



A-489-501  
Administrative Review  
POR: 05/01/2017-04/30/2018  
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July 10, 2019

**MEMORANDUM TO:** Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

**FROM:** James Maeder  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for Preliminary Results of Antidumping  
Duty Administrative Review: Circular Welded Carbon Steel  
Standard Pipe and Tube Products from Turkey; 2017-2018

## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on welded carbon steel standard pipe and tube products (pipe and tube) from Turkey. This review covers the following companies: Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan Mannesmann) and Borusan Istikbal Ticaret T.A.S. (Borusan Istikbal) (collectively, Borusan);<sup>1</sup> Toscelik Profil ve Sac Endustrisi A.S., Tosyali Dis Ticaret A.S., and Toscelik Metal Ticaret A.S. (Toscelik Metal) (collectively, Toscelik);<sup>2</sup> Borusan Birlesik Boru Fabrikalari San ve Tic (Borusan Birlesik); Borusan Gemlik Boru Tesisleri A.S. (Borusan Gemlik); Borusan Holding (BMBYH), Borusan Ihracat Ithalat ve Dagitim A.S. (Borusan Ihracat); Borusan Ithicat ve Dagitim A.S. (Borusan Ithicat); Borusan Mannesmann Yatirim Holding (BMYH), Tubeco Pipe and Steel Corporation (Tubeco); Erbosan Erciyas Boru

<sup>1</sup> In prior segments of this proceeding, we treated Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. as a single entity. See, e.g., *Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2013-2014*, 80 FR 76674 (December 10, 2015) (*Pipe and Tube Turkey Final*). We preliminarily determine that there is no evidence on the record that warrants altering our treatment of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S., as a single entity. The record does not support treating the following companies as part of the Borusan Mannesmann Boru Sanayi ve Ticaret A.S./Borusan Istikbal Ticaret T.A.S. entity: (1) Borusan Birlesik; (2) Borusan Gemlik; (3) Borusan Ihracat; (4) Borusan Ithicat; and (5) Tubeco. Accordingly, as discussed *infra*, each of these five companies will be assigned the rate applicable to companies not selected for individual examination in this review.

<sup>2</sup> In prior segments of this proceeding, we treated Toscelik Profil ve Sac Endustrisi A.S., Tosyali Dis Ticaret A.S., and Toscelik Metal as a single company. See, e.g., *Pipe and Tube Turkey Final*, 80 FR at 76674. We preliminarily determine that there is no evidence on the record for altering our treatment of Toscelik Profil ve Sac Endustrisi A.S., Tosyali Dis Ticaret A.S., and Toscelik Metal as a single company.

Sanayi ve Ticaret A.S. (Erbosan); Kale Baglanti Teknolojileri San. ve Tic. (Kale Baglanti), Noksel Selik Boru Sanayi A.S. (Noksel Selik), Yucel Boru ve Profil Endustrisi A.S. (Yucel), Yucelboru Ihracat Ithalat ve Pazarlama A.S. (Yucelboru), Cayirova Boru Sanayi ve Ticaret A.S. (Cayirova). Cinar Boru Profil San. ve Tic. As (Cinar Boru).

The period of review (POR) is May 1, 2017 through April 30, 2018. We preliminarily find that Toscelik did not make sales below normal value (NV), however, we find that Borusan made sales below NV, and that Erbosan, Borusan Istikbal, Borusan Birlesik, Borusan Gemlik, Borusan Ihracat, Borusan Ithicat, Borusan Holding, BMBYH, Tubeco, Cayirova, Yucel, and Yucelboru had no shipments during the POR.

## II. BACKGROUND

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.213(b)(1), on May 31, 2018, Wheatland Tube Company (the petitioner) requested reviews of various firms, including Borusan and Toscelik.<sup>3</sup> In accordance with 19 CFR 351.213(b)(2), Borusan and Toscelik requested an administrative review of their exports on May 31, 2017.<sup>4</sup> On July 12, 2018, Commerce published a notice of initiation of administrative review of the antidumping duty order on pipe and tube from Turkey for the period May 1, 2017 through April 30, 2018.<sup>5</sup>

In the *Initiation Notice*, we stated our intention, in the event we limited the number of respondents for individual examination, to select respondents based on U.S. Customs and Border Protection (CBP) data.<sup>6</sup> We selected as mandatory respondents the two exporters or producers accounting for the largest volume of pipe and tube from Turkey during the POR (*i.e.*, Borusan and Toscelik).<sup>7</sup>

We issued our standard antidumping questionnaire to Borusan and Toscelik on August 9, 2018. Between August 30, 2017 and May 18, 2018, Borusan and Toscelik submitted timely responses to Commerce's original and supplemental questionnaires.

On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial closure of the federal government from December 22, 2018 through resumption of operations on January 28, 2019.<sup>8</sup> On February 21, 2019, we extended the deadline for the

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<sup>3</sup> See Petitioner's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey: Request for Administrative Review," dated May 31, 2018.

<sup>4</sup> See Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Request for Antidumping Duty Administrative Review," dated May 31, 2018; and Toscelik's Letter, "Circular Welded Carbon Steel Pipe and Tube from Turkey; Toscelik review request," dated May 31, 2018.

<sup>5</sup> See Initiation of Antidumping and Countervailing Duty Administrative Reviews, 83 FR 32270, 32277 (July 12, 2018) (Initiation Notice).

<sup>6</sup> See *Initiation Notice*, 83 FR at 32270.

<sup>7</sup> See Memorandum, "Administrative Review of the Antidumping Duty Order on Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Respondent Selection," dated August 8, 2018.

<sup>8</sup> See Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for

preliminary results to June 20, 2019.<sup>9</sup> On June 4, 2019, we further extended the deadline for the preliminary results, until July 10, 2019.<sup>10</sup>

On January 29, 2019, we received a particular market situation (PMS) allegation from the petitioner.<sup>11</sup> On August 15, 2018, the petitioner requested that Commerce clarify and amend its questionnaire to the respondents in this administrative review to account for Section 232 duties (section 232 duties).<sup>12</sup> On February 5, 2019, Commerce issued a supplemental questionnaire to Borusan and Tosçelik, requesting that they report their payments of Section 232 duties on their sales of the subject merchandise during the POR.<sup>13</sup> On February 11, 2019, the petitioner submitted comments on whether and how Commerce should adjust for 232 duties in its margin calculation.<sup>14</sup> On February 21, 2019, Borusan provided rebuttal comments to the petitioner's submission involving 232 duties.<sup>15</sup> Tosçelik and Borusan timely submitted their responses to Commerce's first supplemental questionnaire on February 22, 2019, and February 27, 2019, respectively.<sup>16</sup> In its February 22, 2019 supplemental questionnaire response, Tosçelik reported that all of its subject merchandise sales during the POR preceded the effective date of 232 duties (*i.e.*, March 23, 2018). Therefore, Tosçelik noted that its sales during the POR were not subject to 232 duties. On April 18, 2019, Commerce issued a second supplemental questionnaire to Borusan regarding its reported 232 duties.<sup>17</sup> On April 24, 2019, Borusan timely responded to Commerce's second supplemental questionnaire.<sup>18</sup> On May 8, 2019, we issued a third

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Enforcement and Compliance, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

<sup>9</sup> See Memorandum, "Certain Circular Welded Carbon Steel Standard Pipes and Tubes from Turkey: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review," dated February 21, 2019.

<sup>10</sup> See Memorandum, "2017-2018 Antidumping Administrative Review of Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review," dated June 4, 2019.

<sup>11</sup> See Petitioner's Letter, "Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Particular Market Situation Allegation," dated January 29, 2019 (PMS Allegation).

<sup>12</sup> See Petitioner's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey Request for Questionnaire Clarification/Modification," dated August 15, 2019.

<sup>13</sup> See Commerce's Letter to Tosçelik, "Administrative Review of the Antidumping Duty Order on Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Supplemental Questionnaires," dated February 1, 2019; and Commerce's Letter to Borusan, "Administrative Review of the Antidumping Duty Order on Welded Carbon Steel Standard Pipe and Tube Products from Turkey: First Supplemental Questionnaire," dated February 5, 2019.

<sup>14</sup> See Petitioner's Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from Turkey: Comments on Adjustment for 232 Duties," dated February 11, 2019 (Wheatland's February 11, 2019 Comments).

<sup>15</sup> See Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Response to Petitioner's Comments on Adjustment for 232 Duties," dated February 21, 2019.

<sup>16</sup> See Tosçelik's Letter, "Circular Welded Carbon Steel Standard Pipe and Tube from Turkey; Tosçelik §AC SQR," dated February 22, 2019 (Tosçelik's February 22, 2019, Supplemental AC QR); and Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Responses to 1st Supplemental Sections A-C Questionnaire & 1st Supplemental Section D Questionnaire," dated February 27, 2019.

<sup>17</sup> See Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Second Supplemental Questionnaire, dated April 18, 2019.

<sup>18</sup> See Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Response to 2nd Supplemental Section C Questionnaire," dated April 24, 2019.

supplemental questionnaire to Borusan regarding 232 duties.<sup>19</sup> On May 20, 2019, Borusan submitted a timely response to Commerce’s third supplemental questionnaire.<sup>20</sup>

### **III. SCOPE OF THE ORDER**

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

### **IV. RATES FOR RESPONDENTS NOT SELECTED FOR INDIVIDUAL EXAMINATION**

In accordance with section 777A(c)(2)(B) of the Act, we selected Borusan and Toscelik for individual examination, as we did not have the resources to examine all companies for which a review was initiated.<sup>21</sup> The statute and Commerce’s regulations do not address the determination of a weighted-average dumping margin to be applied to an individual company not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, we have used section 735(c)(5) of the Act, which provides instructions for determining the weighted-average dumping margin for all other producers and exporters in an investigation, for guidance when determining the weighted-average dumping margin for respondents that we did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we do not calculate an all-others rate using rates that are zero or *de minimis* or based entirely on facts available. Accordingly, our usual practice has been to average the rates for the examined companies, excluding zero, *de minimis*, and rates based entirely on facts available.<sup>22</sup>

Additionally, after we selected Borusan and Toscelik as mandatory respondents, three companies, Kale Baglanti, Noksel Selik, and Cinar Boru, remain subject to this administrative review because none of these three companies: (1) were selected as a mandatory respondent; (2) was the subject of a withdrawal of request for review; (3) requested to participate as a voluntary respondent; or (4) submitted a claim of no shipments. As such, these three companies remain as unexamined respondents.

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<sup>19</sup> See Commerce’s Letter, “Administrative Review of the Antidumping Duty Order on Welded Carbon Steel Standard Pipe and Tube Products from Turkey: 3rd Supplemental Questionnaire,” dated May 8, 2019.

<sup>20</sup> See Borusan’s Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Response to 3rd Supplemental Section C Questionnaire,” dated May 20, 2019.

<sup>21</sup> See Memorandum, “Administrative Review of the Antidumping Duty Order on Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Respondent Selection,” dated August 8, 2018.

<sup>22</sup> See e.g., Multilayered Wood Flooring from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value, 76 FR 64318 (October 18, 2011), and accompanying Issues and Decision Memorandum (IDM) at Comment 11.

In these preliminary results, we determined a weighted-average dumping margin of 16.07 percent for Borusan, and a *de minimis* margin for Toscelik, the other mandatory respondent. When only one weighted-average dumping margin for the individually investigated respondent is not zero, *de minimis* or based entirely on facts available, the rate for companies that we did not examine will be equal to that single weighted-average dumping margin.<sup>23</sup> Accordingly, for the preliminary results of this review, the rate for the following non-examined companies is 16.07 percent: Kale Baglanti Teknolojileri San. ve Tic. (Kale Baglanti), Noksel Selik Boru Sanayi A.S., and Cinar Boru Profil San. ve Tic. As.

## V. PRELIMINARY DETERMINATION OF NO SHIPMENTS

On July 23, 2018, we received a no-shipment certification from Erbosan.<sup>24</sup> Erbosan further certified that it did not know or have reason to believe that any of its customers would subsequently export or sell Erbosan's merchandise to the United States during the POR. On July 25, 2018, we received no-shipment certifications from Cayirova, Yucel, and Yucelboru.<sup>25</sup> On August 7, 2017, we received no-shipment certifications from Borusan Istikbal, Borusan Birlesik, Borusan Gemlik, Borusan Ihracat, Borusan Ithicat, and Tubeco.<sup>26</sup> On April 25, 2018, consistent with our practice, we issued "No Shipment Inquiries" to U.S. Customs and Border Protection (CBP) to confirm that there were no entries of pipe and tube from Turkey exported by Erbosan, Borusan Istikbal, Borusan Birlesik, Borusan Gemlik, Borusan Ihracat, Borusan Ithicat, Tubeco, Cayirova, Yucel, or Yucelboru during the POR.<sup>27</sup> CBP reported that it had no information to contradict the claims of these companies that they had no shipments during the POR.

Based on the foregoing, we preliminarily determine that Erbosan, Borusan Birlesik, Borusan Gemlik, Borusan Ihracat, Borusan Ithicat, Tubeco, Cayirova, Yucel, and Yucelboru had no reviewable shipments during the POR. Also, consistent with our practice, Commerce finds that it is not appropriate to rescind the review with respect to these companies, but rather to complete the review with respect to them, and to issue appropriate instructions to CBP based on the final

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<sup>23</sup> See, e.g., *Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review*, 77 FR 13284, 13288 (March 6, 2012), unchanged in *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the Antidumping Duty Administrative Review*, 77 FR 40854, 40855 (July 11, 2012); *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 36656, 36660 (July 24, 2009); and *Certain Oil Country Tubular Goods from Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 26957 (June 11, 2018) and accompanying Preliminary Decision Memorandum (PDM) at 4, unchanged in *Certain Oil Country Tubular Goods from Turkey: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 64107 (December 13, 2018).

<sup>24</sup> See Erbosan's Letter, "No Shipment Certification of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (ERBOSAN) in the 2017-2018 Administrative Review of the Antidumping Duty Order Involving Certain Welded Carbon Steel Standard Pipe from Turkey," dated July 23, 2018.

<sup>25</sup> See Letter from Cayirova, Yucel, and Yucelboru, "Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey; Notification of No Shipments," dated July 25, 2018.

<sup>26</sup> See Letter from Borusan Istikbal, Borusan Birlesik, Borusan Gemlik, Borusan Ihracat, Borusan Ithicat, and Tubeco, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: No Shipment Letter," dated August 13, 2018.

<sup>27</sup> See CBP message number 8115302, dated April 25, 2018.

results of this review.<sup>28</sup> In our May 6, 2003, “automatic assessment” clarification, we explained that, where respondents in an administrative review demonstrated that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the rate for the intermediate reseller or at the all-others rate applicable to the proceeding.<sup>29</sup> Because “as entered” liquidation instructions do not alleviate the concerns that the *Assessment Policy Notice* was intended to address, instead of rescinding the review with respect to Erbosan, Borusan Birlesik, Borusan Gemlik, Borusan Ihracat, Borusan Ithicat, Tubeco, Cayirova, Yucel, and Yucelboru, we find it appropriate to complete the review and issue liquidation instructions to CBP concerning entries for them. If we continue to find that these companies had no shipments of subject merchandise in the final results, we will instruct CBP to liquidate any existing entries of merchandise produced by them, but exported by other parties, at the rate for the intermediate reseller, if available, or at the all-others rate.<sup>30</sup>

Further, as noted, Borusan Istikbal submitted a no-shipment certification on August 13, 2018.<sup>31</sup> However, also as noted, we have in the past found Borusan Istikbal to be part of the single entity Borusan, and we find no record evidence that warrants altering this treatment. Therefore, because we find the Borusan Mannesmann Boru Sanayi ve Ticaret A.S./Borusan Istikbal Ticaret T.A.S. entity to have had shipments during this POR, we have not made a preliminary determination of no shipments with respect to Borusan Istikbal.

## **VI. DISCUSSION OF THE METHODOLOGY**

### Comparisons to Normal Value

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

#### **A. Determination of Comparison Method**

Pursuant to 19 CFR 351.414(c)(1), Commerce calculates weighted-average dumping margins by comparing weighted-average NV to weighted-average EPs (or CEPs) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, Commerce examines whether to compare weighted-average normal values with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent

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<sup>28</sup> See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003) (Assessment Policy Notice).

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

<sup>30</sup> See, e.g., Magnesium Metal from the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review, 75 FR 26922, 26923 (May 13, 2010), unchanged in Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review, 75 FR 56989 (September 17, 2010).

<sup>31</sup> See Borusan’s Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey. Case No. A-489-501: No Shipment Letter,” dated August 13, 2018.

with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, Commerce nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.<sup>32</sup>

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.<sup>33</sup> The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

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

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable

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<sup>32</sup> See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and the accompanying IDM at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (CIT 2014).

<sup>33</sup> See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium, or large (0.2, 0.5, and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

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

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

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



## B. Results of the Differential Pricing Analysis

For Toscelik, based on the results of the differential pricing analysis, we preliminarily find that zero percent of the value of U.S. sales pass the Cohen's *d* test,<sup>34</sup> and does not confirm the existence of a pattern of prices that differ significantly among purchasers, regions or time periods. Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method. Accordingly, we preliminarily determine to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Toscelik.

For Borusan, based on the results of the differential pricing analysis, we preliminarily find that 77.29 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>35</sup> and confirms the existence of a pattern of prices that differ significantly among purchasers, regions, or time periods. Further, we preliminarily determine that the average-to-average method cannot account for such differences because there is a 25 percent relative change between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using an alternative comparison method based on applying the average-to-transaction method to all U.S. sales. Thus, for these preliminary results, we are applying the average-to-transaction method to all U.S. sales to calculate the weighted-average dumping margin for Borusan.

### Product Comparisons

In accordance with section 771(16) of the Act, we compared prices for products sold in the U.S. market with prices for products sold in the home market which were either identical or most similar in terms of the physical characteristics. For instances in which there was neither an identical nor similar comparison product, we compared the products sold in the United States to constructed value (CV). In the order of importance, these physical characteristics are grade, nominal pipe size, wall thickness, surface finish, and end finish.<sup>36</sup>

### Date of Sale

Section 351.401(i) of Commerce's regulations states that Commerce normally will use the date of invoice, as recorded in the producer's or exporter's records, which are kept in the ordinary course of business. The regulation provides further that Commerce may use a date other than the

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<sup>34</sup> See Memorandum to the File from Karine Gziryanyan, "Analysis for the Preliminary Results of the Antidumping Duty Administrative Review of Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Toscelik Profil ve Sac Endustrisi (Toscelik)," dated concurrently with this memorandum (Toscelik Preliminary Analysis Memorandum) at 8.

<sup>35</sup> See Memorandum to the File from Magd Zalok, "Analysis for the Preliminary Results of the Antidumping Duty Administrative Review of Welded Carbon Steel Standard Pipe and Tube Products from Turkey" dated concurrently with this memorandum (Borusan Preliminary Analysis Memorandum) at Attachment 1.

<sup>36</sup> See Commerce's Letter, "Antidumping Duty Questionnaire," dated August 30, 2018, at B10-B13 and C9-C12.

date of the invoice if the Secretary is satisfied that a different date better reflects the date on which the material terms of sale are established.<sup>37</sup>

With respect to Toscelik's U.S. sales, Toscelik reported that after orders are placed, the customer may add additional products, or add additional quantities of an already-ordered product, to an order.<sup>38</sup> Toscelik has also submitted evidence that such changes to orders have occurred for U.S. sales during the POR.<sup>39</sup> However, there is no record evidence of such changes to orders following invoicing. Therefore, in accordance with our regulatory preference, we are preliminarily using the invoice date as the date of sale for Toscelik's U.S. sales. Furthermore, consistent with Commerce's practice, we used the shipment date as the date of sale where the shipment date preceded the invoice date because under these circumstances the shipment date best reflects the date on which the material terms of sales were established.<sup>40</sup>

As to Borusan's U.S. sales, record evidence indicates that the invoice date is the date that best reflects when the final material terms of sale are set, because the sale quantities are not finalized until the invoice is issued. After the invoice is issued, there are no further changes in the material terms of sale.<sup>41</sup> Moreover, consistent with Commerce's practice, we used the shipment date as the date of sale where the shipment date preceded the invoice date because under these circumstances the shipment date best reflects the date on which the material terms of sale were established.<sup>42</sup> Therefore, we are preliminarily using the earlier of the invoice date or the shipment date as the date of sale for Borusan's U.S. sales.

With respect to both Toscelik's and Borusan's home market sales, consistent with our practice, we have used the invoice date as the date of sale because record evidence indicates that for both respondents the invoice date is the date by which material terms of sale, such as prices and

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<sup>37</sup> See Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 76 FR 55352, 55353 (September 7, 2011), unchanged in Light-Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review, 77 FR 1915 (January 12, 2012).

<sup>38</sup> See Toscelik's August 30, 2018 Section A Questionnaire Response (Toscelik August 30, 2018 AQR) at 18-21.

<sup>39</sup> See Toscelik's March 28, 2018 Supplemental Questionnaire Response (Toscelik March 28, 2018 SQR) at 6 and Exhibit 3.

<sup>40</sup> See, e.g., Seamless Refined Copper Pipe and Tube from Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2010-2011, 77 FR 73422 (December 10, 2012) and accompanying PDM, unchanged in Seamless Refined Copper Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2010-2011, 78 FR 35244 (June 12, 2013); Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review, 72 FR 52065 (September 12, 2007) and accompanying IDM at Comment 11; and Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review, 71 FR 18074, 18079-80 (April 10, 2006), unchanged in Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results and Rescission of Antidumping Duty Administrative Review in Part, 72 FR 4486 (January 31, 2007) and accompanying IDM at Comments 4 and 5.

<sup>41</sup> See Borusan's September 13, 2018 Section A Questionnaire Response at 20 (Borusan September 13, 2018 AQR); see also Borusan's October 17, 2018 Sections B-D Questionnaire Response (Borusan October 17, 2018 BDQR) at C-18.

<sup>42</sup> See *supra*, n.39.

quantities, have been finalized, and there is no indication that changes to material terms of sale occurred subsequent to invoice date.<sup>43</sup>

### Treatment of Duties Under Section 232 of the Trade Expansion Act of 1962

In March 2018, the President exercised his authority under Section 232 of the Trade Expansion Act of 1962, as amended,<sup>44</sup> and issued Proclamation 9705 that mandated, to address national security concerns, imposition of a global tariff of 25 percent on imports of steel articles in order to reduce imports to a level that the Secretary assessed would enable domestic steel producers to use approximately 80 percent of existing domestic production capacity and thereby achieve long-term economic viability through increased production. In considering whether U.S. price should be adjusted for section 232 duties, we look to section 772 of the Act. In particular, section 772(c)(2)(A) of the Act directs Commerce to adjust EP and CEP for “the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties . . .” Therefore, we find that the analysis here depends on whether section 232 duties constitute “United States import duties,” and whether the duties are “included in such price.”

The Court of Appeals for the Federal Circuit (CAFC) has previously considered whether certain types of duties constitute “United States import duties” for purposes of section 772(c)(2)(A) of the Act. In *Wheatland*, the CAFC sustained Commerce’s determination not to adjust U.S. price in antidumping proceedings for section 201 safeguard duties under that statutory provision.<sup>45</sup> Having acknowledged Commerce’s analysis of the legislative history to the Antidumping Act of 1921, which “referred to ‘United States import duties’ as normal customs duties and referred to antidumping duties as ‘special dumping duties’ and that ‘special dumping duties’ were distinguished and treated differently from normal customs duties,” the CAFC in *Wheatland* agreed that “Congress did not intend all duties to be considered ‘United States import duties.’”<sup>46</sup>

The CAFC then found reasonable Commerce’s analysis that section 201 duties were more akin to antidumping duties than “ordinary customs duties.”<sup>47</sup> In comparing section 201 duties with antidumping duties, the CAFC found that: (1) “[l]ike antidumping duties, {section} 201 duties are remedial duties that provide relief from the adverse effects of imports;” (2) “[n]ormal customs duties, in contrast, have no remedial purpose;” (3) “antidumping and {section} 201 duties, unlike normal customs duties, are imposed based upon almost identical findings that the domestic industry is being injured or threatened with injury due to the imported merchandise;” and (4) “[{section} 201 duties are like antidumping duties . . . because they provide only temporary relief from the injurious effects of imports,” whereas normal customs duties “have no termination provision, and are permanent unless modified by Congress.”<sup>48</sup> In sustaining Commerce’s decision regarding section 201 duties in *Wheatland*, the CAFC also held that “[t]o

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<sup>43</sup> See Toscelik August 30, 2018 AQR at 18; and Toscelik March 28, 2018 SQR at 5 and Exhibit 2; see also Borusan October 17, 2018 BDQR at B-22 and B-23; and Borusan September 13, 2018 AQR at A-20.

<sup>44</sup> See 19 U.S.C. § 1862.

<sup>45</sup> See *Wheatland Tube Co. v. United States*, 495 F.3d 1355, 1363 (Fed. Cir. 2007) (*Wheatland*).

<sup>46</sup> *Id.* at 1361.

<sup>47</sup> *Id.* at 1362.

<sup>48</sup> *Id.* at 1362-63.

assess both a safeguard duty and an antidumping duty on the same imports without regard to the safeguard duty, would be to remedy substantially overlapping injuries twice.”<sup>49</sup>

Section 232 duties are not akin to antidumping or 201 duties. Proclamation 9705 states that it “is necessary and appropriate to adjust imports of steel articles so that such imports will not threaten to impair the *national security* . . .”<sup>50</sup> The text of section 232 of the Trade Expansion Act of 1962 also clearly concerns itself with “the effects on the *national security* of imports of the article.”<sup>51</sup> The particular national security risk spelled out in proclamation 9705 is that the “industry will continue to decline, leaving the United States at risk of becoming reliant on foreign producers of steel to meet our national security needs—a situation that is fundamentally inconsistent with the safety and security of the American people.”<sup>52</sup> In other words, section 232 duties are focused on addressing national security prerogatives, separate and apart from any function performed by antidumping and 201 safeguard duties to remedy injury to a domestic industry.

Even more critical to this point is that the Presidential Proclamation states that section 232 duties are to be imposed in addition to other duties unless expressly provided for in the proclamations.<sup>53</sup> The Annex to Proclamation 9740 refers to section 232 duties as “ordinary” customs duties, and it also states that “{a}ll anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.” Notably, there is no express exception in the HTSUS revision in the Annex. In other words, section 232 duties are intended to be treated as any other duties for purposes of the trade remedy laws. Had the President intended that AD duties would be reduced by the amount of section 232 duties imposed, the Presidential Proclamation would have expressed that intent.

For the reasons noted, and consistent with our treatment of 232 duties in *OCTG Ukraine*,<sup>54</sup> we have determined that section 232 duties should be treated as “United States import duties” for

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<sup>49</sup> *Id.* at 1365.

<sup>50</sup> See Proclamation 9705, 83 FR at 11627 (emphasis added); Proclamation 9711 of March 22, 2018, 83 FR 13361, 13363 (March 28, 2018) (Proclamation 9711) (“In proclaiming this tariff, I recognized that our Nation has important security relationships with some countries whose exports of steel articles to the United States weaken our national economy and thereby threaten to impair the national security”); Proclamation 9740 of April 30, 2018, 83 FR 20683 (May 7, 2018) (Proclamation 9740) (similar); Proclamation 9759 of May 31, 2018, 83 FR 25857 (June 5, 2018) (Proclamation 9759) (similar); Proclamation 9772 of August 10, 2018, 83 FR 40429 (August 15, 2018) (Proclamation 9772) (similar); Proclamation 9777 of August 29, 2018, 83 FR 45025 (September 4, 2018) (Proclamation 9777) (similar).

<sup>51</sup> See section 232(b)(1)(A) of the Trade Expansion Act of 1962 (emphasis added); see also section 232(a) of the Trade Expansion Act of 1962 (explaining that “{n}o action shall be taken . . . to decrease or eliminate the duty or other import restrictions on any article if the President determines that such reduction or elimination would threaten to impair the national security”).

<sup>52</sup> See Proclamation 9705, 83 FR at 11627.

<sup>53</sup> See Proclamations 9705, 83 FR at 11627; Proclamation 9711, 83 FR at 13363; Proclamation 9740, 83 FR at 20685-87 (“All anti-dumping or countervailing duties, or other duties and charges applicable to such goods shall continue to be imposed, except as may be expressly provided herein.”); Proclamation 9759, 83 FR at 25857; Proclamation 9772, 83 FR at 40430-31; Proclamation 9777, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive different treatment.

<sup>54</sup> See Memorandum, “Issues and Decision Memorandum for the Final Normal Value Calculations to be Effective from the Release of the Final Normal Values through June 30, 2019, under the Agreement Suspending the

purposes of section 772(c)(2)(A) of the Act — and thereby as “U.S. Customs duties,” which are deducted from U.S. price.

### Export Price

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the exporter or producer of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)” of section 772 of the Act.

For Toscelik, we calculated EP for these preliminary results in accordance with Section 772(a) of the Act because the merchandise was first sold prior to importation by the exporter or producer outside the United States to an unaffiliated purchaser in the United States and because constructed export price methodology was not otherwise warranted. We calculated EP based on the “cost-and-freight” price to the unaffiliated customer.

With respect to section 232 duties, Toscelik provided record evidence indicating that all of its subject merchandise sales during the POR preceded the effective date of the section 232 duties (*i.e.*, March 23, 2018). Therefore, Toscelik’s sales during the POR were not subject to section 232 duties and no deduction for such duties is warranted.<sup>55</sup>

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

Borusan classified certain of its sales to the United States as EP sales which were sold to unaffiliated U.S. customers. We calculated EP for these preliminary results in accordance with subsection 772(a) of the Act, where the subject merchandise is first sold (or arranged to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to unaffiliated purchasers in the United States. We calculated EP based on the “delivery-duty-paid” price to the unaffiliated customer.

With respect to section 232 duties, Borusan confirmed that it paid section 232 duties on certain of its EP sales with entries made on or after March 23, 2013, the effective date of section 232 duties. Moreover, we note that, given the terms of delivery for such sales, the price charged to unaffiliated U.S. customers during the POR reflects such duties.<sup>56</sup> The inclusion of those 232

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Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine,” dated February 15, 2019 at Comment 1; *see also* Attachment 1 to Commerce’s Memorandum, “2017–2018 Administrative Review of Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Section 232 Duties,” dated concurrently with this memorandum (“Section 232 Memorandum”).

<sup>55</sup> *See* Toscelik’s February 22, 2019, Supplemental A-C Questionnaire Response (Toscelik February 22, 2019, SACQR) at 6-7.

<sup>56</sup> *See, e.g.*, Borusan’s February 27, 2019, 1st Supplemental A-D Questionnaire Response (Borusan February 21, 2019 SADQR) at 33-34.

duties in the price of the sales at issue was supported by information reported in the U.S. sales database.<sup>57</sup> Accordingly, we deducted from EP, as appropriate, the amount of section 232 duties that Borusan reported, consistent with Section 772(c)(2)(A) of the Act.

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

### Constructed Export Price

Section 772(b) of the Act defines CEP as “the price at which the subject merchandise is first sold (or agreed to be sold) in the United States to an unaffiliated purchaser in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).” For certain of Borusan’s sales to the United States, we calculated CEP in accordance with section 772(b) of the Act, because the merchandise was sold by a U.S.-based seller affiliated with the producer to unaffiliated purchasers in the United States. We calculated CEP based on an FOB-warehouse basis, where either Borusan or its U.S. affiliated reseller, Borusan Mannesmann Pipe US, are responsible for all costs incurred in transporting the merchandise to the unaffiliated customer’s warehouse in the United States.<sup>58</sup>

Where appropriate, we made deductions from the starting price, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: inland freight from the plant to the port of exportation, domestic brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, customs duties, U.S. inland freight from port to warehouse, warehousing expenses in the United States, as well as U.S. inland freight from the affiliate’s warehouse to the unaffiliated U.S. customer’s warehouse.<sup>59</sup> In accordance with section 772(d)(1) of the Act, we calculated CEP by deducting credit expenses and selling expenses associated with economic activities occurring in the United States, including direct selling expenses and those indirect selling expenses associated with economic activities occurring in the United States.<sup>60</sup>

Pursuant to section 772(f) of the Act, we computed profit based on the total revenues realized on sales in both the U.S. and comparison markets, less all expenses associated with those sales. We then allocated profit to expenses incurred with respect to U.S. economic activity based on the ratio of total U.S. expenses to total expenses for both the U.S. and comparison markets. No other adjustments were claimed or applied.<sup>61</sup>

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<sup>57</sup> *Id.* For further details, see Section 232 Memorandum.

<sup>58</sup> See Borusan October 17, 2018 BDQR at C-20.

<sup>59</sup> See Borusan Preliminary Analysis Memorandum.

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

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

With respect to section 232 duties, Borusan maintains that it was unable to tie CEP sales to entry dates, because the sales from its U.S. affiliate's inventory are not directly linked to imports in the U.S. affiliate's accounting system.<sup>62</sup> Accordingly, Borusan has not reported 232 duties for any of its CEP sales, arguing that the average number of days in its U.S. inventory indicates that none of the reported CEP sales would have been subject to such duties.<sup>63</sup> However, Borusan acknowledges that its U.S. affiliated reseller had a shipment of the subject merchandise that entered the United States during the POR for which it paid 232 duties. Borusan also acknowledges that it is possible that subject merchandise from such an entry could have been sold to unaffiliated U.S. customers prior to the end of the POR.<sup>64</sup> Since Borusan did not keep records linking its CEP sales to actual entry dates, even though it was the importer of record, and its reasoning, based on the average number of days in inventory, is not actual evidence that 232 duties were not paid, it is reasonable to conclude that the subject merchandise from the aforementioned entry could have been sold to an unaffiliated U.S. customer between the entry date of the shipment at issue and the end of the POR. Moreover, since the terms of delivery for CEP sales are on an ex-warehouse basis, the CEP price is inclusive of all U.S. duties, including 232 duties. Thus, Commerce is missing necessary information on the record to deduct 232 duties for the CEP sales that occurred on or after the date of entry of the shipment received by Borusan's affiliate.

Section 776(a)(1) of the Act provides that, if necessary information is missing from the record, Commerce "shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination." Because the CEP data is missing from the record, in accordance with section 776(a)(1) of the Act, as facts available we have preliminarily deducted section 232 duties for the CEP sales that occurred: 1) on or after the entry date of the shipment received by Borusan's U.S. affiliate; and 2) on or after the effective date of Section 232 duties (*i.e.*, March 23, 2018). We calculated the 232 duties for such sales based on the ratio of the actual 232 duties paid for the shipment at issue in relationship to the value of the reported CEP sales that occurred on or after the date of the above-referenced entry.<sup>65</sup>

### Duty Drawback

Borusan also claimed a duty drawback adjustment to U.S. price.<sup>66</sup> Section 772(c)(1)(B) of the Act states that EP and CEP shall be increased by "the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the export of the subject merchandise to the United States." In determining whether an adjustment for duty drawback should be made, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported material be traced directly from importation through exportation. We do require, however, that the company meet our "two-pronged" test in order for the adjustment to be made to EP or CEP.<sup>67</sup> The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one

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<sup>62</sup> See Borusan's May 20, 2019 at 2.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 2-3.

<sup>65</sup> See Borusan Preliminary Analysis Memorandum; see also Section 232 Memorandum for further analysis.

<sup>66</sup> See Borusan October 17, 2018 BDQR at C-40 to C-43.

<sup>67</sup> See *Saha Thai Steel Pipe Public Co., v. United States*, 635 F.3d 1335, 1440-41 (Fed. Cir. 2011) (Saha Thai).

another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.<sup>68</sup>

In this review, we are preliminarily granting a duty drawback adjustment to Borusan because record evidence indicates that Borusan satisfies both the first prong of interdependency between import duty and exemption, and the second prong of sufficient imports to account for the duty drawback claim for Turkey's duty drawback program or Inward Processing Regime.<sup>69</sup> Also, consistent with the practice established in *Rebar Trade*,<sup>70</sup> we limited the amount of the duty drawback adjustment by the per-unit duty costs included in the respondents' cost of production (COP).<sup>71</sup>

## Normal Value

### A. Home Market Viability as Comparison Market

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

### B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, Commerce will calculate NV based on sales at the same level of trade (LOT) as the U.S. Sales. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>72</sup> Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.<sup>73</sup> In order to determine whether the comparison

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<sup>68</sup> *Id.*; see also, *e.g.*, Notice of Final Results of the Eleventh Administrative Review of the Antidumping Duty Order on Certain Corrosion Resistant Carbon Steel Flat Products from the Republic of Korea, 71 FR 7513 (February 13, 2006), and accompanying IDM at Comment 2.

<sup>69</sup> See Borusan October 17, 2018 BDQR at C-40 to C-43.

<sup>70</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 (*Rebar Trade Redetermination*) at 15-18.

<sup>71</sup> See Borusan Preliminary Analysis Memorandum.

<sup>72</sup> See 19 CFR 351.412(c)(2).

<sup>73</sup> *Id.*; see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999, 51001 (August 18, 2010) (*Orange Juice from Brazil*), and accompanying IDM at Comment 7.



market sales are at different stages in the marketing process than the U.S. sales, we examine the distribution system in each market (*i.e.*, the chain of distribution), including selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices),<sup>74</sup> we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.<sup>75</sup>

When Commerce is unable to match sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, we may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it possible, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if the NV LOT is at a more advanced stage of distribution than the LOT of the CEP and there is no basis for determining whether the difference in LOTs between NV and CEP affects price comparability (*i.e.*, no LOT adjustment is possible), we will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.<sup>76</sup>

In this review, we obtained information from Borusan and Toscelik regarding the marketing stages involved in making its reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution.<sup>77</sup>

The selling activities that Borusan performed can be generally grouped into four selling function categories: (1) sales and marketing (sales forecasting, strategic/economic planning, personnel training/exchange, advertising, packing, customer advise, product information, order input/processing, direct sales personnel, sales/marketing support, market research, cash discounts, and commissions); (2) inventory maintenance (inventory maintenance and post-sale warehousing); (3) technical support (engineering services, technical assistance, and after-sales services); and (4) delivery arrangement (freight and delivery, marine insurance, load port brokerage, U.S. Customs clearance, and U.S. Customs duties and charges).<sup>78</sup>

In the home market, Borusan reported that it used two channels of distribution: (1) direct sales to distributors;<sup>79</sup> and (2) direct sales to industrial end-users.<sup>80</sup> However, Borusan reported that the selling activities associated with selling to each of these two channels of distribution do not differ.<sup>81</sup> Based on its reported selling function categories, we preliminarily find that Borusan

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<sup>74</sup> Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling, general and administrative expenses, and profit for CV, where possible. *See* 19 CFR 351.412(c)(1).

<sup>75</sup> *See Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>76</sup> *See, e.g., Orange Juice from Brazil* at Comment 7.

<sup>77</sup> *See* Borusan September 13, 2018 Section A questionnaire response (Borusan September 13, 2018 AQR) at 16 and Exhibits A-6 and A-7; *see also* Toscelik August 30, 2018 AQR at 15-17; and Toscelik September 27, 2018 Suppl. B-DQR at 26.

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

<sup>79</sup> *Id.*

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

<sup>81</sup> *Id.*

performed sales and marketing, inventory maintenance, technical support and delivery arrangement for its home market sales. Because there was no difference in selling activities performed by Borusan in its sales to home market customers, we preliminarily determine that there is one LOT in the home market.

In the U.S. market, Borusan made EP and CEP sales through two channels of distribution, channels 1 and 2, as noted.<sup>82</sup> Borusan did not report a level of trade in its U.S. sales database, maintaining that there is only one level of trade in the U.S. market.<sup>83</sup> For both channels of distribution, we preliminarily find that Borusan performed virtually the same activities at the same or comparable intensity levels. Because the selling functions performed by Borusan in Turkey for U.S. sales do not differ significantly between channels of distribution, we preliminarily determine that there is one LOT in the U.S. market.

Finally, we compared the U.S. LOT to the home market LOT. Borusan claimed that its selling activities involving U.S. sales were limited in comparison to its home market sales.<sup>84</sup> Accordingly, it argues that sales in the home market were made at more advanced levels of trade than the CEP sales.<sup>85</sup> While we acknowledge that certain selling functions performed for home market sales may have entailed additional activities, we disagree that these activities were substantial or so significant that they constitute a different marketing stage, because the selling functions of delivery management have entailed additional activities for U.S. sales. Further, the selling functions performed more frequently on home market sales, *i.e.*, order processing and invoicing, are basic administrative functions. In contrast, international logistics performed for U.S. sales are specialized selling functions.

Consequently, when Borusan's selling activities are viewed as a whole, we preliminarily find that the difference between the selling activities performed for home market and U.S. sales do not rise to the level of a "substantial difference in selling activities," or that Borusan's U.S. and home market sales were at different stages of marketing (or other equivalent). The record shows that Borusan's home market selling functions may contain more activities, but did not result in sales at a different marketing stage, as required by Commerce's regulations. Therefore, we preliminarily determine that sales in the home market during the POR were made at the same LOT as sales to the United States. Because Borusan's home market LOT is not at a more advanced stage of distribution than Borusan's U.S. LOT, a CEP offset is not warranted.<sup>86</sup>

Toscelik reported that in its home market it sold only to distributors, and that all sales were direct sales to the distributors.<sup>87</sup> Therefore, we determine that Toscelik has only one level of trade in its home market. With respect to its U.S. market, Toscelik reported that it produced all sales to order and shipped them directly to its U.S. customers, all of whom were trading companies.<sup>88</sup>

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<sup>82</sup> See Borusan October 17, 2018 BDQR at C-17.

<sup>83</sup> *Id.* at C-20.

<sup>84</sup> See Borusan September 13, 2018 Section A questionnaire response (Borusan September 13, 2018 AQR) at 19-20.

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

<sup>86</sup> See, e.g., *Sucocitricon Cultrale Ltda. v. United States*, Ct. No. 10-00261, 2012 WL 2317764 at \*6 (CIT June 1, 2012).

<sup>87</sup> See Toscelik August 30, 2018 AQR at 15-17; see also Toscelik September 27, 2018 Suppl. B-DQR at 26.

<sup>88</sup> See Toscelik August 30, 2018 AQR at 15.

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

Toscelik also provided Commerce with information on its selling activities in its U.S. and home market.<sup>89</sup> For instance, Toscelik provided virtually the same level of customer support services on its U.S. sales as it did on its home market sales. When Toscelik's selling activities are viewed as a whole, we preliminarily find that the difference between the selling activities performed for home market and U.S. sales do not rise to the level of a "substantial difference in selling activities," or that Borusan's U.S. and home market sales were at different stages of marketing (or other equivalent). Consequently, the record evidence supports a finding that in both markets Toscelik performed essentially the same level of services. While we found minor differences between the home and U.S. market selling activities, we determine that Toscelik's EP sales and the starting price of home market sales represent the same level of selling activities, and are, thus, at the same level of trade. Therefore, for the preliminary results, we find that a level of trade adjustment is not warranted for Toscelik.

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

Commerce may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's-length prices.<sup>90</sup> During the POR, Toscelik and Borusan each made some sales to affiliated parties in the home market. To test whether their home market sales to affiliated parties were made at arm's-length prices, we compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all billing adjustments, discounts and rebates, movement charges, direct selling expenses, and packing expenses. In accordance with 19 CFR 351.403(c) and our practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that sales to the affiliated party were at arm's-length prices.<sup>91</sup> In our calculations of NV, we included sales to affiliated parties that were made at arm's-length prices and excluded sales that were not made at arm's-length prices. We did not rely on any downstream sales in the calculation of NV because for both Borusan and Toscelik the total volume of home market sales to affiliates amounted to less than five percent of the total volume of home market sales.<sup>92</sup>

#### D. Cost of Production Analysis

Pursuant to the amendment of section 773(b)(2)(A)(ii) of the Act, Commerce required that Borusan and Toscelik provide CV and COP information to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices that represented less than the COP of the product.

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<sup>89</sup> See Toscelik March 284, 2019 AQR at 4-5 and Exhibit 1.

<sup>90</sup> See 19 CFR 351.403(c).

<sup>91</sup> See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186, 69187 (November 15, 2002).

<sup>92</sup> See Borusan September 13, 2018 AQR at 3; and Toscelik August 30, 2018 AQR at 1.

## A. Cost Averaging Methodology

Commerce's normal practice is to calculate an annual weighted-average cost for the POR. However, we recognize that possible distortions may result if we use our normal annual-average cost method during a time of significant cost changes. In determining whether to deviate from our normal methodology of calculating an annual weighted-average cost, we evaluate the case-specific record evidence by examining two primary criteria: (1) the change in the cost of manufacturing (COM) incurred by the respondent during the POR must be deemed significant; (2) the record evidence must indicate that sales during the shorter cost-averaging periods could be reasonably linked with the COP or CV during the same shorter cost-averaging periods.<sup>93</sup>

We examined Borusan's cost data and determined that our quarterly cost methodology is not warranted and, therefore, we applied our standard methodology of using annual average costs based on the reported data.

For Toscelik, we found that as discussed below, both of the above criteria were met and that the application of our quarterly cost methodology is appropriate.

### 1. Significance of Cost Changes

In prior cases, we established 25 percent as the threshold (between the high- and low-quarter COM) for determining that the changes in COM are significant enough to warrant a departure from our standard annual-average cost approach.<sup>94</sup> In the instant case, record evidence shows that Toscelik experienced significant cost changes (*i.e.*, changes that exceeded 25 percent) between the high and low quarterly COM during the POR.<sup>95</sup>

### 2. Linkage Between Sales and Cost Information

Consistent with past precedent, because we found the changes in costs to be significant, we evaluated whether there is evidence of a linkage between the cost changes and the sales prices during the POR.<sup>96</sup> Absent a surcharge or other pricing mechanism, Commerce may alternatively look for evidence of a pattern showing that changes in selling prices reasonably correlate to changes in unit costs.<sup>97</sup> To determine whether a reasonable correlation existed between the sales prices and underlying costs during the POR, we compared weighted-average quarterly prices to

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<sup>93</sup> See *Stainless Steel Sheet and Strip in Coils from Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010) (*SSSSC Mexico Final*) and accompanying IDM at Comment 6; and *Stainless-Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008) (*SSPC Belgium Final*) and accompanying IDM at Comment 4.

<sup>94</sup> See *SSPC Belgium Final* IDM at Comment 4.

<sup>95</sup> See Toscelik's September 27, 2018 Section D Questionnaire Response (Toscelik September 27, 2018 DQR) at 107-110; see also Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>; *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793, 46794-95 (August 6, 2015); *SSSSC Mexico Final* IDM at Comment 6; and *SSPC Belgium Final* IDM at Comment 4.

<sup>96</sup> See *SSSSC Mexico Final* IDM at Comment 6; and *SSPC Belgium Final* IDM at Comment 4.

<sup>97</sup> See *SSPC Belgium Final* IDM at Comment 4.

the corresponding quarterly COM for high volume control numbers. Our comparison revealed that sales and costs for Toscelik showed reasonable correlation.<sup>98</sup> After reviewing this information and determining that changes in selling prices correlate reasonably to changes in unit costs, we preliminarily determine that there is linkage between Toscelik's changing sales prices and costs during the POR.<sup>99</sup> Thus, we preliminarily determine that a shorter cost-averaging period approach, based on a quarterly-average COP, is appropriate for Toscelik because we found significant cost changes in COM, as well as a reasonable linkage between costs and sales prices.

### *B. Calculation of COP*

In accordance with section 773(b)(3) of the Act, we calculate COP based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and interest expenses.<sup>100</sup> For Borusan and Toscelik, we calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative and financial expenses, in accordance with section 773(b)(3) of the Act. Unless noted, we relied on the annual COP data submitted by Borusan in its questionnaire responses for the COP calculation. For Toscelik, we based the COP on a quarterly-average COP rather than an annual- average COP. *See* the "Cost Averaging Methodology" section, for further discussion.

We relied on the quarterly COP data submitted by Toscelik, except as follows:

- We increased the cost for prime pipes by the difference between the cost allocated to the second-quality pipes and the second-quality pipes' sales revenue.

We relied on the COP data submitted by Borusan, except as follows:

- We added the SCOST field reported in the COP database to the TOTCOM to increase the cost for prime pipes by the difference between the cost allocated to the second-quality pipes and the second-quality pipes' sales revenue.
- We added the imputed cost of exempted import duties (DUTY field) to the total COM.

Further, we increased Borusan's and Toscelik's reported cost for hot-rolled coil as a component of COP by specific adjustments applicable to the PMS that we find to exist in Turkey concerning this input of production as discussed below.

### *C. Test of Comparison Market Sales Prices*

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the adjusted weighted-average COPs to the home market sales prices of the foreign like product, in order to determine whether the sales prices were below the COPs. For purposes of this comparison, we used COPs exclusive of selling and packing expenses and used sales prices that were exclusive

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<sup>98</sup> *See* Toscelik Preliminary Analysis Memorandum.

<sup>99</sup> *Id.*; *see also* SSSSC Mexico Final IDM at Comment 6; and SSPC Belgium Final IDM at Comment 4.

<sup>100</sup> *See* "Test of Comparison Market Sales Prices" section, *infra*, for treatment of home market selling expenses.

of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

#### *D. Results of the COP Test*

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether: 1) within an extended period of time, such sales were made in substantial quantities; and 2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. In accordance with sections 773(b)(2)(B) and (C) of the Act, where less than 20 percent of the respondent's comparison market sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made within an extended period of time and in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, we disregard the below-cost sales when: 1) they were made within an extended period of time in accordance with section 773(b)(2)(B) of the Act; and, 2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

We found that, for certain products, more than 20 percent of Borusan and Toscelik's home market sales during the POR were at prices less than the COP, they were made within an extended period of time, and such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

#### *E. Calculation of Normal Value Based on Comparison Market Prices*

For those comparison products for which there were sales at prices above the COP, we based NV on comparison market prices. We calculated NV based on the prices that Borusan and Toscelik each reported for home market sales to unaffiliated customers that we determined were made within the ordinary course of trade. As explained above, we also included home market sales to affiliated parties that were made at arm's-length prices. For Borusan, we adjusted the starting price, where appropriate, for billing adjustments, discounts, and rebates, in accordance with 19 CFR 351.401(c). For Toscelik, we adjusted the starting price, where appropriate, for billing adjustments and discounts in accordance with 19 CFR 351.401(c). We also made deductions from NV, consistent with section 773(a)(6)(B)(ii) of the Act, for movement expenses. In addition, we made adjustments for differences in circumstances of sale in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made these adjustments, where appropriate, by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses to NV. For Borusan, direct selling expenses consisted of warranty expenses and factoring expenses. For Toscelik, direct selling expenses consisted of warranty expenses. We also made adjustments for differences in domestic and export packing expenses in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act.<sup>101</sup>

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<sup>101</sup> See Borusan Preliminary Analysis Memorandum and Toscelik Preliminary Analysis Memorandum for further details.

When comparing U.S. sale prices with normal values based on comparison market sale prices of similar, but not identical, merchandise, we also made an adjustment for physical differences in merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and the subject merchandise.<sup>102</sup>

In the calculation of NV for Borusan, in accordance with section 771(15) of the Act, we have not removed home market sales of overruns because we determined that they were in the ordinary course of trade.<sup>103</sup>

#### *F. Calculation of Normal Value Based on Constructed Value*

In accordance with 773(e) of the Act, we used CV as the basis for normal value for the U.S. sales for which we could not find comparison market sales of similar or identical merchandise. In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of each respondent's COP, selling expenses, and profit. In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of each respondent's COP, selling expenses, and profit. We also deducted the packing costs for the foreign like product and included U.S. packing costs. We calculated the COP component of CV as described above in the "Cost of Production Analysis" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based the adjustments for selling expenses and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product at the same level of trade as the U.S. sale, in the ordinary course of trade, for consumption in the comparison market.

#### *G. Particular Market Situation*

Section 504 of the TPEA<sup>104</sup> added the concept of "PMS" in the definition of the term "ordinary course of trade" for purposes of CV under section 773(e) of the Act, and through these provisions for purposes of the COP under section 773(b)(3) of the Act. Section 773(e) of the Act states that "if a PMS situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the COP in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology." The statute does not define "PMS," but the SAA explains that such a situation may exist for sales "where there is government control over pricing to such an extent that home market prices cannot be considered competitively set."<sup>105</sup> Prior to the TPEA, in a limited number of cases, Commerce found that PMS existed and, as a result, declined to use an entire market for purposes of calculating NV, as provided for in section 773(a)(1) of the Act and

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<sup>102</sup> See 19 CFR 351.411(b).

<sup>103</sup> See Memorandum, "2017–2018 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 July 10, 2019.

<sup>104</sup> See TPEA at section 504.

<sup>105</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. 1 (1994) (SAA) at 822.

section 351.404(c)(2) of Commerce's regulations.<sup>106</sup> More recently, Commerce determined that PMS existed which distorted the domestic costs of major inputs used in the production of subject merchandise.<sup>107</sup>

On January 29, 2019, the petitioner alleged that Commerce should find that a PMS existed during the period of review in Turkey, which distorted the COP of pipe and tube. Further, the petitioner submitted factual information in support of this allegation.<sup>108</sup> On April 30, 2019, the petitioner submitted additional factual information that provided alternative means to quantify the alleged distortions in the prices of HRC in this review, *i.e.*, a regression analysis which quantifies the amount of this distortion.<sup>109</sup> On June 13 and June 17, 2019, the petitioner provided a revised regression analysis.<sup>110</sup>

The petitioner alleged that a series of factors affecting the price of hot-rolled coil (HRC), the primary material input in the production of pipe and tube, render, individually or collectively, the costs of pipe and tube production in Turkey as outside the ordinary course of trade.<sup>111</sup> The petitioner alleged that the existence of a PMS is supported by substantial evidence on: (1) the GOT's control over Eregli Demir Celik Fabrikeler A.S. (Erdemir), the largest producer of flat-rolled steel in Turkey, and its affiliate Iskenderun Demir ve Celik A.S. (Isdemir), which contributes to a PMS that makes the acquisition prices of HRC in Turkey not reflective of the ordinary course of trade; (2) Turkish subsidies on HRC inputs; and (3) Turkish imports of HRC from Russia at distorted prices as a result of Chinese overcapacity.<sup>112</sup> The petitioner argued that Commerce should make adjustments to Borusan's and Toscelik's costs of production in order to remedy the alleged distortions in the prices of HRC, as it has done in recent administrative reviews of circular welded pipe (CWP) from Korea and Thailand (where the cost of HRC was

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<sup>106</sup> Examples of investigations or reviews where we have found a sales-based PMS include Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411 (June 9, 1998); Mechanical Transfer Presses from Japan; Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Administrative Order in Part, 63 FR 37331 (July 10, 1998); and Notice of Final Results of the Ninth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy, 72 FR 7011 (February 14, 2007).

<sup>107</sup> See, e.g., Large Diameter Welded Pipe from the Republic of Turkey: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 83 FR 43646 (August 27, 2018) and accompanying PDM at 11-15, unchanged in Large Diameter Welded Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value, 84 FR 6362 (February 27, 2019) and accompanying IDM at Comment 1; *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014- 2015*, 82 FR 18105 (April 17, 2017) and accompanying IDM at 40-41; *Biodiesel from Argentina: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, in Part*, 82 FR 50391 (October 31, 2017) and accompanying PDM at 18-24, unchanged in *Biodiesel from Argentina: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances, in Part*, 83 FR 8837 (March 1, 2018).

<sup>108</sup> See PMS Allegation.

<sup>109</sup> See Petitioner's Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from Turkey: Rebuttal Factual Information," dated April 30, 2019.

<sup>110</sup> See Petitioner's Letter, "Certain Welded Carbon Steel Standard Pipes and Tubes from Turkey: Response to Request for Particular Market Situation Information," dated June 13, 2019; *see also* "Certain Welded Carbon Steel Standard Pipes and Tubes from Turkey: Clarification of Particular Market Situation Information," dated June 17, 2019.

<sup>111</sup> See, generally, PMS Allegation.

<sup>112</sup> *Id.*



increased).<sup>113</sup> In addition, with respect to HRC, the petitioner also proposed using a regression analysis, which, it alleged, appropriately quantifies the amount of the distortion in the price of HRC in Turkey.

For these preliminary results, Commerce finds that a PMS existed in Turkey during the POR concerning the cost of HRC as a component of the COP.<sup>114</sup> The PMS that we find to have existed in Turkey results from the collective impact of the continued effects of global steel overcapacity, the GOT's subsidization of HRC, and GOT ownership of the largest producers of HRC in Turkey.<sup>115</sup> In this administrative review, we considered the components of the PMS allegation as a whole, based on their cumulative effect on the Turkish market for HRC. Based on the totality of the conditions in the Turkish HRC market, Commerce preliminarily finds that the factors described above represent facets of a single PMS.

In addition to finding that a PMS existed in Turkey during the POR with respect to the costs for the HRC input, Commerce has determined that there is sufficient evidence to quantify the impact of the PMS. In quantifying the impact, Commerce has determined to make an upward adjustment to the costs for HRC. Specifically, the acquisition cost for all HRC (domestic and imported), will be increased by the adjustment factor derived from the regression analysis submitted by the petitioner.<sup>116</sup> We preliminarily find that this rate appropriately quantifies the impact of the PMS concerning the distortion in the cost of HRC that we find to exist in Turkey. Specifically, the regression analysis sufficiently quantifies the impact of the PMS on the material cost of HRC in Turkey and derives a corresponding adjustment factor that, when applied to the Borusan's and Toscelik's costs of HRC, accounts for the distortions introduced by the observed PMS.<sup>117</sup>

## VII. CURRENCY CONVERSION

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as

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<sup>113</sup> *Id.* at 27, citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 27541 (June 13, 2018) and accompanying IDM at 11-19; and *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 51927 (October 15, 2018) and accompanying IDM at 13.

<sup>114</sup> For a complete discussion, see memorandum, "2017-2018 Administrative Review of Antidumping Duty Order on Welded Carbon Steel Standard Pipes and Tubes from Turkey: Decisions on Particular Market Situation Allegations," dated concurrently with this memorandum (Decisions on Particular Market Situation).

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> See Decisions on Particular Market Situation. Borusan presented three concerns with the model itself. First it claimed that the variable in the model to represent macroeconomic conditions, gross fixed capital formation (GFCF), was not statistically significant. Second, Borusan argued that the estimated parameter coefficient for the price of aluminum variable, a substitute for steel, is negative, which is the opposite of what economic theory would predict. Third, Borusan argued that in the regression analysis there are multiple data points for different countries in different years that have no quantity associated with their import value. Commerce recognizes that there are concerns with the regression data, but we did not have sufficient time to consider the merits of these arguments for purposes of these preliminary results. Accordingly, we will consider these issues further for purposes of the final results of review and we invite comments from the parties on these claims.

certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance web site at <http://enforcement.trade.gov/exchange/index.html>.

## VIII RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

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Agree

☐

\_\_\_\_\_  
Disagree

7/10/2019

X 

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