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MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review of Certain Oil Country Tubular Goods from Turkey

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I. SUMMARY

We analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the antidumping duty order on certain oil country tubular goods from Turkey covering the period September 1, 2015, through August 31, 2016 (POR). We made changes in the margin calculations as a result of our analysis. We recommend that you approve the position we developed in the "Discussion of the Issue" section of this memorandum.

Comment: Duty Drawback

II. BACKGROUND

On September 7, 2017, we published the *Preliminary Results* of this administrative review and invited interested parties to comment.[1] On October 10, 2017, TMK IPSCO, Vallourec Star L.P., and Welded Tube USA, (collectively, the petitioners) submitted their case brief, and on October 16, 2017, Tosçelik Profil ve Sac Endüstrisi A.Ş., (Toscelik) submitted its rebuttal brief.[2]

[1] *See Certain Oil Country Tubular Goods from Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 42285 (September 7, 2017), and accompanying Decision Memorandum (Preliminary Decision Memorandum) (collectively, *Preliminary Results*).

[2] *See* the petitioners' Case Brief, "Re: Certain Oil Country Tubular Goods from Turkey: Case Brief," dated October 10, 2017 (Petitioners' Case Brief); and Toscelik's Rebuttal Brief, "Re: Oil Country Tubular Goods from Turkey; Toscelik rebuttal brief," submitted on October 16, 2017 (Toscelik's Rebuttal Brief). Note that Toscelik's Rebuttal Brief was timely filed but dated incorrectly with an August 9, 2016, date.

III. SCOPE OF THE ORDER

The merchandise covered by the order is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock.

Excluded from the scope of the order are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description is dispositive.

IV. DISCUSSION OF THE ISSUE

Comment: Duty Drawback

The petitioners argue that the Department of Commerce (Commerce) made what it characterizes as a "ministerial error" when implementing its *Preliminary Results* by not limiting the amount of the duty drawback adjustment by the per-unit duty cost included in Toscelik's costs of production (COP), notwithstanding language in the *Preliminary Results* indicating that it would do so.[3] The petitioners explain that whereas Commerce correctly calculated a duty drawback

[3] *See* Petitioners' Case Brief at 1.

amount using Toscelik's submitted data, Commerce failed to use certain programming language in the margin program that implements Commerce's duty-neutral methodology by limiting the amount of the duty drawback adjustment by the respondent's per-unit duty cost.[4] According to the petitioners, it is this second step which effects the "neutrality" of the duty neutral methodology.[5] The petitioners contend that Commerce did not implement this second step in the *Preliminary Results* and instead relied upon the drawback value reported by Toscelik in its U.S. sales database.[6] The petitioners request for the final results of this administrative review that Commerce implement the second step by limiting the amount of the duty drawback adjustment by the per-unit duty cost included in Toscelik's COP.

In addition, citing *Salmon from Chile,*[7] the petitioners argue that Commerce has a longstanding policy of adding duty drawback to normal value (NV) when it is based on constructed value (CV).[8] The petitioners argue that in *Salmon from Chile* Commerce stated that it was adding duty drawback to CV by making a cost of sale adjustment pursuant to section 773(a)(8) of Tariff Act of 1930, as amended (the Act) when it is compared to U.S. price.[9]

Toscelik argues that the duty-neutral methodology the petitioners claim should be implemented for the final results violates the plain language of the statute, is contrary to judicial precedent, and is the result of the application of a capricious principle that is nowhere found in the law.[10] Citing *RTAC II*,[11] Toscelik argues that the Court of International Trade (CIT) has required that, when the statutory criteria are met, the drawback adjustment must be granted in full on U.S. sales.[12] According to Toscelik, the CIT rejected the petitioners' preferred approach and stated that, "{t}he USP adjustment for drawback, being causally related to exportation, not production, is allocable only to the exports to which it relates…"[13] Toscelik argues that the CIT took cognizance of the difference between the drawback ratio as applied to sales and that as applied to cost and rejected the application of the cost-side adjustment as an adjustment to U.S. price.[14] Toscelik asserts that recasting the cost-side as a "cap" rather than an adjustment does not change the fact that the drawback ratio is not even five percent of the total unit value of the adjustment calculated on an export basis (*i.e*., calculated as "causally related to exportation") as the Court required.[15]

Toscelik argues that the petitioners' reference to "duty neutrality" is unavailing and that the law envisions no such principle, whether in these terms or in its alternative formulation of the purported imbalance that occurs because the sales-side adjustment is calculated using a

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[4] *Id*. at 2.
[5] *Id.*
[6] *Id.* at 3.
[7] S*ee Notice of Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination to Revoke the Order in Part, and Partial Rescission of Antidumping Duty Administrative Review: Fresh Atlantic Salmon from Chile*, 67 FR 51182 (August 7, 2002) (*Salmon from Chile*).
[8] *See* Petitioners' Case Brief at 3.
[9] *Id*. at 3.
[10] *See* Toscelik's Rebuttal Brief at 4.
[11] *See Rebar Trade Action Coalition v. United States*, Slip Op. 16-88 at 9 (CIT September 21, 2016) (*RTAC II*).
[12] *See* Toscelik's Rebuttal Brief at 4 (citing *RTAC II*).
[13] *Id*.
[14] *Id*.
[15] *Id*.

denominator of exports, while the cost-side adjustment is calculated on a denominator of total production.[16] According to Toscelik, there is, in fact, no imbalance that requires correction in order to match sales and costs.[17] Toscelik argues that the imbalance that actually exists is the imbalance that occurs if there is no drawback, and it is this imbalance that was remedied by Congress in the antidumping statute where it states, "{i}n order that any drawback given by the country of exportation upon the exportation of merchandise shall not constitute dumping, it is necessary also to add such items to the purchase price."[18] Toscelik argues that, as such, Congress rectified this imbalance with the duty drawback provision.[19]

Toscelik argues that the petitioners err in claiming that Commerce has a "longstanding policy of adding duty drawback to normal value when it is based on {CV}." Toscelik argues further that the petitioners' citation to a single, 15-year-old case for that proposition does not equate to a "longstanding policy," as the petitioners claim. Toscelik argues that the *Salmon from Chile* case is distinguishable from this case because in the *Salmon from Chile* case, Commerce explicitly added a third country duty drawback amount to CV. Toscelik asserts that in contrast, in this segment of the proceeding, there is no third-country duty drawback amount to add. Further, Toscelik argues that in the *OCTG from Turkey Investigation*, where Commerce based NV on CV, Commerce did not add drawback to CV, and therefore should not do so here.[20]

Commerce Position:

We agree with the petitioners that Commerce did not implement its duty-neutral approach when adjusting for duty drawback in the *Preliminary Results*, as was intended,[21] and that such a methodology is appropriate for the final results.

A duty drawback adjustment to export-price (EP)[22] sales is based on the condition that the "goods sold in the exporter's domestic market are subject to import duties while exported goods are not."[23] In other words, home market sales prices and COP may be import duty "inclusive," while U.S (and third-country) export sales prices are import duty "exclusive."[24] This inconsistency in whether prices or costs are import duty exclusive or inclusive will result in an imbalance in the comparison of EP with NV (including CV). Thus, it is incumbent on Commerce to ensure that the comparison of EP with NV (including with CV) is undertaken on a duty-neutral basis. Accordingly, when warranted, as here, Commerce will make the duty drawback adjustment to EP in a manner that will render this comparison duty neutral. Applying the duty drawback adjustment reported by Toscelik in its U.S. sales database without limiting the amount of the duty drawback adjustment by the per-unit duty cost included in Toscelik's COP

[16] *Id*.
[17] *Id*.
[18] *Id*.
[19] *Id*.
[20] *See Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, in Part*, 79 FR 41971 (July 18, 2014), and accompanying Issues and Decision Memorandum at Comment 2 (*OCTG from Turkey Investigation*).
[21] *See* Preliminary Decision Memorandum at 9.
[22] *See* Toscelik's Questionnaire Responses, dated January 6, 2017, at 49, where Toscelik reported that it made EP sales during the POR.
[23] *See Saha Thai Steel Pipe (Pub.) Co. v United States*, 635 F. 3d 1335, 1340-41 (Fed. Cir. 2011) (*Saha Thai*).
[24] *Id*. at 1341-42.

would not result in the desired import duty neutrality resulting in a duty neutral comparison of EP and NV (or CV) 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.[25] In contrast, on the EP side, the duty drawback adjustment to U.S. price employs a "smaller denominator than that used on the NV side."[26] As such, the combination of duties included within NV (or CV) relative to what is included within U.S. price, results in a larger per-unit U.S. sales adjustment than is imbedded within NV (or CV). This creates an imbalance in the comparison of the U.S. price to NV (or CV).[27]

We disagree with Toscelik's argument that there is no imbalance if we do not apply a duty-neutral approach in this case. Applying a duty drawback adjustment based solely on a respondent's claimed adjustment, without consideration of import duties included in a respondent's cost of materials, may result in an imbalance in the comparison of EP with NV (including with CV). For example, this inequity may be created because a producer may source a material input from both domestic and foreign suppliers. In this situation, the annual average cost for the input is the average cost of both the foreign-sourced input, which incurs import duties, and the domestically sourced input on which no import duties were imposed. As such, a full measure of the claimed duty drawback adjustment cannot be presumed to be present in COP or reflected on the NV side of the dumping comparison, in the NV of the foreign like product, because the COP is not specific to the product exported or the product sold in the comparison market. In other words, the producer's COP reflects the cost to produce both the subject merchandise exported by the respondent, as well as the foreign like product sold in the comparison market. On the EP side of the comparison, adjusting U.S. sales prices for the full measure of the import duty which has been refunded, as advocated by Toscelik, assumes that the exported products were produced solely from foreign-sourced, and thus import-duty-inclusive, inputs. This results in a larger amount of the refunded import duties being attributed to EP, as well as a larger per-unit duty drawback adjustment to EP, than the per-unit duty cost reflected in the product's COP, thereby creating an imbalance.

Furthermore, to prevent distortion of the margin due to import duties as described in more detail below, the amount of the duty drawback adjustment should be determined based on the import duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration because it is the only amount of duty that can reasonably be reflected in the NV of the subject merchandise. That is, for dumping purposes, we consider that imported raw materials and the domestically sourced raw material are proportionally consumed in producing the merchandise, whether sold domestically or exported. The average import duty absorbed into, or imbedded in, the overall cost of producing the merchandise under consideration is the only amount of duty that can reasonably be reflected in the NV of the subject merchandise, which in this case is based on CV. The average import duty cost imbedded in the cost of producing the merchandise is the duty cost "reflected in NV," whether NV is based on home market prices or CV.

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[25] *See Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 81 FR 92785, (December 20, 2016), and accompanying Issues and Decision Memorandum at Comment 2.
[26] *Id*.
[27] *Id*.

In *Saha Thai*, the U.S. Court of Appeals for the Federal Circuit (CAFC) stated:

> The purpose of the duty drawback adjustment is to account for the fact that the producers remain subject to the import duty when they sell the subject merchandise domestically, which increases home market sales prices and thereby increases NV. That is, when a duty drawback is granted only for exported inputs, the cost of the duty is reflected in NV but not in EP. The statute corrects this imbalance, which could otherwise lead to an inaccurately high dumping margin, by increasing EP to the level it likely would be absent the duty drawback.[28]

Thus, the CAFC recognized that the purpose of the duty drawback adjustment is to create a comparison of EP with NV that is duty neutral such that the amount included on both sides of this comparison is equitable and that the weighted-average dumping margin is not distorted because of the inclusion or exclusion of import duties. Moreover, 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 EP or constructed export price (CEP) with NV (or CV), as explained above. Thus, we disagree with Toscelik that no imbalance exists.

Further, we disagree with Toscelik's assertion that the duty neutral approach employed constitutes an unlawful interpretation of the statute. We find that nothing in the statute precludes Commerce from addressing the imbalance between the U.S. price and CV in this case. Moreover, we point out that the duty-neutral approach for calculating duty drawback bases the calculation of duty drawback upon the amount of duty reported in the COP database. Therefore, in our calculation of duty drawback for Toscelik for the final results, we have based our calculation of the adjustment on Toscelik's own information, specifically, information reported by Toscelik in its COP database. Accordingly, for the final results, we have limited the duty drawback adjustment to the reported amount of the adjustment included within the COP database of Toscelik.

With respect to Toscelik's reliance on *RTAC II*, we point out that, as a threshold matter, *RTAC II* is not precedential, as plaintiffs voluntarily dismissed the case. *RTAC II*, therefore, was neither final nor conclusive because the Court did not issue a final judgment.[29] Moreover, the *RTAC II* court stated that the statute required a "full upward adjustment" of the entire amount of the duties rebated on export.[30] The court's words "full upward adjustment," however, are not contained in the statute.[31] Although the statutory language refers to "the amount of any import duties imposed{,}" the statute is silent as to how the "amount of {} duties imposed" is to be calculated

[28] *Id*. at 1338.
[29] *See Union Steel v. United States*, 804 F. Supp. 2d 1356, 1367 (Ct. Int'l Trade 2011) (explaining that "the court may reconsider . . . a non-final order prior to entering a final judgment").
[30] *RTAC II*, Slip Op. 16-88 (CIT Sept. 21, 2016) at *9.
[31] *See* section 772(c)(1)(B) of the Act.

and allocated to each export of U.S. sales duty drawback adjustment purposes.[32] Thus, Congress has left the selection of the methodology to the reasonable exercise of Commerce's discretion.[33]

With regard to the petitioners' argument that an additional adjustment should be made to CV for duty drawback pursuant to *Salmon from Chile*, we disagree. We find that the duty costs have already been included in CV in this case, and therefore, there is no need to make an additional adjustment to CV.[34] Further, the petitioners have not accurately characterized *Salmon from Chile*. In that case, Commerce added a duty drawback adjustment to NV where NV was based on third-country sales, not where NV was based on CV.[35] In this case, we are not relying on third-country data and thus, we find that *Salmon from Chile* is not applicable to the circumstances of this case.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results of this administrative review and the final weighted-average dumping margin in the *Federal Register*.

☒	☐
Agree	Disagree

1/4/2018

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

[32] *Id.*
[33] *See Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984)
[34] *See* Toscelik's supplemental questionnaire response dated May 4, 2017, at 4, and at duty-drawback Excel worksheets.
[35] *See Salmon from Chile*, at 51189.