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**DATE:** December 7, 2018

**MEMORANDUM TO:** Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

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

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

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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 (OCTG) from Turkey covering the period of review (POR), September 1, 2016, through August 31, 2017. We did not make changes in the margin calculations as a result of our analysis of comments from interested parties. We recommend that you approve the positions we developed in the “Discussion of the Issue” section of this memorandum.

## II. BACKGROUND

On June 11, 2018, the Department of Commerce (Commerce) published the Preliminary Results of this administrative review and invited interested parties to comment.<sup>1</sup> On July 11, 2018, United States Steel Corporation (the petitioner or U.S. Steel) submitted a case brief, and on July 16, 2018, Çayirova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru İthalat-İhracat ve Pazarlama A.Ş. (collectively, Yücel) submitted its rebuttal brief.<sup>2</sup> On August 23, 2018,

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<sup>1</sup> See Certain Oil Country Tubular Goods from Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017, 83 FR 26957 (June 11, 2018) (*Preliminary Results*) and accompanying Decision Memorandum (Preliminary Decision Memorandum).

<sup>2</sup> See Letter from the petitioner, “Re: Oil Country Tubular Goods from Turkey: U.S. Steel’s Case Brief,” dated July 11, 2018 (Petitioner’s Case Brief) and Letter from Yücel, “Re: OCTG from Turkey; Yücel rebuttal brief,” dated July 16, 2018 (Yücel’s Rebuttal Brief).



Commerce held a public hearing. After reviewing comments submitted by interested parties and the information available on the record, Commerce determined to conduct a formal inquiry into the *bona fides* nature of the U.S. sale reported by Yücel in this review. Accordingly, on September 21, 2018, Commerce placed certain new factual information on the record, requested additional information from Yücel and its U.S. customer, and provided an opportunity to Yücel and U.S. Steel to submit rebuttal new factual information (NFI) and comments thereto.<sup>3</sup> On September 24, 2018, Commerce extended the deadline for the final results by 59 days to December 7, 2018.<sup>4</sup>

On October 1, 2018, we received the following information: (1) Yücel's and its U.S. customer's responses to our requests for information;<sup>5</sup> (2) Yücel's rebuttal NFI to Commerce's NFI and comments;<sup>6</sup> and (3) U.S. Steel's rebuttal NFI to Commerce's NFI.<sup>7</sup> On October 9, 2018, U.S. Steel submitted rebuttal NFI to NFI contained in Yücel's and its U.S. customer's October 1, 2018, responses.<sup>8</sup> On October 15, 2018, both Yücel and U.S. Steel provided comments on NFI concerning the *bona fides* of Yücel's U.S. sale.<sup>9</sup> On October 30, 2018, Commerce reached a determination that Yücel's U.S. sale subject to this review is a *bona fide* transaction and invited interested parties to comment on this determination.<sup>10</sup> Specifically, we solicited comments limited solely to Commerce's *bona fides* analysis.<sup>11</sup> On November 5, 2018, U.S. Steel submitted a case brief, and on November 7, 2018, Yücel submitted its rebuttal brief.<sup>12</sup>

### 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

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<sup>3</sup> See Letter to Yücel and its U.S. customer, dated September 21, 2018, and Letter to all interested parties, also dated September 21, 2018 (Commerce's NFI).

<sup>4</sup> See Memorandum, "Certain Oil Country Tubular Goods from Turkey: Extension of Deadline for Final Results of Antidumping Duty Administrative Review," dated September 24, 2018.

<sup>5</sup> See Letter from Yücel, "OCTG from Turkey; Çayirova/YiiP bona fides questionnaire response," dated October 1, 2018 (Yücel's *Bona Fides* QR) and Letter from Yücel, "OCTG from Turkey; Çayirova/YIIP bona fides questionnaire, customer response," dated October 1, 2018 (U.S. Customer's *Bona Fides* QR).

<sup>6</sup> See Letter from Yücel, "OCTG from Turkey; Yücel comments on new factual information," dated October 1, 2018 (Yücel's 10-1 Rebuttal NFI and Comments).

<sup>7</sup> See Letter from U.S. Steel, "Oil Country Tubular Goods from Turkey: U. S. Steel's Submission to Rebut, Clarify, or Correct Commerce's Factual Information," dated October 1, 2018 (Petitioner's 10-01 Rebuttal NFI).

<sup>8</sup> See Letter from U.S. Steel, "Oil Country Tubular Goods from Turkey: U. S. Steel's Submission to Rebut, Clarify, or Correct Yücel's Bona Fide Questionnaire Response," dated October 9, 2018 (Petitioner's 10-09 Rebuttal NFI).

<sup>9</sup> See Letter from Yücel, "OCTG from Turkey; Yücel final comments on bona fides of U.S. sale," dated October 15, 2018 (Yücel's Comments), and Letter from U.S. Steel, "Oil Country Tubular Goods from Turkey: Comments Regarding the Non-Bona Fide Nature of Yücel's Single U.S. POR Sale," dated October 15, 2018 (Petitioner's Comments).

<sup>10</sup> See Commerce's Memorandum, "2016-2017 Antidumping Duty Administrative Review of Oil Country Tubular Goods from Turkey: *Bona Fides* Analysis of the U.S. Sale Made by Çayirova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru İthalat-İhracat ve Pazarlama A.Ş.," dated October 30, 2018 (*Bona Fides* Analysis Memo).

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

<sup>12</sup> See Letter from the petitioner, "Re: Oil Country Tubular Goods from Turkey: U.S. Steel's Case Brief Concerning Commerce's *Bona Fides* Analysis," dated November 5, 2018 (Petitioner's *Bona Fides* Case Brief) and Letter from Yücel, "Re: OCTG from Turkey; Yücel rebuttal brief regarding *bona fides* of U.S. sale," dated November 7, 2018 (Yücel's *Bona Fides* Rebuttal Brief).

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 ISSUES**

##### **Issue 1: Whether the U.S. Sale is *Bona Fide***

In its original case brief, the petitioner argued that, prior to issuing its final results, Commerce should conduct a *bona fide* analysis of Yücel's U.S. sale in this administrative review; the petitioner argued that in light of the record evidence and Commerce's *bona fide* factors, Commerce should conclude, based on a totality of the circumstances, that Yücel's single U.S. sale is unrepresentative or extremely distortive and should be excluded from the margin calculations.<sup>13</sup> Specifically, the petitioner argued that in this review Yücel failed to meet its burden of creating a record that establishes the commercial reasonableness of its single reported U.S. sale. Further, it contended, the record evidence indicates the following: (a) the sales documentation establishes that the entry should have been made prior to POR; (b) the price and quantity of the U.S. sale do not indicate it is likely to be repeated; (c) the expenses related to the

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<sup>13</sup> See, generally, Petitioner's Case Brief.

U.S. sale appear contrived to generate a favorable dumping margin; (d) the U.S. sale was not made at a profit; and (e) there is no evidence to definitively establish the arm's-length nature of the transaction.<sup>14</sup> These points, the petitioner argued, support a finding that Yücel's U.S. sale was not based on normal commercial practices but, instead, was arranged for the purpose of obtaining an artificially lower dumping margin.<sup>15</sup> The petitioner alleged that, because Yücel does not have a reviewable U.S. transaction, consistent with its practice, Commerce should rescind the administrative review of Yücel.<sup>16</sup>

In its original rebuttal brief, Yücel argued that Commerce should reject the petitioner's request for an inquiry into the *bona fides* of Yücel's reported U.S. sale as untimely.<sup>17</sup> Yücel argued that, in the event Commerce considers the petitioner's claim on its merits, the record is clear that Yücel's reported U.S. sale is a *bona fide* transaction.<sup>18</sup> Specifically, Yücel argued that the petitioner has a high burden to establish that a respondent's U.S. sales are not *bona fide*, as Commerce only excludes sales in an administrative review in exceptional circumstances when those sales are unrepresentative and extremely distortive.<sup>19</sup>

As we indicated in the "Background" section, after reviewing interested parties' comments and the information available on the record, we determined to conduct a formal inquiry into the *bona fides* nature of the U.S. sale reported by Yücel in this review. We carefully analyzed all new factual information on the record and comments provided by interested parties on this issue in order to ascertain whether Yücel's U.S. sale under review was made in a *bona fide* manner. After a comprehensive analysis of record evidence and a thorough evaluation of interested parties' comments, Commerce reached a determination that Yücel's U.S. sale subject to this review is a *bona fide* transaction. The following addresses comments we solicited and received from interested parties, limited solely to Commerce's *bona fides* determination issued on October 30, 2018.

#### *Petitioner's Arguments*

Commerce should reconsider and reverse its preliminary conclusion that Yücel's single U.S. sale was a *bona fide* transaction.<sup>20</sup> Yücel's weighted-average dumping margin of 1.59 percent, calculated in the *Preliminary Results*, is indicative that it was not calculated using a repeatable or commercial U.S. sale - instead, Yücel manufactured this low rate by entering the subject merchandise at the very beginning of this POR and used the remainder of the period of review to create favorable home market sales to match to its single U.S. sale.<sup>21</sup> Had Yücel met its customer's expectations and delivered the product prior to this period of review, Yücel would have had its dumping margin calculated using its cost of production, as it had in the original investigation; however, to secure a low antidumping duty margin, it was in Yücel's interest to secure a sale in this POR and gerrymander home market sales to match to it.

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<sup>14</sup> *Id.*

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

<sup>16</sup> *Id.*

<sup>17</sup> *See*, generally, Yücel's Rebuttal Brief.

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

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

<sup>20</sup> *See* Petitioner's *Bone Fides* Case Brief at 1.

<sup>21</sup> *Id.* at 2.

Commerce's determinations must be based on substantial evidence.<sup>22</sup> The longstanding precedent unambiguously conveys that conjectures, mere assumptions, or suppositions, without support in record evidence, will not satisfy the substantial evidence standard.<sup>23</sup> In this case Commerce unreasonably deferred to Yücel when record evidence establishes a contrary narrative. Specifically, 1) Yücel unreasonably delayed the entry of product to create a POR sale, 2) Commerce's reliance on another mandatory respondent's sale reported in a prior review is not probative information against which to benchmark Yücel's sale, 3) the pricing information from a published source, Preston Pipe and Tube is, however, probative, and provides for an indicator of the U.S. OCTG market, and 4) Yücel's characterization of the U.S. market does not comport with the commercial reality.<sup>24</sup>

By altering the entry date, Yücel created an opportunity to artfully manufacture a low cash deposit rate separate from its normal commercial practices, thereby benefiting from its unexplained delivery delay.<sup>25</sup>

- Commerce speculated in its explanation of the lag of time between the anticipated and actual arrival of Yücel's shipment of OCTG to the United States.<sup>26</sup>
- Commerce's claim that the delay in the arrival of goods to the United States was out of Yücel's control<sup>27</sup> ignores the fact that Yücel acted as importer-of-record for this shipment,<sup>28</sup> which allowed Yücel to determine when to enter its merchandise in the United States.<sup>29</sup>
- The delay in the entry of goods is the most reasonable explanation for the reason that Yücel's steel import license bore the status "corrected" - Commerce's steel licensing system does not permit a steel license to be generated in a "corrected" state unless there is a correction that needs to be made to the original license - Yücel's broker's proffered explanation on this matter is not plausible, given the system parameters.<sup>30</sup>

Commerce's reliance on a mandatory respondent's U.S. sale reported in a prior review for its analysis of Yücel's U.S. sales in this review is not probative of an expected market price.

- While Commerce enumerated its *Bona Fides* Analysis Memo the factors it normally considers probative of whether the price and quantity of a respondent's sale is *bona fide*, Commerce's recitation of its practice misses the consideration of sales made outside the

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<sup>22</sup> *Id.* at 4, citing 19 U.S.C. § 1516a(b)(1)(B)(i), *Vinh Hoan Corp v. United States*, 49 F. Supp. 3d 1285 (CIT 2015), *GPX Int'l Tire Corp v. United States*, 942 F. Supp. 2d 1343 (CIT 2013), *Tosçelik Profil ve Sac Endüstrisi A.Ş. v. United States*, Consol. No. 15-339, Slip op. at 3 (CIT 2018), *Elkem Metals Co. v. United States*, 276 F. Supp. 2d 1296, 1315 (CIT 2003), and *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951).

<sup>23</sup> *Id.* at 4-5, citing *Yangzhou Bestpak Gifts & Crafts Co. v. United States*, 716 F.3d 1370, 1378 (CAFC) and *Jinan Yipin Corp. v. United States*, 526 F. Supp. 2d 1347, 1375 (CIT 2007).

<sup>24</sup> *Id.* at 3, 6-12.

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.* at 6, citing *Bona Fides* Analysis Memo at 13.

<sup>27</sup> *Id.* at 7, citing *Bona Fides* Analysis Memo at 13-15.

<sup>28</sup> *Id.* at 7, citing Yücel's February 2, 2018, sections B-D questionnaire response at 73.

<sup>29</sup> *Id.* at 7, citing Customs' regulations at 19 CFR § 141.68 (which, the petitioner alleges, establish a multitude of options for Yücel to "enter" the merchandise on a date that suits it).

<sup>30</sup> *Id.* at 7, citing Steel Import Licensing System: Frequently Asked Questions (Nov. 2013) (*available at* [https://enforcement.trade.gov/steel/license/faq/SIMA\\_FAQ.pdf](https://enforcement.trade.gov/steel/license/faq/SIMA_FAQ.pdf)).

POR by producers/exports not under review - notably because these sales are less contemporaneous and have been examined under different circumstances.<sup>31</sup>

- While Commerce may contradict its practice where the circumstances warrant, the information reported by Tosçelik in the previous review only serves to raise questions as to the validity of both, Tosçelik's U.S. sale reported in the prior review and Yücel's U.S. sale reported in this review.
  - It is an odd fact that Tosçelik's and Yücel's respective U.S. prices for substantially similar product did not diverge, notwithstanding the passage of time<sup>32</sup> – this coincidence is also undermined by Yücel's claims that the "low demand in the marketplace occasioned by the depression of crude oil prices" was driving down domestic OCTG prices in 2016.<sup>33</sup>
  - Tosçelik's sale is also troubling to rely upon because the entry of its merchandise does not appear in the official import statistics<sup>34</sup> - although Commerce dismisses this concern because of the existence of the CBP Form 7501,<sup>35</sup> other documentation, such as Tosçelik's export certificate and the bill of lading, indicate an HTS category for the underlying shipment that's different than the HTSUS category of the entry, as stated in Tosçelik's CBP Form 7501.<sup>36</sup> Commerce's blind reliance on the CBP Form 7501 to establish the reliability of Tosçelik's sale cannot be squared with these other documents.<sup>37</sup>

The pricing information in the Preston Pipe and Tube Report of February 2017 is the source of the most probative market prices for benchmarking Yücel's sale.

- This publication reports regularly the price paid for various grades and specifications of OCTG in the U.S. market.<sup>38</sup>
- The average prices stated therein for the March-May 2016 period are reflective of the trends shown by the crude oil and natural gas prices;<sup>39</sup> while Commerce expressed skepticism regarding the responsiveness of OCTG prices to changes in crude oil and natural gas prices, its own precedent supports using these data points as reference for market pricing.<sup>40</sup>
- Because the average prices in the Preston Pipe and Tube Report account for the entirety of the domestic OCTG market, this information does not explain why Yücel's reported U.S. price is substantially below the average prices stated in the publication – indeed, these published prices also demonstrate the unreasonable congruity between Yücel's sale reported in this review and Tosçelik's sale reported in the prior review.<sup>41</sup>

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<sup>31</sup> *Id.* at 8, citing *Bona Fides* Analysis Memo at 5.

<sup>32</sup> *Id.* at 8, citing *Bona Fides* Analysis Memo at 6-7.

<sup>33</sup> *Id.* at 8-9, citing Yücel's *Bona Fides* QR at 2-3.

<sup>34</sup> *Id.* at 9, citing Petitioner's 10-01 Rebuttal NFI at Attachment 2.

<sup>35</sup> *Id.* at 9, citing *Bona Fides* Analysis Memo at 12.

<sup>36</sup> *Id.* at 9, citing Commerce's NFI at Attachment 2.

<sup>37</sup> *Id.* at 9.

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

<sup>39</sup> *Id.* at 10, citing *Bona Fides* Analysis Memo at 10, and Petitioner's 10-09 Rebuttal NFI at Attachment 3.

<sup>40</sup> *Id.* at 10, citing *Bona Fides* Analysis Memo at 10, and *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014) (*OCTG Korea*) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>41</sup> *Id.* at 10.

- Commerce should conclude that Yücel's pricing is so askew from the market to be unreliable for use in determining a dumping margin in this review.<sup>42</sup>

Yücel's description of the U.S. market does not track with the commercial reality of the domestic pipe and tube market in 2016.

- Given the state of the record, there is no evidence in support of Yücel's assertions of low OCTG demand in the United States and a lack of tube mill capacity within the domestic industry at the time of its U.S. sale.<sup>43</sup>
- The record evidence demonstrates that crude oil and natural gas spot prices were increasing, that the average market prices for OCTG (for the first three quarters of 2016), as published by the Preston Pipe and Tube Report, were robust and increasing, and that there was an underutilized capacity in the domestic pipe and tube industry.<sup>44</sup> Thus, rather than acknowledging that the domestic industry, with its underutilized capacity, could have easily absorbed Yücel's U.S. customer's order subject to this review, the petitioner alleges that Commerce instead "expressed the need for conclusive evidence that the domestic industry could replace 'supply provided by imported OCTG' as a whole," the petitioner contends that this read of the record is unreasonable.<sup>45</sup>
- Yücel's claim that the low U.S. demand warranted a provision of a discount on its subject sale is also not borne out by the record; were the situation in the market as dire as Yücel asserts, lower prices would be reflected in the average OCTG prices for 2016 (as published in the Preston Pipe and Tube Report) – because such was not the case, no other importer or domestic producer felt constrained by low demand, because the market was rebounding and bullish.<sup>46</sup>

### *Yücel's Arguments*

The petitioner ignores the abundant case law that, in determining whether substantial evidence supports the agency's determination, the court must consider "the record as a whole, including evidence that supports as well as evidence that 'fairly detracts from the substantiality of the evidence.'"<sup>47</sup> Thus, Commerce cannot embrace a one-sided approach to the record, but must assess the evidence rationally, and Commerce must provide a "logically reasoned and well researched approach."<sup>48</sup> The rule that a Court may not substitute its judgment for that of Commerce allows Commerce to exercise its judgment to select between competing theories, provided that its choice is supported by substantial evidence on the record as a whole.<sup>49</sup> Commerce's *Bona Fides* Analysis Memo is precisely the sort of well-reasoned and researched analysis that the courts require of Commerce - not only did Commerce set forth the detailed reasons for each of its findings, but it also explained why it found the petitioner's objections

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<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 11, citing Yücel's *Bona Fides* QR at 2 and U.S. Customer's *Bona Fides* QR at 6.

<sup>44</sup> *Id.* citing, generally, Petitioner's 10-09 Rebuttal NFI.

<sup>45</sup> *Id.* at 11-12, citing *Bona Fides* Analysis Memo at 20.

<sup>46</sup> *Id.* at 12.

<sup>47</sup> See Yücel's *Bona Fides* Rebuttal Brief at 1, citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1379 (CAFC 2003) (quoting *Atl. Sugar, Ltd. v. United States*, 744 F.2d 1556, 1562 (CAFC1984)) and *Mitsubishi Materials Corp. v. United States*, 17 C.I.T. 301, 304, 820 F. Supp. 608, 613 (CIT 1993).

<sup>48</sup> *Id.* at 1, citing *Save Domestic Oil, Inc. v. United States*, 357 F.3d 1278, 1289 (CAFC).

<sup>49</sup> *Id.* at 1, citing *U.S. Steel Corp. v. United States*, 33 C.I.T. 984, 637 F. Supp. 2d 1199, 1208 (CIT 2009).

unavailing in each case.<sup>50</sup> The objections in the petitioner’s case brief to certain findings in Commerce’s *Bona Fides* Analysis Memo are either unsupported by the record or merely provide an alternative interpretation which Commerce has already rejected.<sup>51</sup>

There is no evidence that Yücel did anything to delay the delivery of the subject shipment, and there is no reason why it would have done so, since it would not have changed the outcome of the case.

- From the time of loading the merchandise onto the vessel (*i.e.*, events following the exportation of the goods from Turkey), Yücel had no control over the timing of the arrival of the goods – being the importer of record does not give Yücel control over transit time.<sup>52</sup>
- The petitioner speculates that it is impossible to file a corrected steel import license under the circumstances set forth in Yücel’s U.S. Customs broker’s explanation on the matter provided in the record – there is no reason to disbelieve the statement of Yücel’s U.S. Customs broker, an entirely independent third party, concerning the reason for the “corrected” notation on the steel import license.<sup>53</sup>
- There was no advantage to be gained by allegedly “gaming” the entry date.
- There is no support on the record for the petitioner’s assertion that Yücel entered the U.S. sale at the beginning of the POR and then used the balance of the POR to create favorable home-market sales, influencing the margin in this review – all of Yücel’s home market sales were invoiced within a few weeks of the U.S. sale.<sup>54</sup>
- There is no basis to the petitioner’s assertion that the normal value in Yücel’s dumping margin calculation would be based on constructed value had Yücel delivered the product prior to this POR, or that Yücel “created an opportunity to artfully manufacture a low cash deposit rate” - regardless of whether Yücel’s U.S. sale had entered in the prior, 2015-2016 review, or in the current, 2016-2017 review, the reportable home-market sales would have been the same, namely, those within the “90/60 window” period of the U.S. sale, and the exact same universe of sales would have been the basis for comparison; thus, entering the goods in the earlier POR would not have affected the outcome of the review in which the product entered.<sup>55</sup>

The petitioner’s arguments as to price are unpersuasive.

- The price of Yücel’s U.S. sale was manifestly comparable to its home-market prices, as the magnitude of its computed weighted average dumping margin makes clear.<sup>56</sup>
- Yücel’s U.S. customer sold the OCTG at a considerable mark-up, and it provided an explanation concerning the price difference between the product procured from Yücel and the products procured from other suppliers.<sup>57</sup>

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<sup>50</sup> *Id.* at 2.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 3.

<sup>53</sup> *Id.* at 3, citing Yücel’s *Bona Fides* QR at Exhibit 4.

<sup>54</sup> *Id.* at 4, citing Yücel’s February 2, 2018, sections B-D questionnaire response (BDQR) at Exhibit 17 and Yücel’s April 18, 2018, supplemental questionnaire response (SQR) at Exhibit 3 (noting that, since Yücel had only one U.S. sale, it was only required to report home market sales within the “90/60 window” period).

<sup>55</sup> *Id.* at 4-5, citing BDQR at 1.

<sup>56</sup> *Id.* at 5-6.

<sup>57</sup> *Id.* at 6, citing U.S. Customer’s *Bona Fides* QR at 3 and 6.



- Regardless of any secondary evidence concerning price, *e.g.*, Tosçelik's price in the previous review, or the information in the petitioner's favored Preston Pipe and Tube Report, the primary evidence of Yücel's own pricing behavior and that of its U.S. customer leave no doubt that Yücel's pricing was *bona fide*.<sup>58</sup>
- The petitioner misrepresents the comparison in prices between the U.S. sales made by Tosçelik in the prior review and the U.S. sale made by Yücel in this review. These sales involved sale terms different from each other – the correct comparison that relies on the entered values for the respective sales shows the difference reflective of the movement in raw material prices between the times of the two sales, and the petitioner did not object to this comparison.<sup>59</sup>
- Yücel challenges the petitioner's argument concerning the reliability of Tosçelik's information, due to a different HTS classification of Tosçelik's product, as reflected in the various sales documents (*i.e.*, one HTS classification in the Turkish Customs exit declaration form and the bill of lading vs. another HTSUS classification in the CBP Form 7501). It is speculative for the petitioner to assume that the Turkish HTS treatment of subject merchandise is identical to that of the United States, because the Turkish HTS is not on the record; in fact, it appears that under Turkish practice, the export in question, which was unquestionably OCTG, was described for Turkish customs purposes more cursory, as shown on the Turkish invoice that accompanies the exit declaration.<sup>60</sup> In light of this description used for export, Yücel asserts, the HTS subheading on the Turkish customs exit declaration cannot be assumed to be identical to the U.S. HTS subheading for OCTG - the record in the present case is not sufficiently detailed to enable one to see why Tosçelik's OCTG was described in this way on the Turkish invoice or in the Turkish customs exit declaration.<sup>61</sup> Notwithstanding, it is indisputable that the U.S. Customs reports Tosçelik's product in the HTS subheading for OCTG, and there can be no dispute that its U.S. sale of OCTG occurred as reported in the last review.<sup>62</sup>
- Concerning the petitioner's arguments related to the pricing information in the Preston Pipe and Tube Report, the petitioner ignores Commerce's substantive reasons for finding this information misleading, and the petitioner has no rebuttal to Commerce's finding. Accordingly, not only is the petitioner's pricing argument merely an alternative theory, but it relies on data that Commerce has reasonably determined to be unreliable for present purposes; Commerce has been given no reason to prefer the petitioner's theory to its own.<sup>63</sup>

The petitioner's argument as to the commercial reality of the OCTG market is not persuasive.

- The petitioner presents a different interpretation of the overall market from that of Commerce.<sup>64</sup>

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 6-7, citing Yücel's January 13, 2018, Section A response (AQR) at Exhibit 7 (page 11), Commerce's NFI at Attachment 2, and Yücel's 10-1 Rebuttal NFI and Comments at 2-3.

<sup>60</sup> *Id.*, at 7, citing Commerce's NFI at Attachment 2.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 7-8, citing Commerce's NFI at Attachment 2.

<sup>63</sup> *Id.* at 8-9, citing *Bona Fides* Analysis Memo at 10.

<sup>64</sup> *Id.* at 9.

- Yücel made it clear on the record that its pricing for the U.S. sale in question was based on its own cost of production - thus, regardless of the OCTG market overall, Yücel's pricing is clearly *bona fide*: it is normal for an importer/trader to request a quote, and for an exporter/manufacturer to quote based on its costs.<sup>65</sup>
- The discount to which Yücel agreed did not represent a material difference in price. Contrary to the petitioner's assertion, it was Yücel's U.S. customer's claim of a low demand for OCTG in the United States that warranted its request for a discount.<sup>66</sup> This is simply normal negotiations, and the magnitude of Yücel's discount reflects the extent to which the parties accepted the characterization of the market. The petitioner grossly overstates the record in claiming that Yücel believed the market to be in "dire" shape.<sup>67</sup>
- The overall trends in the OCTG market are irrelevant to the *bona fides* of Yücel's U.S. sale – the record lays out specific facts of how and why the sale was made, and of the ultimate disposition of Yücel's product in the United States, which leave no doubt that Yücel's U.S. sale was *bona fide*.<sup>68</sup>

The petitioner has long-since abandoned any argument concerning the quantity of the sale, the profitability of the sale, the transaction expenses, or the resale prices. The arguments in the petitioner's *bona fides* case brief are as insubstantial as were those from which the petitioner has now walked away. Commerce should maintain the findings of the initial *bona fides* determination and reject the petitioner's overwrought and specious arguments to the contrary.<sup>69</sup>

**Commerce's Position:** In new shipper reviews, the exporter or producer must show that its sales to the United States during the POR were *bona fide*.<sup>70</sup> In administrative reviews, however, Commerce has previously explained that if a producer's or exporter's transactions involve price, quantities, and overall circumstances that do not call into question the commercial viability of those sales, generally, it will not analyze in great detail the *bona fides* of those sales.<sup>71</sup> Nevertheless, Commerce will evaluate the *bona fides* of a sale in an administrative review if it determines that information on the record warrants such an analysis.<sup>72</sup> Where Commerce finds

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<sup>65</sup> *Id.*

<sup>66</sup> *Id.*, citing Yücel's Bona Fides QR at 6.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 10.

<sup>69</sup> *Id.* at 10-11.

<sup>70</sup> See 19 CFR 351.214(b)(2)(iv)(C); *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum at pages 5-11; *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review, {sic} and Final Rescission of Antidumping Duty New Shipper Review*, 68 FR 1439 (January 10, 2003), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>71</sup> See *Certain Tissue Paper Products from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 72 FR 58642 (October 16, 2007) and accompanying Issues and Decision Memorandum at Comment 4a.

<sup>72</sup> See, e.g., *Prestressed Concrete Steel Wire Strand from Thailand: Preliminary Results of Antidumping Duty Administrative Review; 2015*, 82 FR 9197 (February 3, 2017) and accompanying Preliminary Decision Memorandum at 3 (unchanged in *Prestressed Concrete Steel Wire Strand from Thailand: Final Results of Antidumping Duty Administrative Review; 2015*, 82 FR 25240 (June 1, 2017)); *Glycine from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind, In Part; 2013-2014*, 80 FR 18814, 18814 (April 8, 2015) and accompanying Preliminary Decision Memorandum at 3 (unchanged

that a reported sale is not *bona fide*, Commerce will exclude the sale from its dumping margin calculations.<sup>73</sup> However, where Commerce finds that all of a respondent's sales subject to the review are non-*bona fide*, Commerce will rescind the review as to that respondent.<sup>74</sup>

To determine whether a sale is “unrepresentative or extremely distortive” and, therefore, excludable as non-*bona fide*, Commerce employs a totality-of-the-circumstances test.<sup>75</sup> In examining the totality of the circumstances, we examine whether the transaction is “commercially reasonable” or “atypical.”<sup>76</sup> Atypical or non-typical in this context means unrepresentative and extremely distortive.<sup>77</sup> In evaluating whether a sale is *bona fide*, we consider, *inter alia*, such factors as: (1) the timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis.<sup>78</sup> Therefore, we consider a number of factors in the *bona-fides* analysis, “all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise.”<sup>79</sup>

Although some *bona fides* issues may share commonalities across various cases, Commerce examines the *bona fide* nature of a sale on a case-by-case basis, and the analysis may vary with the facts surrounding each sale.<sup>80</sup> In *Tianjin Tiancheng* the Court of International Trade (CIT) affirmed Commerce's practice of considering “any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant,” and found that “the weight given to each factor investigated will depend on the circumstances surrounding the sale.”<sup>81</sup> Furthermore, in *Hebei New Donghua*, the CIT held that “Commerce's practice makes clear that it is highly likely to examine objective, verifiable factors to ensure that a sale is not being made to circumvent an antidumping duty order,” and therefore, a prospective respondent is “on notice that it is unlikely to establish the *bona fides* of a sale

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in *Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 62027 (October 15, 2015) and accompanying Issues and Decision Memorandum at Comment 5 (*Glycine from China*), sustained in *Evonik Rexim (Nanning) Pharm. Co. v. United States*, 253 F. Supp. 3d 1364, 1370-71 (CIT 2017) (*Evonik*)).

<sup>73</sup> See *Evonik*, 253 F. Supp. 3d at 1370 (citing *Tianjin Tiancheng Pharm. Co., Ltd. v. United States*, 366 F. Supp. 2d 1246, 1249 (CIT 2005) (*Tianjin Tiancheng*)).

<sup>74</sup> See *Glycine from China*, 80 FR at 62027, and accompanying Issues and Decision Memorandum at 24 (rescinding review as to *Evonik* because it “did not have *bona fide* sales during the POR”).

<sup>75</sup> See, e.g., *Evonik*, 253 F. Supp. 3d at 1370-71; *Glycine from The People's Republic of China: Rescission of Antidumping Duty New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd.*, 69 FR 47405, 47406 (August 5, 2004) and *Solid Urea from the Russian Federation: Final Results of Antidumping Duty New-Shipper Review and Rescission of Antidumping Duty Administrative Review*, 73 FR 29736 (May 22, 2008), and the accompanying Issues and Decision Memorandum at Comment 2.

<sup>76</sup> See, e.g., *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review, and Final Rescission of Antidumping Duty New Shipper Review*, 68 FR 1439, 1440 (January 10, 2003).

<sup>77</sup> See *American Silicon Techs. v. United States*, 110 F. Supp. 2d 992, 995 (CIT 2000).

<sup>78</sup> See *Evonik*, 253 F. Supp. 3d at 1370 (citing *Tianjin Tiancheng*, 366 F. Supp. 2d at 1249).

<sup>79</sup> See *Hebei New Donghua Amino Acid Co., Ltd. v. United States*, 374 F. Supp. 2d 1333, 1342 (CIT 2005) (*Hebei New Donghua*) (citing *Fresh Garlic from the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002) and the accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd).

<sup>80</sup> See *Hebei New Donghua* 374 F. Supp. 2d at 1340 citing *Tianjin Tiancheng*, 366 F. Supp. 2d at 1263.

<sup>81</sup> See *Tianjin Tiancheng*, 366 F. Supp. 2d at 1250, 1263.

merely by claiming to have sold the merchandise in a manner representative of its future commercial practices.”<sup>82</sup>

In this review, our analysis of record evidence pertaining to each of the aforementioned *bona fides* criteria that Commerce normally examines has led to a determination, based on the totality of circumstances, that Yücel’s reported U.S. sale is a *bona fide* transaction. Specifically, we found the following: 1) our price and quantity analysis indicated that Yücel’s U.S. sale was commercially reasonable; 2) the timing of Yücel’s U.S. sale did not appear to be unrepresentative of its normal business practices or of future sales of subject merchandise to the United States; 3) there is nothing unusual or extraordinary, in terms of the type or the magnitude, of expenses arising from the U.S. sale; 4) the transaction was conducted on an arm’s-length basis and negotiated reflecting independent interests of each party to the transaction; 5) Yücel’s merchandise was resold by the U.S. customer at a profit; and 6) other factors were suggestive of typical business practices: a) credible reasons why the sale was made, b) the legitimacy of the U.S. customer and its long term presence in the OCTG business, and c) the plausible narrative and chronology of events depicting the ongoing business relationship between Yücel and its U.S. customer, and the resumption of business activity following improved market-access conditions, etc.<sup>83</sup> The following addresses interested parties’ comments relating to Commerce’s *bona fides* analysis pertaining to Yücel’s reported U.S. sale.

We disagree with the petitioner’s assertion that the record indicates that Yücel delayed the entry of its merchandise into the United States, in order to have a POR entry subject to this review. The merits of this assertion were considered and rejected in our *bona fides* analysis. Specifically, we explained that the record evidence shows that Yücel’s product was on board the vessel just over a month prior to the first day of the POR, *i.e.*, September 1, 2016, and two days prior to the U.S. customer’s “latest ship date,” as reflected in its purchase order; the merchandise arrived in the United States (based on the date of importation as stated in CBP Form 7501) and was entered shortly after the beginning of the POR.<sup>84</sup> The record shows that Yücel’s product was stowed on board the vessel ahead of schedule, in time to meet its U.S customer’s required delivery date, which was shortly before the POR.<sup>85</sup> We found that the only known way for Yücel to delay the shipment of its merchandise would be for it to be tardy in delivering its product for its scheduled voyage, or somehow stall the loading of its cargo onto the vessel – the record does not show, however, that Yücel was subject to stevedoring and demurrage charges that Yücel would have incurred for such actions.<sup>86</sup> We found no basis to conclude that Yücel allegedly delayed the entry of its goods because (1) the date of importation was only within one day of the U.S. customer’s requested date of delivery and (2) it was not clear how Yücel could control the arrival of its cargo to its designated destination once its goods were stowed on board the vessel in the port of exportation.<sup>87</sup> While we observed, that, given Yücel’s typical practices, the shipment’s expected arrival appeared to have been late by approximately one week, we could not rule out that such an anomaly cannot simply be attributed to unanticipated delay in transit,

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<sup>82</sup> See *Hebei New Donghua* 374 F. Supp. 2d at 1339.

<sup>83</sup> See, generally, *Bona Fides* Analysis Memo.

<sup>84</sup> *Id.* at 13.

<sup>85</sup> *Id.* at 14.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 15.

once Yücel's product was at sea/ocean<sup>88</sup>; there is no evidence on the record that any potential delay was caused by Yücel. Further, the petitioner conflates the potential delay in the physical arrival of goods to the United States with the alleged delay of entry of merchandise into the U.S. Customs territory. As the discussion above shows, Yücel's merchandise arrived in the United States at the beginning of the POR. While the petitioner is correct that Yücel, being the importer of record, has certain discretion in selecting the specific date of entry for its merchandise, such a date can only be on or after the date of importation (*i.e.*, the date of the arrival of goods in the United States port).

Further, we find no support for the petitioner's contention that the status notation "corrected" in the steel import license accompanying Yücel's shipment supports the alleged delay of entry of subject merchandise. In our *bona fides* analysis, we specifically considered and rejected this contention. Specifically, we found that there was no evidence that any information in Yücel's steel import license was corrected, notwithstanding the status notation bearing the word "corrected"; that appears to have been a clerical mistake in how the document was submitted electronically, as attested to on the record by Yücel's U.S. Customs broker.<sup>89</sup> We find there is no reason to discredit the explanation provided by Yücel's U.S. Customs broker on this matter.

We also stated in our analysis that the record is silent as to how Yücel benefits from having its entry reviewed in the latter review, as opposed to the former review, as we were unable to identify any reason why Yücel would benefit from delaying the entry.<sup>90</sup> To this end, we agree with Yücel that, had the entry in question been made in the 2015-2016 review, the same set of home-market sales (made during the "window period" of the U.S. sale) examined in this review would have served as the basis for comparison, and there is no basis to determine that the outcome of Commerce's dumping margin calculations would have been different.

We disagree with the petitioner's assertion that our reliance on another mandatory respondent's U.S. sales reported in a prior review is not probative information against which to benchmark Yücel's U.S. sale reported in this review. In our *bona fides* analysis, we fully explained the rationale for relying on Tosçelik's information reported in the 2015-2016 administrative review as the primary basis for gauging the commercial validity of Yücel's U.S. sale. We explained that, typically, for price and quantity comparisons, Commerce relies on the POR data for entries made under the HTSUS categories, covered by the scope of the order, under which the shipment of the U.S. sale under examination was entered, as obtained from the U.S. Customs and Border Protection (CBP). In the course of Commerce's *bona fides* analysis, either as an alternative or in addition to the CBP data examination, Commerce may also compare a respondent's selling price and quantity of the reported U.S. transaction to the POR sales made by other producers/exporters under review, or to a respondent's own sales, whether these were made to third country markets or to the United States before or after the POR.<sup>91</sup> In this review, we explained, the record shows that (1) there are no other POR entries of OCTG under the HTSUS category of Yücel's shipment (aside from Yücel's own entry subject to this review), (2) Yücel is the sole mandatory respondent in this review – there are no other POR entries or sales to be examined that were made by other Turkish producers/exporters of OCTG, (3) Yücel made no third-country sales of

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<sup>88</sup> *Id.* at 13.

<sup>89</sup> *Id.* at 15.

<sup>90</sup> *Id.* at 14.

<sup>91</sup> *Id.* at 5 (citations to precedent omitted).

OCTG during the POR, and (4) there were no purchases by Yücel's U.S. customer from Yücel subsequent to the U.S. sale subject to this review.<sup>92</sup>

Given these limitations of sources for comparisons, we explained that the information reported by a mandatory respondent, Tosçelik, in the immediately preceding 2015-2016 administrative review constitutes the best information available on the record of this review to gauge the commercial validity of Yücel's reported U.S. sale. We reached this conclusion because, as we explained and showed with record evidence, Tosçelik's information reveals the congruity in the products sold by both Tosçelik and Yücel and provides the level of specificity that we found necessary (given the nature of the product) for a meaningful assessment of the material terms of Yücel's sale reported in this review.<sup>93</sup> Specifically, we stated, "{t}he homogeneity in the products sold to the United States by Yücel and Tosçelik allows for a proper analysis of the material terms of Yücel's U.S. sale because it is free of any distortion caused by the physical differences in the products that may affect their cost and price."<sup>94</sup> In addition, we found other characteristics affecting price similar between Yücel's and Tosçelik sales which, in turn, we found pertinent for purposes of our analysis.<sup>95</sup> When we adjusted for differences in the sales terms, our comparison of Yücel's price for its U.S. sale with Tosçelik's prices for its U.S. sales made in the 2015-2016 review showed that Yücel's U.S. sale was made at a considerably lower price.<sup>96</sup> On this point, there is no merit in the petitioner's claim that the validity of both Tosçelik's and Yücel's U.S. sales is compromised because the price for Yücel's U.S. sale shows no divergence, given the passage of time, from prices of Tosçelik's U.S. sales. The record evidence disproves unequivocally this assertion.

We do not find persuasive the petitioner's argument that Tosçelik's U.S. sales are not reliable for purposes of our *bona fides* analysis because the entry of its merchandise does not seem to appear in the official import statistics, or because it was classified for Turkish customs differently from that for U.S. Customs. Concerning the petitioner's first point, in our *bona fides* analysis we considered and rejected this argument, and we continue to find no merit in the petitioner's argument that warrants a reversal of our prior position. Specifically, we stated, "{t}he fact that Tosçelik's...entry may not have made it into the compilation of the U.S. import statistics, or that it cannot be readily ascertained where and how this specific entry is captured in the U.S import statistics, is not a factor dispositive of Tosçelik's reporting in the 2015-2016 review being unreliable, or of the unsuitability of Tosçelik's data for establishing a reasonable basis for comparison. The record shows that Tosçelik's shipment was entered into the U.S. Customs territory, as evident by the existence of the CBP Form 7501, applicable to its shipment reported in the 2015-2016 review."<sup>97</sup> We also stated that "...a particular placement of a party's transaction in the import statistics is not a criterion that we normally consider informative in the assessment of the *bona fides* of that party's sale."<sup>98</sup> Concerning the petitioner's second point, because Turkish HTS nomenclature is not on the record of this review, and the record of the 2015-2016 review is closed for purposes of further inquiries on this matter, it is impossible to

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<sup>92</sup> *Id.* at 5-6.

<sup>93</sup> *Id.* at 6.

<sup>94</sup> *Id.* at 6-7.

<sup>95</sup> *Id.* at 7.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 12.

<sup>98</sup> *Id.*

ascertain why Tosçelik's product was classified for Turkish customs using an HTS category that differs from that of the U.S. Customs. Nevertheless, there is no dispute that the U.S. Customs classified Tosçelik's shipment in the HTS subheading applicable to OCTG, as evident from the CBP Form 7501 applicable to its shipment in question - a different HTS classification of Tosçelik's product for Turkish customs is not dispositive evidence that Tosçelik's U.S. sale of OCTG did not occur as reported in the 2015-2016 administrative review in which Tosçelik was individually examined. In our *bona fides* analysis, we specifically rejected the notion that Tosçelik's information is not reliable for our purposes, stating, "the fact that neither of the petitioners in the 2015-2016 review questioned the *bona fides* of Tosçelik's U.S. sales suggests that the domestic interested parties did not see a viable *bona fides* issue in that review. At a minimum, it does not foreclose the analysis we have presented here. Further, the petitioner cites no precedent or authority which obligates Commerce to determine the *bona fides* of the information on which it relies for comparison purposes, absent a pre-existing finding to the contrary."<sup>99</sup> Accordingly, we see no reason to depart from relying on Tosçelik's information reported in the 2015-2016 review as the primary basis for comparison to Yücel's reported U.S. sale in this review.

We disagree with the petitioner that the pricing information in the Preston Pipe and Tube Report is the appropriate source for benchmarking Yücel's U.S. sale, or is indicative that Yücel's price is so askew from the market that it is unreliable for use in determining a dumping margin in this review. First, as we explained above, for purposes of price and quantity comparisons, we determined that Tosçelik's information reported in the 2015-2016 review provides the best information available on the record of this review to gauge the commercial validity of Yücel's reported U.S. sale. Second, in our *bona fides* analysis we found it unavailing that the average market prices for OCTG in the United States (at the time of Yücel's U.S. sale), based on information in the Preston Pipe and Tube Report, were substantially higher than Yücel's price of its U.S. sale. Specifically, in our *bona fides* analysis we stated:

The inherent problem with any blind reliance on this pricing information for the purpose of a direct comparison to Yücel's reported price is that the average price values listed in the publication (1) commingle price points for transactions made at various channels of trade (*i.e.*, mill direct to distributors, mill direct to end-users, mill direct to further processors), (2) reflect CIF import values for imports with drastically varying cash deposit rates for AD/CVD duties applicable to shipments from various countries subject to the discipline of AD/CVD orders, (3) commingle price points for transactions involving products with varying dimensions, heat treatment types, whether or not with upset ends or threaded, whether coupled or not, etc., and (4) skew the result toward transactions with high traded values.<sup>100</sup>

We concluded, nevertheless, that, "because (1) Yücel's U.S. sale involves a relatively basic type of OCTG, (2) made at the very initial channel of trade (*i.e.*, mill direct to a U.S. distributor, which then re-sold Yücel's product after further processing to another U.S. distributor, which will have presumably re-sold it again to an end-user), and (3) involves a low value of trade, the information in the Preston Pipe and Tube Report only serves to validate the reason why the price

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<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 10.

of Yücel's U.S. sale is lower than the average transaction value for "Carbon ERW Tubing," prevalent between March 2016 and May 2016."<sup>101</sup> The petitioner does not dispute our rationale for finding the pricing information in the Preston Pipe and Tube Report misleading for purposes of our analysis, and we already considered and rejected similar arguments in our *Bona Fides* Analysis Memo. Nevertheless, the above discussion shows that the average market pricing information in the Preston Pipe and Tube Report provides no means to discredit the price of Yücel's U.S. sale as atypical, and serves to highlight the superiority of Tosçelik's information, in terms of specificity, that we found necessary in our comparative analysis aimed to gauge the commercial validity of the material terms of Yücel's U.S. sale.

We disagree with the petitioner's characterization of the record and our analysis thereof in its contention that Yücel's description of the U.S. market does not track with the commercial reality of the domestic pipe and tube market in 2016. As a preliminary matter, it was Yücel's unaffiliated U.S. customer, and not Yücel, that provided its assessment of the market conditions prevalent at the time of the U.S. sale in question, and its explanation of how its procurement needs fit into what it deemed as the constrained supply in the domestic market.

Concerning the low demand for OCTG, the negotiations between Yücel and its U.S. customer reveal that the U.S. customer depicted soft demand in the marketplace for OCTG, given the state of gas prices at the time and, acknowledging caution from the final consumers of OCTG, it requested a modest concession in price from Yücel.<sup>102</sup> The petitioner continues in its previous attempts to discredit the U.S. customer's assessment of market conditions for OCTG at the time of the U.S. sale, in alluding that the price of Yücel's U.S. sale bears no relation to the reality in the marketplace, or that Yücel's U.S. sale is unrepresentative of a typical sale of OCTG. Principally, the petitioner continues to argue that a general trend upwards in crude oil and gas prices, along with OCTG prices at the time of Yücel's U.S. sale, is evidence that contradicts the U.S. customer's depiction of the market as being driven by a low demand. However, in our *bona fides* analysis we considered and rejected this argument as having no merit. Specifically, we stated, "while we agree that the trends in the OCTG market generally follow the trends in crude oil and natural gas markets, the record is silent as to how responsive the OCTG prices are to changes in crude oil and natural gas prices, and what the time lag is. Further, the petitioner's depiction of crude oil and natural gas prices is focused on the time period that starts in January 2016 (which shows a general trend up in prices), but it fails to assess this trend within a broader historical context."<sup>103</sup> In other words, a snapshot of crude oil and natural gas market prices over a short period of time (*i.e.*, from January 2016 until the issuance of the purchase order several months later), shown in insulation of prices' previous peaks and troughs in previous years' past, or without considering prices' moving averages, is not a meaningful metric that establishes that the market for OCTG at the time of Yücel's U.S. sale was rebounding and booming, as the

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

<sup>102</sup> See Yücel's *Bona Fides* QR at Exhibit 2.

<sup>103</sup> See *Bona Fides* Analysis Memo at 10. In this regard, the petitioner's reliance on *OCTG Korea* is misplaced for its proposition that Commerce's "precedent supports using these data points as reference for market pricing." Here, just as in *OCTG Korea*, Commerce accepted the general notion that OCTG prices are influenced by oil and natural gas prices. Compare *Bona Fides* Analysis Memo at 10, with *OCTG Korea* at Comment 1. Our finding is narrow, in that, for purposes of the *bona fides* analysis, the pricing information in the Preston Pipe and Tube Report is too broad to dispute the commercial validity of Yücel's U.S. sale, or find it not reflective of the market conditions for OCTG at the time, as perceived by the U.S. Customer.



petitioner alleges. While there is no evidence in support of Yücel's U.S. customer's assertion of low OCTG demand at the time of U.S. sale, similarly, we continue to find that there is no evidence to the contrary. The petitioner presents nothing new in its arguments that shows a misrepresentation in how Yücel's U.S. customer described the market for OCTG in early 2016.

The petitioner continues to challenge as baseless Yücel's U.S. customer's assertion that significant volumes of OCTG must be imported, due to a lack of OCTG mill capacity in the United States. The petitioner renews its argument that the domestic industry, with its underutilized capacity, could have easily absorbed Yücel's U.S. customer's order, and that Commerce's interpretation of the record was unreasonable when it "expressed the need for conclusive evidence that the domestic industry could replace 'supply provided by imported OCTG' as a whole."<sup>104</sup> We disagree with these contentions.

Yücel's U.S. customer explained that its commercial strategy is to diversify its portfolio of qualified suppliers.<sup>105</sup> Having previously purchased OCTG from Yücel on numerous occasions during 2013-2014, the U.S. customer explained that, given Yücel's absence from the market, the purpose of the subject U.S. sales was to verify whether Yücel's product was still up to the U.S. customer's specifications and guidelines for further processing and, ultimately, of sufficient quality for end-users in the marketplace; the U.S. customer stated that the subject purchase from Yücel, intended to be scaled to greater volumes for future transactions, provides the means for an alternative option for its supply chain.<sup>106</sup> The U.S. customer stated that most of its purchases from suppliers that have undergone a qualification process similar to the one it subjected Yücel (for the U.S. sale in question), were in volumes of 1,000 metric tons or more.<sup>107</sup> Further, in reply to our question why the U.S. customer purchased subject merchandise from Yücel, rather than from a domestic competitor, the U.S. customer explained that the market requires imported OCTG because there is a lack of tube mill capacity in the United States, so that significant volumes must be imported to satisfy the needs of the end-users.<sup>108</sup> Based on this information, in making the subject merchandise purchase from Yücel, the U.S. customer's prerogative was not to simply obtain a marginal quantity of OCTG in a "one-off" transaction but, rather, to undergo a process of securing for itself an alternative and viable supplier of OCTG, with the purpose of procuring from it substantial volumes of product in the future – the U.S. customer viewed as inadequate, from the standpoint of its overall procurement requirements, the supply offered by the domestic industry. It is for these reasons that we found misleading, in our *bona fides* analysis, the petitioner's argument that the underutilized capacity of U.S. pipe and tube mills flies in the face of the U.S. customer's assertion of the lack of tube mill capacity in the United States.<sup>109</sup> We merely found that the record does not explain whether and to what extent the domestic capacity can satisfy the demand created by OCTG imported for distribution by entities such as Yücel's U.S. customer. Therefore, we found – and we continue to find – that the record does not undercut Yücel's U.S. customer's assertions on the matter.

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<sup>104</sup> See Petitioner's *Bona Fides* Case Brief at 11-12, citing *Bona Fides* Analysis Memo at 20.

<sup>105</sup> See *Bona Fides* Analysis Memo at 16, citing U.S. Customer's *Bona Fides* QR at 4.

<sup>106</sup> See U.S. Customer's *Bona Fides* QR at 4.

<sup>107</sup> *Id.* at 5.

<sup>108</sup> *Id.* at 6.

<sup>109</sup> See *Bona Fides* Analysis Memo at 19-20.

After considering interested parties' comments on this issue, as discussed above, for the final results of this review we continue to find that Yücel's U.S. sale is a *bona fide* transaction. Accordingly, for these final results, we continue to rely on the reported U.S. sale in determining the weighted-average dumping margin for Yücel.

## **Issue 2: Whether the Dumping Margin was Manipulated**

Aside from the *bona fides* of Yücel's U.S. sale, discussed above, in its original case brief, the petitioner argued that Yücel manipulated its dumping margin.

### *Petitioner's Arguments*

- Because Yücel had no home market or third country sales for use in price comparisons during the original investigation, the home-market sales reported in this review were contrived to artificially manufacture a low cash deposit rate separate from normal commercial practices.<sup>110</sup>
- The price adjustments for home-market sales that serve as identical matches to the U.S. sale are significantly higher than those for non-identical matches. While this is explained by the different currencies in which these home-market sales were made, Yücel does not explain why this scenario occurs, other than providing for an advantageous price comparison to it.<sup>111</sup>

### *Yücel's Arguments*

- There is no factual basis to support the petitioner's speculation that the reported POR home-market sales were contrived for antidumping-duty margin purposes. Yücel had multiple sales in the home market during the POR, made to different customers in different customer categories (*i.e.*, distributors and end-users).<sup>112</sup>
- Concerning the petitioner's claim that an identical match to the reported U.S. sale is based on home-market sales that were denominated in Turkish Lira, instead of other home-market sales denominated in USD (and, hence, allegedly producing higher price adjustments advantageous to Yücel), the facts are simply as Yücel reported them; as a seller, Yücel must accommodate its customers' currency preferences, so long as they are lawful and reasonable. The mere fact that Yücel's home-market sales occurred in more than one currency cannot dispute the *bona fides* of either the home-market sales or, *a fortiori*, the U.S. sale.<sup>113</sup>

**Commerce's Position:** There is no evidence to support the petitioner's claim that the reported POR home-market sales, made to different customers in different customer categories, were contrived to artificially manufacture an allegedly low cash deposit rate. The petitioner's line of argument amounts to pure speculation. The fact that Yücel had no home market or third country sales for use in price comparisons during the original investigation is not dispositive of the

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<sup>110</sup> See Petitioner's Case Brief at 8.

<sup>111</sup> *Id.* at 14-15.

<sup>112</sup> See Yücel's Rebuttal Brief at 6-7, citing Yücel's SQR at 6.

<sup>113</sup> *Id.* at 9-10.

purpose of Yücel's home market sales during this POR.<sup>114</sup> Further, Yücel provided sample documentation concerning (1) its sales of OCTG in Turkey made prior to the POR, (2) a sale of OCTG in Turkey outside the "window" period of 60 days after the U.S. sale, made to the same customer for which it reported comparison market sales in this review, and (3) its sales of line pipe, another energy tubular product, made to two regular customers of this product, for which Yücel reported comparison market sales in this review.<sup>115</sup> This information shows that Yücel made home-market sales of OCTG (and similar products) since the original investigation.

The petitioner also contends that a home market sale that served as an identical match to the U.S. sale was the only home-market sale denominated in Turkish Lira (as opposed to US dollars) – for this sale, the reported credit expenses were significantly higher (the calculation was based on short terms borrowings in Turkish Lira) than for sales denominated in U.S. dollars (where the calculations were based on short terms borrowings in US dollars). The petitioner alleges that evidence of this outlier establishes that Yücel arranged a favorable price-comparison result. We find no merit in the petitioner's claim. While the petitioner provides a valid reason why the credit expense for the Turkish Lira-denominated home-market sale was substantially higher than credit expenses for the U.S. dollar-denominated home-market sales, it ignores the fact that the starting price for the Turkish Lira denominated home-market sale was also substantially higher than the starting prices for the U.S. dollar-denominated home-market sales. Consequently, the calculated net price for the Turkish Lira-denominated home-market sale is on par with the calculated net prices for the U.S. dollar-denominated home-market sales (after conversion to Turkish Lira).<sup>116</sup> Accordingly, contrary to the petitioner's assertion, there was no advantageous price comparison obtained from the Turkish Lira-denominated home-market sale serving as an identical price-comparison match to the reported U.S. sale.

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<sup>114</sup> Moreover, Commerce's long-standing practice "is to treat each segment of an antidumping proceeding, including the antidumping investigation and the administrative reviews that may follow, as independent proceedings with separate records which lead to independent determinations." *See, e.g., E.I. DuPont de Nemours & Co. v. United States*, 22 C.I.T. 19, 32 (January 29, 1998).

<sup>115</sup> *See* Yücel's *Bona Fides* QR at 7 and Exhibits 5 and 6.

<sup>116</sup> *See* Petitioner's Case Brief at 14 (column titled HMNETPRI in the table); *see also* memorandum, "Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from Turkey: Preliminary Analysis Memorandum for Çayirova Boru Sanayi ve Ticaret A.Ş. and Yücel Boru İthalat-İhracat ve Pazarlama A.Ş.; 2016-2017," dated June 5, 2018, for comparison market SAS program output at 55.

## V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. 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*.

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\_\_\_\_\_  
Agree

☐

\_\_\_\_\_  
Disagree

12/7/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance