



A-489-501

Administrative Review

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

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December 12, 2016

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

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

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## **SUMMARY**

The Department of Commerce (the Department) has analyzed the comments submitted by the interested parties in the administrative review of the antidumping duty (AD) order on welded carbon steel standard pipe and tube products (welded pipe and tube) from Turkey covering the period of review (POR) May 1, 2014 to April 30, 2015.<sup>1</sup> This 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 Tosyali Dis Ticaret A.S. (collectively, Toscelik); Toscelik Metal Ticaret A.S. (Toscelik Metal); 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).<sup>2</sup> Based upon our analysis of the comments received, we made changes to the margin

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<sup>1</sup> See *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Preliminary Results of Antidumping Duty Administrative Review, and Partial Rescission of Review; 2014-2015*, 81 FR 38131 (June 13, 2016) (*Preliminary Results*), and the accompanying Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Welded Carbon Steel Standard Pipe and Tube Products from Turkey; 2014-2015 Administrative Review," dated June 6, 2016 (Preliminary Decision Memorandum).

<sup>2</sup> As explained in the *Preliminary Results*, the Department treats Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. as the same legal entity, and Toscelik Profil ve Sac Endustrisi A.S. and Tosyali



calculation for Toscelik and Borusan for the final results. We continue to find that Toscelik sold welded pipe and tube in the United States below normal value (NV). We also continue to find that Borusan did not sell welded pipe and tube in the United States below NV, and that Erbosan and the Yucel Group had no shipments. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of issues for which we received comments from parties:

#### General Comments

1. Non-Prime Merchandise Sales
2. Duty Drawback

#### Borusan-Specific Comments

3. Overruns
4. U.S. Movement Expenses
5. Certain Brokerage Expenses
6. Further Processed Sales

#### Toscelik-Specific Comments

7. Weight Basis for Comparison Methodology
8. INTEX Ratio
9. Indirect Selling Expense Ratio
10. Warehousing Expenses

### **BACKGROUND**

The Department published the *Preliminary Results* in the *Federal Register* on June 13, 2016.<sup>3</sup> In accordance with 19 CFR 351.309(c), we invited parties to comment on our *Preliminary Results*.<sup>4</sup> On July 27, 2016, we received a case brief from domestic producer and interested party JMC Steel Group (JMC).<sup>5</sup> On August 19, 2016, we received rebuttal briefs from Borusan<sup>6</sup> and Toscelik.<sup>7</sup>

The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

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Dis Ticaret A.S. as the same legal entity. *See* Preliminary Decision Memorandum, at 1-2, n.1.).As noted in the *Preliminary Results*, we initiated a review of 1) Borusan Birlisik; 2) Borusan Gemlik, 3) Borusan Ihracat, 4) Borusan Ithicat, and 5) Tubeco; and we did not find them as part of the Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. entity. *See* Preliminary Decision Memorandum, at 1-2 n.1. No party submitted comments on these companies. Accordingly, each of these five companies will be assigned the rate applicable to companies not selected for individual examination in this review. Further, also as noted in the *Preliminary Results*, we find that Toscelik Metal no longer exists. *Id.*

<sup>3</sup> *See Preliminary Results*, 81 FR at 38131.

<sup>4</sup> *Id.*

<sup>5</sup> *See* Letter from JMC Steel Group (“JMC”) to the Department, “Welded Carbon Steel Standard Pipe and Tube from Turkey: Administrative Case Brief,” dated July 27, 2016 (JMC Case Brief).

<sup>6</sup> *See* Letter from Borusan to the Department, “Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Rebuttal Brief,” dated August 9, 2016 (Borusan Rebuttal Brief).

<sup>7</sup> *See* Letter from Toscelik to the Department, “Welded Carbon Steel Standard Pipe and Tube from Turkey; Toscelik rebuttal brief,” dated August 9, 2016 (Toscelik Rebuttal Brief).

## **SCOPE OF THE ORDER**<sup>8</sup>

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 International (ASTM) specifications, most notably A-120, A-53 or A-135.

## **DISCUSSION OF THE ISSUES**

### **General Comments**

#### **Comment 1: Duty Drawback**

##### *JMC Arguments:*

JMC asserts that the Department should recalculate the duty drawback adjustment for both Borusan and Toscelik in a manner consistent with the *Rebar Trade Remand*.<sup>9</sup> JMC asserts that the duty drawback adjustment that was claimed by both Toscelik and Borusan in this case is inconsistent with the Department's analysis in the *Rebar Trade Remand*.<sup>10</sup> Specifically, JMC asserts that the Department has consistently followed a "duty neutral" approach in a number of cases since December 2015.<sup>11</sup> JMC also argues that in *HWR from Turkey*, the Department also followed a "duty neutral" approach where, like the instant case, the respondent obtained materials from both within and outside of Turkey.<sup>12</sup> JMC asserts that in these final results, the Department should similarly adopt such a "duty neutral" approach. Citing *WSSP from India*,

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<sup>8</sup> See *Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products from Turkey*, 51 FR 17784 (May 15, 1986). Note that the HTSUS did not exist at the time the order went into effect, so the references to the HTSUS numbers did not appear in the scope contained in the order.

<sup>9</sup> 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 Remand*).

<sup>10</sup> See JMC Case Brief, at 18.

<sup>11</sup> *Id.*, at 18, citing to *Certain Corrosion Resistant Steel Products from India: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 81 FR 35329 (June 2, 2016), and accompanying Issues and Decision Memorandum at Comment 1, *Certain Cold Rolled Steel Flat Products from Brazil: Final Affirmative Determination of Sales at Less Than Fair Value*, 81 FR 49946 (July 29, 2016) and accompanying Issues and Decision Memorandum at Comment 1. Finally, JMC cites to the preliminary calculation of duty drawback set forth in *Welded Stainless Pressure Pipe from India: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 28824 (May 10, 2016) (*WSSP from India*) and accompanying Decision Memorandum, at 10-12.

<sup>12</sup> See JMC Case Brief, at 19, citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016) (*HWR from Turkey*), and accompanying Issues and Decision Memorandum at 25.

JMC asserts that the Department should allocate “all production for the relevant period based on the cost inputs” incurred during the period of investigation (POI) or POR.<sup>13</sup>

JMC further asserts that for these final results, the Department should re-allocate the amount of duty drawback that Borusan and Toscelik reported in their respective COP databases to represent the duty drawback adjustment made to U.S. price (USP).<sup>14</sup> Additionally, JMC contends that the Department should deduct the bank expenses related to duty drawback from Borusan’s or Toscelik’s duty drawback claim. Finally, JMC notes that for Toscelik, the Department erroneously neglected to add duty drawback to Toscelik’s USP.<sup>15</sup>

*Toscelik Rebuttal Arguments:*

Toscelik contends that the Department’s duty neutral approach is unlawful. Toscelik asserts that the statute directs the Department to increase “U.S. price 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 exportation of the subject merchandise to the United States.”<sup>16</sup> Toscelik argues that duty drawback is a statutory adjustment tied to U.S sales amount rather than to the value shown in the cost of production data set.<sup>17</sup>

Toscelik further argues that in formulating the duty drawback adjustment the statute says nothing about the amount of the duty drawback adjustment shown in the cost of production database.<sup>18</sup> Toscelik contends that “commercial reality” dictates that Toscelik receive the duty drawback benefit incurred on its U.S. sales rather than the amount that is reflected in Toscelik’s COP database.<sup>19</sup> Finally, citing to *Saha Thai*, Toscelik asserts that that this ruling granted the Department the discretion to make an adjustment to the cost of production for duties rebated.<sup>20</sup> Toscelik asserts that there is nothing in *Saha Thai* that limits the U.S. adjustment for duty drawback to what is in NV.<sup>21</sup> Based on the foregoing, Toscelik concludes that there is no reason or rational to address an “imbalance” between what is in cost of production (COP) and United States Price (USP).<sup>22</sup>

*Borusan Rebuttal Arguments:*

Borusan argues that the duty drawback amount it reported was sales specific and balanced by an addition to COP that is based on the average duty amount that is rebated as a result of exportation of the merchandise.<sup>23</sup> Borusan further argues that the amount of duty drawback that

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<sup>13</sup> *Id.*, at 19, citing *WSSP from India*, and accompanying Issues and Decision Memorandum at 10-12.

<sup>14</sup> *Id.*, at 20.

<sup>15</sup> See JMC Case Brief, at 17.

<sup>16</sup> See Toscelik Rebuttal Brief, at 14, citing Section 772(a)(c)(1)(B) of the Act.

<sup>17</sup> *Id.*, at 14-15.

<sup>18</sup> *Id.*, at 17.

<sup>19</sup> *Id.*, at 19.

<sup>20</sup> *Id.*, at 27, citing *Saha Thai Steel Pipe (Public) Co. Ltd. v. United States*, 635 F.3d 1335, 1340 (Fed. Cir. 2011) (*Saha Thai*).

<sup>21</sup> See Toscelik Rebuttal Brief, at 27.

<sup>22</sup> *Id.*, at 28.

<sup>23</sup> See Boruan Rebuttal Brief, at 2.

it reported represents the amount of duties imported on raw materials with respect to “particular export of subject merchandise to the United States that is exempted from the payment of import duties based upon exportation.”<sup>24</sup> Finally, Borusan asserts that, unlike the situation in *Rebar Trade*, Borusan only applied the duty drawback to the sales upon which it incurred duty drawback.<sup>25</sup> Finally, Borusan argues that if the Department determines not to use a sales specific approach to calculate duty drawback, it should base the duty drawback amount on the per-unit costs that Borusan reported in its COP response.<sup>26</sup>

### **Department’s Position:**

In these final results, in calculating the duty drawback adjustment for both Toscelik and Borusan, we have applied a “duty neutral” approach for applying the duty drawback adjustment to USP. As explained below, we continue to maintain that the duty neutral approach articulated in *Rebar Trade* constitutes a reasonable interpretation of the statute and corrects an imbalance in the comparison of USP to NV. Moreover, while *Saha Thai* does not compel the Department to employ the duty neutral approach employed here and in the *Rebar Trade Remand*, we find nothing in *Saha Thai* that precludes the Department from adopting the duty neutral approach employed in these final results. In this regard, we disagree with Toscelik’s assertion that the Department has no rationale to address in this review the imbalance discussed in *Rebar Trade*. Consistent with the *Rebar Trade Remand*, we continue to find in these final results that where duty drawback inputs are sourced from both domestic (Turkish) and foreign sources, a calculation of duty drawback which is based on export volume “results in an imbalance in the comparison of export price (EP) or constructed export price (CEP) with NV.”<sup>27</sup> As explained in *Rebar Trade*, this imbalance exists because the NV portion of the comparison reflects an average annual cost that reflects both foreign sourced inputs (which incur duties) and domestic inputs for which the Respondent incurs no duties.<sup>28</sup> In contrast, on the EP/CEP side, the duty drawback adjustment to the USP employs a “smaller denominator than that used on the NV side.”<sup>29</sup> As in *Rebar Trade*, we maintain that the combination of duties included within NV relative to what is included within USP, results in a larger per-unit U.S. sales adjustment than is imbedded within NV. This creates an imbalance in the comparison of the USP to NV.<sup>30</sup>

Additionally, we disagree with Toscelik’s assertion that the “duty neutral” approach employed here constitutes an unlawful interpretation of the statute. Nothing in the Statute precludes us from addressing the imbalance between USP and NV in the manner articulated in the *Rebar Trade Remand*. Moreover, we note that while Borusan has reported its duty drawback on a “transaction specific basis,”<sup>31</sup> the “duty neutral” approach for calculating duty drawback outlined in the *Rebar Trade Remand* bases the calculation of duty drawback upon the amount of duty reported in the COP database.<sup>32</sup> Therefore, in our calculation of duty drawback for both Borusan

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<sup>24</sup> *Id.*, at 3.

<sup>25</sup> *Id.*, at 4.

<sup>26</sup> *Id.*

<sup>27</sup> *See Rebar Trade*, at 16.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *See Boruan Rebuttal Brief* at 4.

<sup>32</sup> *See Rebar Trade*, at 18.

and Toscelik, and consistent with the *Rebar Trade Remand*, we have based our calculation of the adjustment reported by Borusan or Toscelik on their respective COP databases.

Accordingly, in these final results, we have limited the duty drawback adjustment to the reported amount of the adjustment included within the COP database of Toscelik or Borusan.<sup>33</sup> We have based this duty drawback calculation on the per-unit costs reported by Toscelik and Borusan reported in their COP databases.<sup>34</sup> Additionally, we agree with JMC that the bank charges associated with securing duty drawback should be deducted from the total adjustment for duty drawback. We have adjusted the duty drawback adjustment for both Borusan and Toscelik to account for these bank expenses.<sup>35</sup> Finally, we note that in these final results, we have corrected a programming error that resulted in our failing to add duty drawback to Toscelik's USP in the *Preliminary Results*.<sup>36</sup>

## Comment 2: Non-Prime Merchandise Sales

### *JMC's Arguments:*

JMC contends that the Department should use the standards set forth in recent decisions for treating sales of non-prime merchandise. JMC cites the recently concluded investigation of *Line Pipe from Turkey*, in which the Department determined that no costs assigned to sales of non-prime merchandise and revenue from the sale could be used to offset costs.<sup>37</sup> JMC points out that in *Line Pipe from Turkey*, the Department stated: "We revised Toscelik's reported cost of second-quality pipes to reflect these products' net realizable values, and we allocated the residual manufacturing costs to the prime products during the POI."<sup>38</sup>

JMC asserts that merchandise sales that cannot be assigned a control number (CONNUM) and/or cannot be reported, are unable to undergo the scrutiny of the margin program, and, thus, the respondents should not benefit from the assignment of costs to these calculations.<sup>39</sup>

JMC argues that in reporting its non-prime pipe, Toscelik separates non-prime merchandise at the time of identification and records this merchandise into inventory at the value of the incurred cost.<sup>40</sup> JMC argues that in the *Line Pipe from Turkey* decision, the Department expressed a preference to value non-prime products that cannot be used in the same applications as the prime

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<sup>33</sup> See Memorandum to the File from Michael J. Heaney, "Final Analysis Memorandum for Toscelik Profil ve Sac Endustrisi A.S in the 2014 – 2015 Administrative Review of Welded Carbon Steel Standard Pipe and Tube Products from Turkey," dated December 12, 2016 (Toscelik Final Analysis Memorandum); see also Memorandum to the File from Scott Hoefke, "Final Analysis Memorandum for Borusan Mannesmann Boru Sanayi ve Ticaret A.S. in the 2014 – 2015 Administrative Review of Welded Carbon Steel Standard Pipe and Tube Products from Turkey," dated December 12, 2016 (Borusan Final Analysis Memorandum).

<sup>34</sup> See Toscelik Final Analysis Memorandum; see also Borusan Final Analysis Memorandum.

<sup>35</sup> *Id.*

<sup>36</sup> See Toscelik Final Analysis Memorandum.

<sup>37</sup> See JMC Case Brief at 31, citing *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less-Than-Fair-Value*, 80 FR 61362, (October 13, 2015) and accompanying Issues and Decision Memorandum, at 4 (*Line Pipe From Turkey*).

<sup>38</sup> *Id.*

<sup>39</sup> See JMC Case Brief, at 31.

<sup>40</sup> See Toscelik Supplemental Questionnaire Response, at 25-26.

quality merchandise at their sales price rather than their full production costs.<sup>41</sup> JMC states that Borusan calculated the difference between the sales price and the cost of non-prime merchandise, reporting this net loss in the SCOST field. JMC points out that the Department did not include this SCOST field in the calculation of COP for the *Preliminary Results*.<sup>42</sup> While JMC reiterates its preference for treating non-prime merchandise in accordance with *Line Pipe from Turkey*, JMC argues that the Department should, at a minimum, make an adjustment regarding the reported secondary pipe cost (SCOST) field.<sup>43</sup>

#### *Borusan's Rebuttal Arguments:*

Borusan argues that JMC must concede that Borusan's calculations regarding net loss of non-prime merchandise are properly calculated.<sup>44</sup> Therefore, the Department should ignore JMC's comments with respect to Borusan's non-prime merchandise costs.<sup>45</sup>

No other parties commented on this issue.

#### **Department's Position:**

We agree with JMC that residual costs for non-prime merchandise should be added to the COP field for Toscelik. As we noted in *HWR Pipe from Turkey*, the Department normally values non-prime merchandise (*i.e.*, merchandise that cannot be used in the same application as prime quality merchandise) at its sale price rather than at its full production cost.<sup>46</sup> Also, in such instances, consistent with *Line Pipe from Turkey*, the Department's practice is to fully assign to prime merchandise the residual cost of scrap.<sup>47</sup> Accordingly, for these final results, we have recalculated Toscelik's cost of manufacture by reassigning the production cost of Toscelik's non-prime merchandise to prime merchandise.<sup>48</sup>

In that regard, we also agree with JMC that the SCOST field should be added to the TOTCOM so that the cost of scrap is properly assigned to the cost of manufacture of prime merchandise. Finally, we agree with Borusan that its calculation of the SCOST field was done correctly. Accordingly, in these final results, we have also revised Borusan's cost of manufacture by adding the cost of scrap fully to the cost of manufacture of Borusan's prime merchandise.<sup>49</sup>

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<sup>41</sup> See *Line Pipe from Turkey*, accompanying Issues and Decision Memorandum, at 4.

<sup>42</sup> See JMC Case Brief, at 32.

<sup>43</sup> *Id.*, at 33.

<sup>44</sup> See Borusan Rebuttal Brief, at 14.

<sup>45</sup> See *id.*

<sup>46</sup> See *HWR Pipe from Turkey* and accompanying issues and decision memorandum at Comment 11 page 34, note 129, citing *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*WLP from Korea*), and accompanying Issues and Decision Memorandum, at Comment 9.

<sup>47</sup> See *Line Pipe from Turkey*, and accompanying Issues and Decision Memorandum, at 4.

<sup>48</sup> See Toscelik Final Analysis Memorandum.

<sup>49</sup> See Borusan Final Analysis Memorandum.

## Borusan-Specific Comments

### Comment 3: Overruns

#### *JMC Arguments:*

JMC argues that overrun sales made by Borusan during the POR should be excluded, as they are outside of the ordinary course of trade.<sup>50</sup> JMC states that it is the Department's practice to evaluate the following factors: whether the merchandise is "off quality" or produced according to unusual specifications; comparative volume of sales and the number of buyers in the home market; average quantity of an overrun sale compared to the average quantity of an ordinary sale; and price and profit differentials in the home market.<sup>51</sup> JMC argues that no single factor is dispositive.<sup>52</sup> JMC asserts that inclusion of overrun sales would distort Borusan's margin calculation.<sup>53</sup>

JMC claims the following factors establish that Borusan's home market sales of overruns are outside the ordinary course of trade:

- First, overrun sales are made in a distinct channel of distribution, as Borusan only sells overruns in the home market and to only certain types of customers.<sup>54</sup> Also, that overruns are a different specification than the local standard.<sup>55</sup>
- Second, overruns represented an insignificant percentage of home market sales during the POR, and were made to a limited number of customers in limited quantities.<sup>56</sup>
- Third, on the basis of identical CONNUMs, the average quantity of an overrun sale differed significantly from the average quantity of a non-overrun sale;<sup>57</sup> on a weighted-average basis across each identical CONNUM, the average quantity of an overrun sale varied by certain percentages from the average quantity of a non-overrun sale;<sup>58</sup> and on a weighted-average basis across all identical CONNUMs (weighted by the overrun quantity), the average quantity of an overrun sale equaled a certain percentage of the average quantity of non-overrun sales.<sup>59</sup>
- Fourth, on the basis of identical CONNUMs, the weighted-average net unit prices and profits for overrun sales were lower than those for non-overrun sales.<sup>60</sup>

Based on these four factors, JMC argues the Department should exclude Borusan's home market overrun sales from its margin calculation in accordance with section 771(15) of the Act, just as it did in *NOES from Korea*.<sup>61</sup>

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<sup>50</sup> See JMC Case Brief, at 25.

<sup>51</sup> *Id.*, at 27.

<sup>52</sup> *Id.*, at 28.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*, at 28-29.

<sup>57</sup> *Id.*, at 29.

<sup>58</sup> *Id.*, at 29-30.

<sup>59</sup> *Id.*, at 30.

<sup>60</sup> *Id.*



*Borusan's Rebuttal Arguments:*

Borusan disagrees with JMC's argument that overrun sales are outside the ordinary course of trade, and argues that one must evaluate all of the circumstances related to the sales of overrun merchandise.<sup>62</sup> Borusan points out that in the most recently completed administrative review of this case, as well as in every previous review in which Borusan was a respondent, the Department treated its overrun sales as sales made in the ordinary course of trade.<sup>63</sup> Borusan claims the Department looks at the totality of the circumstances in determining whether sales are outside the ordinary course of trade, and argues the totality of the circumstances in this case show that its home market sales of overruns are made in the ordinary course of trade.<sup>64</sup> Therefore, the Department should follow its established practice for this proceeding and continue to treat Borusan's overrun sales as sales made in the ordinary course of trade.<sup>65</sup>

In arguing that Borusan's home market sales of overruns are outside the ordinary course of trade, Borusan maintains JMC fails to consider whether the merchandise is off-quality or manufactured pursuant to unusual specifications. Borusan contends that its home market sales of overruns consist of almost every grade Borusan sold in the home market, and all are prime grade material, which shows that these sales are not unusual or extraordinary.<sup>66</sup>

Borusan further rebuts the four factors addressed by JMC. First, Borusan claims JMC is incorrect in asserting that overrun sales are made in a distinct channel of distribution. Borusan contends it is unremarkable that overruns are only sold in the home market, since home market consists of numerous standard pipe products and export sales often consist of larger volume sales that are produced to order.<sup>67</sup> Further, Borusan argues that a significant percentage of all home market sales are made to distributors, not just sales of overruns.<sup>68</sup> Borusan contends that the instant case, where all home market sales are made through one distribution channel (direct sales from the mill), can be distinguished from *NOES from Korea*, where the Department found overrun sales were made largely through a distinct distribution channel (over the Internet).<sup>69</sup> Borusan counters it is not unusual to produce merchandise to ASTM specifications in the Turkish market and that Borusan had both overrun and non-overrun merchandise homemarket

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<sup>61</sup> *Id.*, at 4-5, citing *Non-Oriented Electrical Steel from the Republic of Korea: Final Determination of Sales at Less than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 61612 (October 14, 2014) (*NOES from Korea*) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>62</sup> See Borusan Rebuttal Brief, at 4.

<sup>63</sup> *Id.* at 4, citing *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 (December 10, 2015) (*Turkish Standard Pipe 13/14*) and accompanying issues and decision memorandum at Comment 10. Borusan also noted that prior to the last administrative review overrun sales were not raised as an issue. Borusan Rebuttal Brief at 4 note 7.

<sup>64</sup> *Id.*, at 5, citing 771(15) of the Act and 19 CFR 351.102(b)(35).

<sup>65</sup> *Id.*, at 5.

<sup>66</sup> *Id.*, at 7. Citing *NOES from Korea* and accompanying Issues and Decision Memorandum at Comment 2, Borusan contrasts that case with the instant case, stating the Department found in *NOES from Korea* that the respondent classified overruns with non-prime merchandise.

<sup>67</sup> *Id.*, at 7-8.

<sup>68</sup> *Id.*, at 7 and Attachment 1.

<sup>69</sup> *Id.*, at 8-9, citing Borusan's October 1, 2016 section B questionnaire response at B-16 and *NOES from Korea*.

sales made to ASTM specifications.<sup>70</sup> Borusan argues that while merchandise made to the ASTM specifications is less commonly sold on the Turkish market than merchandise made to Turkish standards, ASTM is one the most common specifications worldwide, and is, in fact, sold in Turkey.<sup>71</sup> Instead, Borusan submits that this case is more akin to *Hot-Rolled from India*, where the Department did not treat overruns as outside the ordinary course of trade given that the sales “have characteristics that are comparable to those of sales generally made in the home market.”<sup>72</sup>

Second, with respect to JMC’s argument that overruns represented only a small percentage of home market sales during the POR, Borusan asserts that this percentage is not insignificant.<sup>73</sup> Borusan claims this is especially true here when one considers the percentage of home market customers purchasing both overrun and non-overrun merchandise, and the fact that these same customers purchase a certain percentage of all merchandise (both overrun and non-overrun) sold in the home market.<sup>74</sup> Borusan avers it is logical to focus on the number of customers buying both overrun and non-overrun material rather than those only buying only overrun material, because “[i]f the same purchaser is buying both overrun and non-overrun material, both of which are prime grade material, it is likely that the material is being used for the same purposes and is made in the ordinary course of trade.”<sup>75</sup>

Third, regarding JMC’s comparison of the average quantity of an overrun sale versus the average quantity of a non-overrun sale, Borusan argues that while there is a difference the actual quantity difference is small to the point of insignificant.<sup>76</sup> Additionally, Borusan avers that in some instances the average quantity of overruns to non-overruns was substantially larger than that of an overrun sale.<sup>77</sup> As such, Borusan asserts a comparison of the average quantity of an overrun sale is not probative of whether or not Borusan’s overruns are outside the ordinary course of trade.<sup>78</sup>

Finally, with respect to prices and profits, Borusan maintains that while the prices and profits for overruns were, on average, lower than the prices and profits for non-overruns, this was also the case in the previous review, and in that case the Department treated Borusan’s overruns as made in the ordinary course of trade.<sup>79</sup> Borusan contends that a difference in average prices and profits is not enough to determine that overrun sales are made outside the ordinary course of trade, since the Department considers the totality of the circumstances in making such a determination.<sup>80</sup> Borusan claims that in past cases, the Department examined the totality of the evidence and

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<sup>70</sup> *Id.* at 9.

<sup>71</sup> *Id.*, at 9.

<sup>72</sup> *Id.*, at 9-10, citing *Certain Hot-Rolled Carbon Steel Flat Products from India: Notice of Final Results of Antidumping Duty Administrative Review*, 73 FR 31961 (June 5, 2008) (*Hot-Rolled from India*) and accompanying Issues and Decision Memorandum at Comment 2.

<sup>73</sup> *Id.*, at 10.

<sup>74</sup> *Id.*, and Attachment 1.

<sup>75</sup> *Id.*, at 10.

<sup>76</sup> *Id.*, at 11.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*, at 12 referencing *Turkish Standard Pipe 13/14* and accompanying Issues and Decision Memorandum at Comment 10

<sup>80</sup> *Id.*

found that overruns had been made in the ordinary course of trade even though there were differences in prices and profits.<sup>81</sup>

In conclusion, Borusan argues the record contains no evidence that its home market sales of overruns were made outside the ordinary course of trade; therefore, it urges the Department to continue to find these sales were made in the ordinary course of trade.

### **Department's Position:**

Section 773(a)(1)(B) of the Act provides that NV shall be based on the price at which the foreign like product is first sold, *inter alia*, in the ordinary course of trade. Section 771(15) of the Act defines "ordinary course of trade" as the "conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind." Furthermore, section 771(15) of the Act indicates that we shall consider, "among others," sales and transactions made below the cost of production pursuant to section 773(b)(1), and certain sales between affiliated parties within the meaning of section 773(f)(2) of the Act, to be outside the ordinary course of trade. Other than these two statutory exclusions, the Act provides "little assistance in determining what is outside the scope of that definition."<sup>82</sup> What may constitute "among others" in the statute is informed by statements in the SAA:

Commerce may consider other types of sales or transactions to be outside the ordinary course of trade when such sales or transactions have characteristics that are not ordinary as compared to sales or transactions generally made in the same market. Examples of such sales or transactions include merchandise produced according to unusual product specifications, merchandise sold at aberrational prices, or merchandise sold pursuant to unusual terms of sale. As under existing law, amended section 771(15) does not establish an exhaustive list, but the Administration intends that Commerce will interpret section 771(15) in a manner which will avoid basing normal value on sales which are extraordinary for the market in question, particularly when the use of such sales would lead to irrational or unrepresentative results.<sup>83</sup>

Additionally, the Department's regulations at 19 CFR 351.102(b)(35) further define sales outside the ordinary course of trade as: "sales or transactions {that} have characteristics that are extraordinary for the market in question. Examples of sales that the Secretary might consider as being outside the ordinary course of trade are sales or transactions involving off-quality merchandise or merchandise produced according to unusual product specifications, merchandise sold at aberrational prices or with abnormally high profits, merchandise sold pursuant to unusual terms of sale, or merchandise sold to an affiliated party at a non-arm's length price." Thus, the

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<sup>81</sup> *Id.*, at 12-13, citing *Certain Corrosion-Resistant Carbon Steel Flat Products from Australia; Final Results of Antidumping Duty Administrative Reviews*, 61 FR 14049, 14051 (March 29, 1996).

<sup>82</sup> See *United States Steel Corp. v. United States*, 953 F. Supp. 2d 1332, 1341 (CIT 2013) (*US Steel*)(quoting *NSK Ltd. v. United States*, 170 F. Supp. 2d 1280, 1296 (CIT 2001)).

<sup>83</sup> See SAA, at 834.

Department broadly possesses the “discretion to determine what sales are outside the ordinary course of trade.”<sup>84</sup>

With specific regard to “overrun” sales, the Department examines various non-dispositive factors to determine whether overrun sales are in the ordinary course of trade, including, but not limited to, the following: (1) whether the merchandise is “off-quality” or produced according to unusual specifications; (2) the comparative volume of sales and the number of buyers in the home market; (3) the average quantity of an overrun sale compared to the average quantity of a commercial sale; and (4) price and profit differentials in the home market.<sup>85</sup>

As discussed below, the Department considered each of these four factors based on the information available on the record. As an initial matter, we note that the record contains evidence of the following: (1) Borusan sold overruns in the home market and identified these sales in its home market database;<sup>86</sup> (2) overruns are identified in Borusan’s system by order type (“stock overrun”);<sup>87</sup> and (3) Borusan had no sales of overrun merchandise in the United States during the POR.<sup>88</sup> With regard to *Turkish Standard Pipe 13/14*, we note that there was little argument to address regarding overruns as no party commented on the issue of whether Borusan’s home market sales of overruns may have been outside the ordinary course of trade.<sup>89</sup> In contrast, in the instant case, JMC commented on the issue prior to the *Preliminary Results*.<sup>90</sup>

#### *Quality and Specifications of Merchandise and Distribution Channel*

The Department examined the data reported in Borusan’s home market sales database and found that every grade which Borusan sold in the home market consisted of both overrun and non-overrun merchandise.<sup>91</sup> In addition, all of Borusan’s home market sales of overruns were reported as prime grade material.<sup>92</sup> The record does contain the specifications of Borusan’s overrun merchandise, but there is no evidence on the record that indicates what the overrun merchandise is used for after purchase. While Borusan did make sales of certain ASTM pipe in the home market, there is no evidence on the record that suggests that the particular ASTM is an unusual product specification, as Borusan sold non-overrun merchandise for the same ASTM as well, albeit in smaller quantities. Thus, we are unable to conclude that Borusan’s home market

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<sup>84</sup> See *US Steel*, 953 F. Supp. 2d at 1341 (citing, e.g., *Torrington Co. v. United States*, 146 F. Supp. 2d 845, 861 (CIT 2001), *aff’d*, 62 Fed.Appx. 950 (Fed.Cir. 2003) (NONPRECEDENTIAL) (Fed. Cir. 2003)).

<sup>85</sup> See, e.g., *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 4385, 4386 (January 22, 2013), and accompanying Preliminary Decision Memorandum, at 7 (unchanged in *Certain Cut-to-Length Carbon-Quality Steel Plate Products from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 29113 (May 17, 2013)).

<sup>86</sup> See Borusan’s October 2, 2015 section B questionnaire response, at B-10.

<sup>87</sup> *Id.*

<sup>88</sup> See Borusan’s October 2, 2015 section C questionnaire response, at C-7-C-8.

<sup>89</sup> See *Turkish Standard Pipe 13/14* and accompanying Issues and Decision Memorandum at Comment 10.

<sup>90</sup> See JMC’s January 19, 2016 submission at 3 and Exhibit I-3.

<sup>91</sup> See Memorandum from Scott Hoefke through Erin Kearney to the File, “2014 – 2015 Administrative Review of Welded Carbon Steel Standard Pipe and Tube Products from Turkey; Borusan Mannesmann Boru Sanayi ve Ticaret A.S.’s Home Market Sales of Overruns,” dated December 12, 2015 (Overruns Memorandum), at 3.

<sup>92</sup> See Borusan’s October 2, 2015 section B questionnaire response, at B-10-B-11; *see also* Overruns Memorandum at 3.

sales of overruns consist of “off-quality” merchandise or merchandise with unusual specifications.

JMC also asserted that that Borusan’s home market sales of overruns are made in a distinct channel of distribution. With respect to the argument that Borusan sells overruns mainly to distributors, we examined the information on the record and find that a substantial percentage of all of Borusan’s home market sales are made to distributors.<sup>93</sup> Borusan also reported that all of its home market sales were made through one channel of distribution, *i.e.*, direct sales from the mill.<sup>94</sup> This is in contrast to *NOES from Korea*, where the Department concluded, based on record evidence, that the respondent used a unique channel of distribution, *i.e.*, internet auctions, as its preferred means of selling overrun products.<sup>95</sup> Thus, we find that Borusan’s overrun sales were not made in a distinct channel of distribution.

#### *Comparative Volume of Sales and Number of Purchasers*

The Department considered the quantity of home market sales of overrun merchandise in relation to the total quantity of home market sales and found that overruns do not constitute an insignificant percentage of total home market sales.<sup>96</sup> In addition, the Department considered the number of home market customers buying overruns (those buying overruns only and those buying both overruns and non-overruns) and found that this group of customers makes up a significant proportion of total home market customers. However, we note that a small number of customers purchased the vast majority of all overrun sales, and these customers did not purchase a sizeable quantity of non-overrun merchandise sold in the home market.<sup>97</sup> For this same group of customers, the Department also considered the volume of their overrun purchases as a ratio of all of their purchases and found that the percentage of overruns purchased by this group of customers is significant.<sup>98</sup> Unlike the facts of this case, in *Turkish Standard Pipe 13/14*, the Department found that Borusan had a significant amount of sales, but the small number of buyers buying the vast amount of overruns was not at issue.<sup>99</sup> Thus, we find that while the comparative volume of sales is significant, the small number of buyers that purchased the vast majority of overrun sales is substantial and thus appears to be outside the ordinary course of business.

#### *Average Sale Quantity*

For those CONNUMs that were sold as both overruns and non-overruns, the Department compared the average quantity of overrun sales to the average quantity of non-overrun sales and found that the average sales quantities of overrun and non-overrun merchandise were not similar.<sup>100</sup> We found the average quantity of overrun sales to be significantly lower on a percentage basis than that of the average quantity of non-overrun sales.<sup>101</sup> We disagree with

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<sup>93</sup> See Overruns Memorandum, at 3.

<sup>94</sup> See Borusan’s October 2, 2015 section B questionnaire response, at B-16.

<sup>95</sup> See *NOES from Korea* and accompanying Issues and Decision Memorandum, at Comment 2.

<sup>96</sup> See Overruns Memorandum, at 3.

<sup>97</sup> *Id.*, at 3-4.

<sup>98</sup> *Id.*, at 4.

<sup>99</sup> See *Turkish Standard Pipe 13/14* and accompanying Issues and Decision Memorandum at Comment 10.

<sup>100</sup> See Overruns Memorandum at 4

<sup>101</sup> *Id.*

Borusan that the difference in average quantity effectively demonstrates that sale to be outside the ordinary course of trade. This case distinguishes itself from *Turkish Standard Pipe 13/14*, as the Department determined in that case that the average sales quantities of overrun and non-overrun merchandise were similar.<sup>102</sup>

### *Prices and Profits*

Finally, the Department compared the prices and profits of overrun and non-overrun sales and found that, as in *Turkish Standard Pipe 13/14*, the prices and profits are consistently lower for overrun sales.<sup>103</sup> We agree with Borusan that low prices and profits alone may be insufficient to conclude that sales are outside the ordinary course of trade, as Commerce must evaluate all the circumstances particular to the sales in question.”<sup>104</sup> However, in the instant review, as noted above in the Department’s analysis of the relevant factors, prices and profits are not the sole factor indicating that overruns were made outside the ordinary course of trade.

### *Conclusion*

Considering the above factors *in toto*, the Department finds that the record contains sufficient information to determine that Borusan’s home market sales of overrun merchandise are outside the ordinary course of trade. The record reflects that Borusan’s home market sales of overruns are not made in a unique channel of distribution, and the volume of overrun sales is significant in comparison to Borusan’s total volume of home market sales. However, we note the record lacks information about the uses for this merchandise and the commonality of the particular ASTM merchandise in the Turkish market compared to the local standard. We do find the following in support of finding overruns being outside the ordinary course of trade (1) overruns are sold only in the home market; (2) the vast majority of overruns are purchased by a small subset of overall overrun buyers; (3) the average quantity of overrun sales is lower than the average quantity of non-overrun sales; and (4) analysis shows the prices and profits of overrun sales are consistently lower for overruns than for non-overrun sales, even though both are classified as prime merchandise. Given our analysis of these factors, we have excluded Borusan’s home market sales of overruns these final results.

### Comment 4: U.S. Movement Expenses

#### *JMC Arguments:*

JMC contends that Borusan’s reported expenses relating to its retention of a resident agent and resident surety should be deducted from the calculated U.S. price.<sup>105</sup> JMC argues that the Department distinguishes, as upheld by the Court of International Trade (CIT), between “business expenses that arise from economic activities in the United States and business

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<sup>102</sup> See *Turkish Standard Pipe 13/14* and accompanying Issues and Decision Memorandum at Comment 10.

<sup>103</sup> See Overruns Memorandum at 4, see also *Turkish Standard Pipe 13/14* and accompanying Issues and Decision Memorandum at Comment 10.

<sup>104</sup> See *Appvion, Inc. v. United States*, Court No. 14-00143, Slip Op. 15-104 (CIT September 17, 2015), at 9.

<sup>105</sup> See JMC Case Brief, at 22-23.

expenses that are direct, inevitable consequences of an antidumping duty order.”<sup>106</sup> JMC argues that these expenses arise because Borusan is acting as the importer of record, rather than as a consequence of the antidumping order, and the Department should, therefore, deduct this expense from U.S. price for the final results.<sup>107</sup>

#### *Borusan Rebuttal Arguments:*

Borusan disagrees with JMC and argues that the resident surety expense should not be deducted from U.S. price.<sup>108</sup> Borusan states that the surety expense is a continuous bond that covers all of Borusan’s imports that are subject to antidumping duties as importer of record.<sup>109</sup> Borusan argues that JMC’s proposed methodology for calculating movement expenses includes expenses related to importing materials not subject to this review and, thus, would overstate expenses.<sup>110</sup> Furthermore, Borusan argues that the reported expense is not a sale-by-sale expense, and if the Department determines that this bond amount is not related to antidumping duties, it should be added to Borusan’s reported U.S. indirect selling expenses.<sup>111</sup>

#### **Department’s Position:**

We disagree with JMC that we should deduct this expense from Borusan’s calculated U.S. price. The Department stated in its initial questionnaire that we “will accept allocated price adjustments and expenses only if you can demonstrate that the allocation is calculated on as specific a basis as is feasible (*e.g.*, on a customer-specific basis, product-specific basis, and/or monthly-specific basis, etc.) and is not unreasonably distortive.”<sup>112</sup> Here, we find no evidence on the record that the reported expense can be traced to individual sales, nor did we request that Borusan allocate a per-unit cost.<sup>113</sup> Furthermore, although the Department does distinguish between “business expenses that arise from economic activities in the United States and business expenses that are direct, inevitable consequences of an antidumping duty order,”<sup>114</sup> we find that evidence on the record does not support that the expense is solely related to antidumping duties and thus could be related to business expenses resulting from other economic activities in the United States. Therefore, we have treated this expense as a U.S. indirect selling expense.<sup>115</sup>

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<sup>106</sup> *Id.* at 22, citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2558, 2571 (January 15, 1998) and *NTN Bearing Corp. v. United States*, 186 F. Supp. 2d 1257 (CIT 2002).

<sup>107</sup> *Id.*, at 22-23.

<sup>108</sup> See Borusan Rebuttal Brief, at 13.

<sup>109</sup> *Id.*, at 14.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> See Letter from the Department to Borusan Mannesmann Boru Sanayi ve Ticaret A.S., dated August 7, 2015 at G-9; see also Letter from the Department to Toscelik Profil ve Sac Endustrisi A.S./Tosyali Dis Ticaret A.S., dated August 7, 2015, at G-9.

<sup>113</sup> See Borusan’s March 30, 2016 submission, at Exhibit C-27.

<sup>114</sup> *Id.* at 22, citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 2558, 2571 (January 15, 1998), and citing *NTN Bearing Corp. v. United States*, 26 CIT 53, 71, 186 F. Supp. 2d 1257 (2002).

<sup>115</sup> See Borusan Final Analysis Memorandum.

#### Comment 5: Certain Brokerage Expenses

##### *JMC Arguments:*

In the *Preliminary Results*, the Department stated its intent to exclude certain movement expenses from the calculations, including the movement expense representing brokerage charges incurred in Turkey (DBROK2U).<sup>116</sup> JMC states that Borusan split domestic brokerage charges into two fields, DBROK2U and a separate field representing domestic loading/lashing expenses (DBROK1U).<sup>117</sup> JMC argues that the Department should also deduct DBROK1U from US price.<sup>118</sup>

No other parties commented on this issue.

##### **Department's Position:**

We agree with JMC. As stated in the *Preliminary Results*, we intended to exclude domestic brokerage charges from our calculation of U.S. price, but we inadvertently did not exclude Borusan's domestic loading/lashing expenses from the calculation of Borusan's U.S. price. Therefore, we have corrected this calculation for the final results of this review.<sup>119</sup>

#### Comment 6: Further Processed Sales

##### *JMC Arguments:*

JMC argues that, contrary to the Department's stated position in the *Preliminary Results*, calculations performed in SAS failed to exclude certain Borusan sales which were purchased by home market customers and further processed prior to export.<sup>120</sup> JMC suggests that the SAS language be changed to reflect the exclusion of further processed sales.<sup>121</sup>

No other parties commented on this issue.

##### **Department's Position:**

We agree with JMC. As stated in the *Preliminary Results*, we intended to exclude further processed sales from the calculation of normal value, but we inadvertently did not exclude Borusan's further processed sales. Therefore, we have corrected this calculation for the final results of this review.<sup>122</sup>

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<sup>116</sup> See *Preliminary Decision Memorandum* at 10.

<sup>117</sup> See JMC Case Brief, at 21; see also Borusan First Supplemental Questionnaire Response, at 12.

<sup>118</sup> *Id.*

<sup>119</sup> See Borusan Final Analysis Memorandum.

<sup>120</sup> See JMC Case Brief, at 21.

<sup>121</sup> *Id.*, at 22.

<sup>122</sup> See Borusan Final Analysis Memorandum.



## Toscelik-Specific Comments

### Comment 7: Weight Basis for Comparison Methodology

#### *JMC Arguments:*

JMC asserts that Toscelik's sales calculations should be calculated on the basis of theoretical weight, rather than the actual weight basis used in the *Preliminary Results*.<sup>123</sup> JMC cites to the Department's decision in *Certain Welded Stainless Steel Pipe from the Republic of Korea* as precedent for the Department's longstanding preference for "making sales comparisons on the basis on which U.S. sales were made."<sup>124</sup> JMC references the Department's recent decisions in which it declared its preference that "theoretical weight is the more appropriate basis for price comparisons."<sup>125</sup>

JMC argues that Toscelik sells merchandise to U.S. customers on a theoretical weight basis, and that Toscelik's calculations using actual weight are inappropriate.<sup>126</sup> JMC contends that evidence on the record of this review is clear that sales in the U.S. are made on the basis of theoretical weight, which it supports by citing invoices showing sales based on theoretical weight.<sup>127</sup> JMC explains that, while theoretical weight and length have a fixed conversion factor, there is no such relationship with theoretical weight and actual weight (also referred to as scale weight).<sup>128</sup> Furthermore, JMC argues that because the bases for comparison are different, exchanging theoretical for actual weight results in a different margin.<sup>129</sup>

JMC avers that scale weights are unreliable, as they are influenced by a variety of factors, including: (a) mechanical (concerning the weighbridge); (b) environmental (such as wind, snow and mud); (c) truck-related (such as differences in packing materials or fuel levels present when trucks are weighed); (d) human-related (involving either driver error or bridge operator error); and (e) system-related (*i.e.*, how frequently scales are recalibrated and stored-tare weight systems are refreshed).<sup>130</sup> According to JMC, these factors can lead to inaccuracies in the reported actual weight of up to four percent.<sup>131</sup> Unlike actual weight, JMC states that theoretical weight, as a constructed value, cannot be inaccurate.<sup>132</sup> JMC argues that the Department should convert the actual weight values provided by Toscelik to theoretical weight. JMC cites to previous cases in which the Department has converted home market sales prices to a theoretical weight basis, giving the Department precedent to do so in this case.<sup>133</sup>

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<sup>123</sup> See JMC Case Brief, at 6-7.

<sup>124</sup> See JMC Case Brief, at 2, citing *Certain Welded Stainless Steel Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 57 FR 53705 (November 12, 1992).

<sup>125</sup> See JMC Case Brief, at 1, citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016), and accompanying Issues and Decision Memorandum, at 15.

<sup>126</sup> See JMC Case Brief, at 3, citing Toscelik Questionnaire Response Section A at 19.

<sup>127</sup> *Id.*, at 3.

<sup>128</sup> *Id.*, at 6.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*, at 7.

<sup>131</sup> *Id.*, at 12.

<sup>132</sup> *Id.*

<sup>133</sup> See JMC Case Brief, at 3, citing, *e.g.*, "*Light-Walled Rectangular Pipe and Tube from Mexico: Notice of Final*

Additionally, JMC states that the term “actual” in reference to weight is poorly defined. JMC requests that the Department adopt precise and uniform language with regard the usage of the word “actual” in this and all subsequent determinations.<sup>134</sup>

Furthermore, JMC argues that the Department should, as it has in recent decisions, ignore Toscelik’s argument regarding “weight gain,” which occurs when a company manufactures a product under a given specification (*i.e.*, EN or ASTM) and maximizes its profit by producing toward the lower end of the tolerance of that specification.<sup>135</sup> Finally, JMC cites the Department’s decision in *LWR Pipe from Mexico* and states that the Department should “convert Toscelik’s data to a theoretical weight basis or, it must articulate its rationale for relying upon scale weight.”<sup>136</sup>

#### *Toscelik Rebuttal Arguments:*

Toscelik argues that as a practical matter, its margins must be calculated on an actual weight basis since its cost datasets are reported on an actual weight basis. Toscelik points out that the Department’s questionnaire does not express a preference for either theoretical or actual weight.<sup>137</sup> Furthermore, the Department has a long history of utilizing actual weight in pipe cases, including in all past reviews of this proceeding.<sup>138</sup>

Toscelik contends that JMC has failed to establish any distortions in Toscelik’s calculation of actual weight.<sup>139</sup> Toscelik also mentions that the use of theoretical weight would fail to capture scale weight variations caused by the addition of zinc on galvanized pipe, and argues that different product specifications for the different standards would introduce large distortions and create dumping margins.<sup>140</sup> Toscelik asserts that actual weight is a superior measurement because it accounts for the producer’s “weight gain,” which occurs when a company manufactures a product under a given specification (*i.e.*, EN or ASTM) and maximizes its profit by producing toward the lower end of the tolerance of that specification.<sup>141</sup>

#### **Department’s Position:**

In its initial questionnaire, the Department instructed respondent companies to “use a single measure for expressing all prices, expenses, and adjustments.”<sup>142</sup> The Department did not specify whether these prices, expenses, and adjustments should be reported in theoretical or

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*Determination of Sales at Less than Fair Value*, 69 FR 53667 (September 2, 2004) (*LWR Pipe from Mexico*).

<sup>134</sup> See JMC Case Brief, at 16.

<sup>135</sup> *Id.*, at 14; see also, *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 81 FR 47355 (July 21, 2016), and accompanying Issues and Decision Memorandum, at 16.

<sup>136</sup> See JMC Case Brief, at 7, citing *LWR Pipe from Mexico*.

<sup>137</sup> *Id.*, at 3.

<sup>138</sup> *Id.*, at 1.

<sup>139</sup> *Id.*, at 2.

<sup>140</sup> *Id.*, at 6.

<sup>141</sup> See Toscelik Rebuttal Brief, at 2.

<sup>142</sup> See Letter from the Department to Toscelik, dated August 7, 2015.

actual weight, but did state that companies should report any “factor by which the unit of measure in which the price/expense/revenue was incurred was multiplied in order to arrive at the amount reported in the unit of measure column and the database (*e.g.*, theoretical to actual weight; short tons to metric tons; *etc.*).” Toscelik reported all relevant information on an actual weight basis and, thus, reported no conversion factor.

In previous pipe cases, the Department has based price comparisons on theoretical or actual weight, depending on the particular facts of each case.<sup>143</sup> Furthermore, Toscelik has utilized actual weight as its reporting basis in all previous reviews of the instant case. We agree with JMC, however, that theoretical weight is generally the preferable basis for the comparison methodology, given the potential inaccuracies of scale weight and the theoretical sales basis upon which products are sold in the United States. We find that the evidence on the record in this case, however, is insufficient to base calculations on theoretical weight.

Despite JMC’s request that the Department base all of its calculations on theoretical weight, we find this to be unfeasible in the instant case, given the lack of theoretical weight cost data on the record for Toscelik.<sup>144</sup> Additionally, we find that converting Toscelik’s cost data from actual weight basis to a theoretical weight basis would be imprecise for the purposes of this review.

It is within the Department’s prerogative to choose between two methods so long as it articulates a rationale that is based on substantial record evidence.<sup>145</sup> In light of evidence on the record and consistent with our *Preliminary Results*, the Department will continue to use Toscelik’s reported actual weight in its calculations of the current review. In subsequent reviews of the instant proceeding, however, the Department intends to revisit this issue and consider the use of theoretical weight as the basis for reporting costs and sales in both the domestic and U.S. markets. Finally, the Department also agrees with JMC that “actual weight” should be more clearly defined; however, the use of theoretical weight in future proceedings should render this problem moot.

#### Comment 8: INTEX Ratio

##### *JMC Arguments:*

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<sup>143</sup> For instances in which we have used theoretical weight, *see, e.g.*, *Certain Welded Stainless Steel Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 57 FR 53693 (November 12, 1992) and *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 57 FR 17885 (April 28, 1992); for instances in which we have used actual weights, *see, e.g.*, *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Administrative Review and Final Determination of No Shipments*, 2013-2014, 80 FR 76674 (December 10, 2015) and *Light-Walled Rectangular Pipe and Tube from Turkey: Notice of Final Results of Antidumping Administrative Review*, 75 FR 61127 (October 4, 2010).

<sup>144</sup> We note that insufficient time remained in the instant review to request the cost data on a theoretical weight basis before these final results of review.

<sup>145</sup> *See Hynix Semiconductor Inc. v. United States*, 391 F. Supp. 2d 1337, 1342 (CIT 2005), which states: “[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s finding from being supported by substantial evidence.”

JMC argues that the Department should adjust Toscelik's net financial expense (INTEX) for exchange rate gains and losses.<sup>146</sup> JMC notes that in *Line Pipe from Turkey*, the Department relied on the financial expenses outlined in Toscelik's 2014 Financial Statements.<sup>147</sup> However, in *Line Pipe from Turkey*, JMC notes that the Department made an adjustment to the reported data for exchange rate gains and losses.<sup>148</sup> JMC asserts that the Department made an analogous adjustment for Toscelik's exchange rate gains and losses in the INTEX calculation used in the *2013-2014 Review* of this case.<sup>149</sup>

#### *Toscelik Rebuttal Arguments:*

Toscelik contends that the adjustment to its INTEX expenses proposed by JMC is "massive" and that the Department should make no adjustment to these expenses without a "fully developed record" upon which Toscelik is allowed to comment.<sup>150</sup> Toscelik further asserts that JMC should have raised any objections which it had to its INTEX calculation earlier in the proceeding.<sup>151</sup>

#### **Department's Position:**

We agree with JMC. As we noted in the *2013-2014 Review* of this case, the Department's practice is to calculate financial expenses, and to include in its INTEX calculation "all foreign exchange gains and losses."<sup>152</sup> Moreover, as JMC has noted, while the Department utilized Toscelik's financial expenses in *Line Pipe from Turkey* to calculate Toscelik's INTEX expense, the Department made an adjustment in that INTEX calculation to account for Toscelik's exchange rate gains and losses.<sup>153</sup> Additionally, we find that Toscelik has offered nothing to distinguish its INTEX calculation from either the INTEX calculation employed in the *2013-2014*

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<sup>146</sup> See JMC Case Brief, at 33-34.

<sup>147</sup> *Id.*, at 33, citing *Welded Line Pipe from the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 80 FR 29617 (May 22, 2015), unchanged in *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015) (*Line Pipe from Turkey*).

<sup>148</sup> *Id.*

<sup>149</sup> See JMC Case Brief, at 34, citing *Welded Carbon Steel Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments*; 2013-2014, 80 FR 76674 (December 10, 2015), and accompanying Issues and Decision Memorandum, at 46-50 (*2013-2014 Review*).

<sup>150</sup> See Toscelik Rebuttal Brief, at 30.

<sup>151</sup> *Id.*

<sup>152</sup> See *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 (December 10, 2015), and accompanying Issues and Decision Memorandum, at 49, citing *Certain Frozen Warmwater Shrimp from India: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 52055 (September 12, 2007), and accompanying Issues and Decision Memorandum, at Comment 7; *Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Mexico*, 67 FR 55800 (August 30, 2002), and accompanying Issues and Decision Memorandum, at Comment 8; and *Notice of Final Results of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile*, 65 FR 78472 (December 15, 2000), and accompanying Issues and Decision Memorandum, at Comment 7.

<sup>153</sup> See *Welded Line Pipe from the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination* 80 FR 29617 (May 22, 2015), unchanged in *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015) (*Line Pipe from Turkey*).

Review or from the INTEX calculation utilized in *Line Pipe from Turkey*. Accordingly, in these final results, we have adjusted Toscelik's INTEX expense for exchange rate gains and losses.<sup>154</sup>

#### Comment 9: Indirect Selling Expenses Ratio

##### *JMC Arguments:*

JMC asserts that in the Department's calculation of U.S. indirect selling expenses, the Department should include the items reported by Toscelik in account 76050003, which relate to an allowance under Turkish law for a deduction from taxable income for export revenue.<sup>155</sup> JMC argues that in *HWR from Turkey*, the Department disallowed a claim for an upward adjustment to USP because there is no provision under U.S. antidumping law for adjustment for deducting taxable income from export revenue.<sup>156</sup>

No other party commented on this issue.

#### **Department's Position:**

We agree with JMC. We find no basis for excluding the expenses for taxable income deducted from export revenue under Section 772(d)(1)(D) of the statute. Therefore, in our calculation of U.S. indirect selling expenses, in these final results, and consistent with *HWR from Turkey*, we have included the expenses included within expense pool 76050003. We have adjusted our calculation of U.S. indirect selling expenses for Toscelik accordingly.<sup>157</sup>

#### Comment 10: Warehousing Expenses

##### *JMC Arguments:*

JMC claims that Toscelik's home market warehousing expense claim is overstated.<sup>158</sup> JMC contends that the majority of the warehousing expenses claimed by Toscelik are attributable to the selling activities of service centers, rather than to expenses that relate to warehousing.<sup>159</sup>

##### *Toscelik Rebuttal Arguments:*

Toscelik argues that in its Section B response, it provided its cost center reports for both its Gebze and Aliaga facilities.<sup>160</sup> Toscelik further argues that none of its claimed home market

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<sup>154</sup> See Toscelik Final Analysis Memorandum.

<sup>155</sup> See JMC Case Brief, at 23.

<sup>156</sup> *Id.*, citing *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 81 FR 10583 (March 1, 2016) and accompanying Preliminary Decision Memorandum at 10, unchanged in *HWR from Turkey*.

<sup>157</sup> *Id.*; see also Toscelik Final Analysis Memorandum.

<sup>158</sup> See JMC Case Brief, at 23-25.

<sup>159</sup> *Id.*, at 23-24.

<sup>160</sup> See Toscelik Rebuttal Brief, at 29, citing Toscelik's September 28, 2015, Section B submission at Exhibit 4 (Toscelik's Section B Response).

warehousing expenses enumerated in its Section B Response relate to selling activities rather than to warehousing expenses.<sup>161</sup>

**Department's Position:**

We agree with Toscelik. In the *Preliminary Results*, we made a circumstances of sale adjustment for Toscelik's reported warehousing expenses, in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

In reviewing Toscelik's reported warehousing expenses, we find no evidence suggesting that Toscelik's claimed expenses relate to activities other than warehousing, or that Toscelik's reported warehousing expenses are overstated.<sup>162</sup> Therefore, in these final results, pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410, we have made no changes from our *Preliminary Results*, and we have continued to make a circumstances of sale adjustment for Toscelik's warehousing expenses.

**Recommendation**

We recommend following the above methodology for these final results.

☒

\_\_\_\_\_  
Agree

☐

\_\_\_\_\_  
Disagree

12/12/2016

X



Signed by: PAUL PIQUADO

Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

<sup>161</sup> See Toscelik Rebuttal Brief, at 29.

<sup>162</sup> See Toscelik's Section B Response, at Exhibit 4.