioner entitled “Circular Welded Carbon Steel Pipes And Tubes from Turkey: Revised Request for Antidumping Duty Administrative Review” dated June 1, 2015.

³ See Letter to the Department from Borusan entitled “Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Request for Antidumping Duty Administrative Review,” dated June 1, 2015.

⁴ See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 80 FR 37588 (July 1, 2015) (Initiation Notice). The Initiation Notice inadvertently referenced misspellings of two company names. The Department issued a correction of these misspellings on August 3, 2015. See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 80 FR 45947 (August 3, 2015).

⁵ See Initiation Notice, 80 FR at 37588.

as mandatory respondents the two exporters/producers accounting for the largest volume of welded pipe and tube from Turkey during the POR (i.e., Borusan and Toscelik).⁶ We issued the standard antidumping questionnaire to Borusan and Toscelik on August 7, 2015. Between September 4, 2015, and March 30, 2016, Borusan and Toscelik submitted timely responses to the Department's original and supplemental sections A, B, C, and D questionnaires.

On September 9, 2015, petitioner requested that the Department verify Borusan and Toscelik. On April 8, 2016, petitioner withdrew the request.

On February 4, 2016, the Department extended the deadline for the preliminary results of this review until May 16, 2016.⁷ Finally, on May 16, 2016, the Department extended the deadline for the preliminary results until June 6, 2016.⁸

Scope of the Order

The products covered by this order are welded carbon steel standard pipe and tube products with an outside diameter of 0.375 inch or more but not over 16 inches of any wall thickness, and are currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. These products, commonly referred to in the industry as standard pipe or tube, are produced to various ASTM specifications, most notably A-120, A-53 or A-135.

Preliminary Determination of No Shipments

On July 2, 2015 and July 17, 2015, Erbosan and the Yucel Group, respectively, submitted letters to the Department certifying that they had no sales, shipments, or entries of the subject merchandise to the United States during the POR.⁹ Erbosan further certified that it did not know

⁶ See Memorandum to Scot Fullerton, Director, Office VI from Fred Baker, "Administrative Review of the Antidumping Duty Order on Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Respondent Selection," dated August 24, 2015.

⁷ See Memorandum from Scott Hoefke to Christian Marsh, Subject: Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2014-2015," dated February 4, 2016. As explained in the memorandum from the Acting Assistant Secretary for Enforcement & Compliance, the Department has exercised its authority to toll all administrative deadlines due to the closure of the federal government due to Winter Storm Jonas. All deadlines in this segment of the proceeding have been extended by four business days. See Memorandum to the File from Ron Lorentzen, Acting A/S for Enforcement & Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

⁸ See Memorandum from Scott Hoefke to Christian Marsh, Subject: Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2014-2015," dated May 16, 2016.

⁹ See Letter to the Department from Erbosan entitled "No Shipment Certification of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. ("ERBOSAN") in the 2013-2014 Administrative Review of the Antidumping Duty Order Involving Certain Welded Carbon Steel Standard Pipe from Turkey," dated July 2, 2015; see also Letter to the Department

or have reason to know that any of its customers would subsequently export or sell Erbosan's merchandise to the United States during the POR. On August 11, 2015, consistent with our practice, the Department issued "No Shipment Inquiries" to CBP to confirm that there were no entries of welded pipe and tube from Turkey exported by either Erbosan or Yucel Group during the POR.¹⁰ We received nothing from CBP that contradicted Yucel Group's no shipment claim. We did however, receive entry documentation from CBP which listed Erbosan as the manufacturer of certain merchandise which entered United States customs territory during the POR, indicating the possibility that Erbosan had reviewable shipments during the POR.

Regarding Erbosan, given the timing of when the entry documentation was placed on the record of this review, *i.e.*, subsequent to these Preliminary Results, we intend to consider comments from interested parties concerning Erbosan's no shipment claim before issuing the final results.

Based on the foregoing, we preliminarily determine that Erbosan and Yucel Group had no reviewable shipments during the POR. Also, consistent with our practice, the Department finds that it is not appropriate to rescind the review with respect to Erbosan or the Yucel Group, but rather to complete the review with respect to both Erbosan and the Yucel Group, and to issue appropriate instructions to CBP based on the final results of this review.¹¹ In our May 6, 2003, "automatic assessment" clarification, we explained that, where respondents in an administrative review demonstrated that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the rate for the intermediate reseller or at the all-others rate applicable to the proceeding.¹² Because "as entered" liquidation instructions do not alleviate the concerns that the Assessment Policy Notice was intended to address, instead of rescinding the review with respect to Erbosan and the Yucel Group, we find it appropriate to complete the review and issue liquidation instructions to CBP concerning entries for both Erbosan and the Yucel Group after the final results of this administrative review are issued. If we continue to find that Erbosan and Yucel Group had no shipments of subject merchandise in the final results, we will instruct CBP to liquidate any existing entries of merchandise produced by Erbosan or Yucel Group, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.¹³

Rates for Non-Examined Companies

The statute and the Department's regulations do not address the establishment of a rate to be applied to companies not selected for examination when the Department limits its examination in

from Yucel Group entitled "Welded Carbon Steel Pipe & Tube Products from Turkey: Notification of No Shipments" dated July 17, 2015.

¹⁰ See Customs e-mail message number 5223304, dated August 11, 2015 (Erbosan); see also Customs e-mail message number 5223305, dated August 11, 2015 (Yucel Group).

¹¹ See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (Assessment Policy Notice).

¹² Id.

¹³ See, e.g., Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review, 75 FR 26922, 26923 (May 13, 2010), unchanged in Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review, 75 FR 56989 (September 17, 2010).

an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally “an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or de minimis margins, and any margins determined entirely {on the basis of facts available}.”

In this review, we have preliminarily calculated a weighted-average dumping margin for Toscelik that is not zero, de minimis, or determined entirely on the basis of facts available. Accordingly, the Department preliminarily assigned to the companies not individually examined (Borusan Birlesik, Borusan Gemlik, Borusan Ihracat, Borusan Ithicat, and Tubeco) the 0.96 percent weighted-average dumping margin calculated for Toscelik.

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Borusan’s and Toscelik’s sales of the subject merchandise from Turkey to the United States were made at less than NV, the Department compared the export price (EP) to the NV as described in the “Export Price” and “Normal Value” sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average normal values to weighted-average export prices (or constructed export prices) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average normal values with the export prices (or constructed export prices) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.¹⁴

In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation

¹⁴ See Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011, 77 FR 73415 (December 10, 2012) and the accompanying Issues and Decision Memorandum at comment 1; see also Apex Frozen Foods Private Ltd. v. United States, 37 F. Supp. 3d 1286 (Ct. Int’l Trade 2014).

pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.¹⁵ The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes or state) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between export price (or constructed export price) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the

¹⁵ See, e.g., Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 78 FR 33351 (June 4, 2013); Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, 79 FR 54967 (September 15, 2014); or Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 80 FR 61362 (October 13, 2015).

difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the "ratio test" assesses the extent of the significant price differences for all sales as measured by the Cohen's *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen's *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen's *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen's *d* test. If 33 percent or less of the value of total sales passes the Cohen's *d* test, then the results of the Cohen's *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

For Toscelik, based on the results of the differential pricing analysis, the Department preliminarily finds that 25.17 percent of the value of U.S. sales pass the Cohen's *d* test,¹⁶ and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Toscelik.

For Borusan, based on the results of the differential pricing analysis, the Department preliminarily finds that 37.02 percent of the value of U.S. sales pass the Cohen's *d* test,¹⁷ and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, the Department preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to those U.S. sales which passed the Cohen's *d* test and the average-to-average method to those sales which did not pass the Cohen's *d* test. Thus, for these preliminary results, the Department is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Borusan.

Product Comparisons

In accordance with section 771(16) of the Act, we compared prices for products sold in the U.S. market with prices for products sold in the home market which were either identical or most similar in terms of the physical characteristics. In the order of importance, these physical characteristics are grade, nominal pipe size, wall thickness, surface finish, and end finish.

Date of Sale

Regarding determination of the date of sale, section 351.401(i) of the Department's regulations states that the Department normally will use the date of invoice, as recorded in the producer's or exporter's records which are kept in the ordinary course of business. The regulation provides further that the Department may use a date other than the date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established.

¹⁶ See Memorandum to the File from Michael J. Heaney, "Analysis for the Preliminary Results of the 2014-2015 Antidumping Duty Administrative Review of Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Toscelik Profil ve Sac Endustrisi A.S.," dated June 6 2016 (Toscelik Preliminary Analysis Memorandum) at page 8.

¹⁷ See Memorandum to the File from Scott Hoefke, "Analysis for the Preliminary Results of the 2014-2015 Antidumping Duty Administrative Review of Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Borusan Mannesmann Boru Sanayi ve Ticaret A.S.," dated June 6, 2016 (Borusan Preliminary Analysis Memorandum) at page 8.

With respect to Toscelik's U.S. sales, Toscelik reported that after orders are placed, the customer may add additional products, or add additional quantities of an already-ordered product, to an order.¹⁸ Toscelik has also submitted evidence that such changes to orders have occurred for U.S. sales during the POR.¹⁹ However, there is no record evidence of such changes to orders following invoicing. Therefore, in accordance with our regulatory preference, we are preliminarily using the invoice date as the date of sale for Toscelik's U.S. sales. Furthermore, consistent with the Department's practice, we used the shipment date as the date of sale where the shipment date preceded the invoice date because under these circumstances the shipment date best reflects the date on which the material terms of sales were established.²⁰

With respect to Borusan's U.S. sales, record evidence indicates that the contract date is the date that best reflects when the material terms of sale are set. Borusan reaches definitive agreement on the material terms of sale (particularly, quantity and price) at the time the final contract is reached. After the contract is finalized, there are no further changes in the material terms of sale.²¹ Consequently, we are preliminarily using contract date as date of sale for Borusan's U.S. sales, consistent with the prior administrative review of Borusan.²²

With respect to both Toscelik's and Borusan's home market sales, consistent with our regulatory presumption, we have used the invoice date as the date of sale because record evidence indicates that for both respondents the invoice date is the date by which material terms of sale, such as prices and quantities, have been finalized, and there is no indication that changes to material terms of sale occurred subsequent to invoice date.²³ However, consistent with the Department's practice, we used the shipment date as the date of sale where the shipment date preceded the invoice date because under these circumstances the shipment date best reflects the date on which the material terms of sale were established.

¹⁸ See Toscelik's September 4, 2015, section A submission at 19.

¹⁹ See Toscelik's September 28, 2015, Section C submission at 55-56 and at Exhibit 9.

²⁰ See, e.g., Seamless Refined Copper Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 73422 (Dec. 10, 2012), and the accompanying Preliminary Issues and Decision Memorandum, unchanged in Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35244 (June 12, 2013); Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (September 12, 2007) and accompanying Issues and Decision Memorandum, at Comment 11; and Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 18074, 18079-80 (Apr. 10, 2006), unchanged in Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results and Rescission of Antidumping Duty Administrative Review in Part, 72 FR 4486 (January 31, 2007), and the accompanying Issues and Decision Memorandum at Comments 4 and 5.

²¹ See Borusan's September 13, 2015 section A questionnaire response at A-20 and Borusan October 1, 2015 section C questionnaire response at C-15.

²² See, e.g., Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 79 FR 35999 (June 5, 2015) and accompanying Preliminary Decision Memorandum at 7-8, unchanged in 2013-2014 Final Results (80 FR 61361, October 13, 2015) (13-14 Review).

²³ See Toscelik's September 4, 2015, section A submission at 16, 19, and Toscelik's September 28, 2015, Section B submission at 19; see also Borusan's September 13, 2015 section A questionnaire response at A-20- A-21 and Borusan's October 1, 2015 section B questionnaire response at B-17.

Export Price

For sales to the United States, the Department calculated EP in accordance with section 772(a) of the Act because the merchandise was first sold prior to importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States and because constructed export price methodology was not otherwise warranted. We calculated EP based on the “cost-and-freight” price or other basis negotiated with the unaffiliated customer.

Where appropriate, we made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: domestic inland freight, domestic brokerage and handling, U.S. brokerage and handling, international freight, marine insurance, U.S. duty, and other international movement expenses.

Both respondents claimed a duty drawback adjustment to U.S. price.²⁴ Section 772(c)(1)(B) of the Act states that EP and CEP shall be increased by “the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the export of the subject merchandise to the United States.” In determining whether an adjustment for duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our “two-pronged” test in order for the adjustment to be made to EP or CEP.²⁵ The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.²⁶

In this review, we preliminarily are granting a duty drawback adjustment to both Toscelik and Borusan because both companies have satisfied the criteria described above for Turkey’s duty drawback program or Inward Processing Regime.²⁷ Also, consistent with the practice established in Rebar Trade,²⁸ we based the amount of the duty drawback adjustment on the per-unit duty costs included in the respondents’ cost of production (COP).²⁹

No other adjustments were claimed or applied.

²⁴ See Toscelik’s September 28, 2015, Section C submission at 72 and exhibits 10-11; see also Borusan’s October 2, 2015 section C questionnaire response at 34-40 and exhibit C-15.

²⁵ See Saha Thai Steel Pipe Public Co., v. United States, 635 F.3d 1335, 1440-41 (Fed Cir. 2011) (Saha Thai)

²⁶ Id.; see also, e.g., Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006) and Accompanying Issues and Decision Memorandum at Comment 2.

²⁷ See Toscelik’s September 28, 2015, Section C submission at 72 and exhibits 10-11; see also Borusan’s October 2, 2015 section C questionnaire response at 34-40 and exhibit C-15.

²⁸ See Final Results of Redetermination Pursuant to Court Remand: Rebar Trade Coalition v. United States Consol. Court No., 14-00268 Slip Op. 15-130 (CIT November 23, 2015), dated April 7, 2016 at 15- 18 (Rebar Trade).

²⁹ See Borusan Preliminary Analysis Memorandum at 5; see also Toscelik Preliminary Analysis Memorandum at 5.

Normal Value

A. Home Market Viability as Comparison Market

To determine whether there was a sufficient volume of sales of welded pipe and tube in the home market to serve as a viable basis for calculating NV, the Department compared the volume of the respondents' home market sales of the foreign like product to their volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.404(b). Pursuant to section 773(a)(1)(C) of the Act, because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for comparison purposes for both Borusan and Toscelik. Consequently, pursuant to section 773(a)(1)(B)(i) of the Act and 19 CFR 351.404(c)(1)(i), we based Borusan's and Toscelik's NV on their home market sales.

B. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action accompanying the Uruguay Round Agreements Act,³⁰ to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade as the EP. Pursuant to 19 CFR 351.412(c)(1)(iii), the NV level of trade is based on the starting price of the sales in the comparison market or, when NV is based on constructed value (CV), the starting price of the sales from which we derive the adjustments to CV for selling expenses and profit. For EP sales, pursuant to 19 CFR 351.412(c)(1)(i), the U.S. level of trade is based on the starting price of the sales in the U.S. market, which is usually from the exporter to the importer.

To determine whether comparison market sales are at a different level of trade than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.³¹ If the comparison market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the comparison market sales at the level of trade of the export transaction, we make a level of trade adjustment under section 773(a)(7)(A) of the Act.

Toscelik reported that in its home market it sold only to distributors, and that all sales were direct sales to the distributors.³² Therefore, we determine that Toscelik has only one level of trade in its home market. With respect to its U.S. market, Toscelik reported that it produced all sales to order and shipped them directly to its U.S. customers, all of whom were trading companies.³³

³⁰ See H.R. Doc. No. 316, 103d Cong., 2d Sess. 829-831 (1994).

³¹ See 19 CFR 351.412(c)(2).

³² See Toscelik's September 4, 2015, Section A submission at 13-15 and Toscelik's September 28, 2015, Section B submission at 26.

³³ See Toscelik's September 4, 2015, Section A submission at 13-15.

Based on this information, we determine that only one level of trade exists in Toscelik's U.S. market.

Borusan reported that in the home market it sold to trading companies, distributors, industrial end-users, and construction companies.³⁴ However, all sales were direct sales to customers, and prices do not vary between customer categories.³⁵ In the U.S. market, Borusan sold to only trading companies and distributors.³⁶ Based on this information, we determine that only one level of trade exists in both Borusan's home and U.S. markets.

Borusan and Toscelik also provided the Department with information on their selling activities in their U.S. and home markets.³⁷ We find that Borusan and Toscelik provided virtually the same level of customer support services on their U.S. sales (all of which were EP) as they did on their home market sales, and that the minor differences that do exist do not establish a distinct and separate level of trade. Consequently, the record evidence supports a finding that in both markets Borusan and Toscelik performed essentially the same level of services. While we found minor differences between the home and U.S. markets, we determine that for both Borusan and Toscelik the EP and the starting price of home market sales represent the same stage in the marketing process, and are, thus, at the same level of trade. For this reason, we preliminarily find that a level of trade adjustment is not warranted for either Borusan or Toscelik. As there are no CEP sales, no CEP offset is appropriate.

C. Affiliated Party Transactions and the Arm's-Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's-length prices.³⁸ During the POR, Toscelik and Borusan made some sales to affiliated parties in the home market. To test whether their home market sales to affiliated parties were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all billing adjustments, discounts and rebates, movement charges, direct selling expenses, and packing expenses. In this review, all of the sales made by both Borusan and Toscelik were made at prices that are not at arm's length. Accordingly, we did not include the affiliated party sales of either Borusan or Toscelik in our analysis.³⁹ Also, because such affiliated party sales were either consumed by the affiliate or were in insignificant volumes, in accordance with 19 CFR

³⁴ See Borusan September 13, 2015 section A questionnaire response at 16.

³⁵ Id.

³⁶ Id.

³⁷ See Toscelik's September 4, 2015, submission at 15 and at Exhibit 6; see also Borusan's September 13, 2015 section A response at A-17- A-18 and at Exhibit A-7.

³⁸ See 19 CFR 351.403(c).

³⁹ See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186, 69187 (November 15, 2002).

351.403(d), we did not rely on downstream sales in place of the excluded sales to the affiliate. This is consistent with our treatment of affiliated party transactions in past reviews of this case.⁴⁰

D. Cost of Production Analysis

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and countervailing duty (CVD) law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than the COP.⁴¹ The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the ITC.⁴² Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.⁴³ Accordingly, the Department requested this information from Borusan and Toscelik. We examined Borusan's and Toscelik's cost data and determined that our quarterly cost methodology is not warranted, and, therefore, we have applied our standard methodology of using annual costs based on Borusan and Toscelik's reported data.

1. Calculation of Cost of Production

We calculated the COP on a product-specific basis, based on the sum of the respondents' costs of materials and fabrication for the foreign like product plus amounts for selling, general, and administrative expenses, interest expenses, and the costs of all expenses incidental to preparing the foreign like product for shipment in accordance with section 773(b)(3) of the Act.

For Borusan, we relied on the COP data submitted and in its October 2, 2015 Section D and its March 29, 2016, supplemental section D supplemental questionnaire response.

For Toscelik, we relied on Toscelik's September 28, 2015 Section D response and its March 28, 2016, supplemental response to the Department's supplemental cost questionnaire.⁴⁴

⁴⁰ See, e.g., 13-14 Review Preliminary Results and accompanying Preliminary Decision Memorandum at 10-11, unchanged in 2013-2014 Final Results (80 FR 61361).

⁴¹ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

⁴² See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) ("Applicability Notice").

⁴³ Id., 80 FR at 46794-95.

⁴⁴ For further discussion, see Toscelik Preliminary Analysis Memorandum at 5 see also Borusan Preliminary Analysis Memorandum at 5.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP for the POR to the per-unit price of the comparison market sales of the foreign like product to determine whether these sales by the respondents had been made at prices below the COP. In particular, in determining whether to disregard home market sales made at prices below their COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. We determined the net comparison market prices for the below-cost test by adjusting the gross unit price for all applicable billing adjustments, discounts and rebates, movement charges, direct and indirect selling expenses, and packing expenses excluding all adjustments for imputed expenses.

3. Results of the Cost of Production Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where 20 percent or more of the respondent's home market sales of a given product were at prices less than the COP, we disregarded the below-cost sales because (1) they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act and (2) based on our comparison of prices to the weighted average of the COPs, they were at prices which would not permit the recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Because we are applying our standard annual weighted-average cost methodology in these preliminary results, we have also applied our standard cost-recovery test with no adjustments.

Our cost test for Borusan and Toscelik indicated that for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales in our analysis as outside of the ordinary course of trade and used the remaining sales to determine NV, as well as to calculate selling expenses and profit for CV.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on the prices Borusan and Toscelik reported for home market sales to unaffiliated customers that we determined were made within the ordinary course of trade. As explained above, we also included home market sales to affiliated parties that were made at arm's-length prices. We adjusted the starting price, where appropriate, for billing adjustments, discounts and rebates in accordance with 19 CFR 351.401(c). We also made deductions from NV, consistent with section 773(a)(6)(B)(ii) of the Act, for movement expenses. In addition, we made adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made these adjustments, where

appropriate, by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses to NV. Direct selling expenses consisted of credit expenses, warranty expenses, and factoring expenses. We also made adjustments for differences in domestic and export packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act.⁴⁵

When comparing U.S. sale prices with normal values based on comparison market sale prices of similar, but not identical, merchandise, we also made adjustments for physical differences in merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and the subject merchandise.⁴⁶

F. Calculation of Normal Value Based on Constructed Value

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of each respondent's material and fabrication costs, SG&A expenses, profit and U.S. packing costs. We calculated the COP component of CV as described above in the "Cost of Production" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based the adjustments for selling expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sales of the foreign like product at the same level of trade as the U.S. sale, in the ordinary course of trade, for consumption in the comparison market.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance web site at <http://enforcement.trade.gov/exchange/index.html>.

⁴⁵ See Borusan Preliminary Analysis Memorandum at 4 and Toscelik Preliminary Analysis Memorandum at 4 for further details.

⁴⁶ See 19 CFR 351.411(b).

Recommendation

We recommend applying the above methodology for these preliminary results.

✓
Agree

Disagree


Paul Piquado
Assistant Secretary
for Enforcement and Compliance

6 JUNE 2016
(Date)