



A-489-501  
Administrative Review  
POR: 05/01/2019-04/30/2020  
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July 30, 2021

**MEMORANDUM TO:** Christian Marsh  
Acting 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; 2019-2020

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on circular welded carbon steel standard pipe and tube products (CWP) from Turkey, for the period of review (POR), May 1, 2019, through April 30, 2020. This review covers twenty producers and/or exporters. We preliminarily find that the sole mandatory respondent, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan Mannesmann) and its affiliated entity, Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, Borusan),<sup>1</sup> made sales of the subject merchandise at prices below normal value (NV), and preliminarily assign the dumping margin calculated for Borusan to five companies not individually examined in this review. In addition, we preliminarily find that thirteen exporters 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 28 and 29, 2020, Nucor Tubular Products Inc. (Nucor Tubular) and Wheatland Tube Company (Wheatland) (collectively, the petitioners), respectively,

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<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, 76674 (December 10, 2015). We preliminarily determine that there is no evidence on the record for altering our treatment of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S., as a single entity.

requested reviews of twenty firms, including Borusan.<sup>2</sup> Moreover, on May 29, 2020, Borusan requested an administrative review of its exports.<sup>3</sup> Pursuant to those requests and in accordance with 19 CFR 351.221(c)(1)(i), on July 10, 2020, we initiated this review on twenty companies.<sup>4</sup>

Between June 3, and August 14, 2020, 14 exporters timely filed no-shipment certifications: (1) Toscelik Endustrisi;<sup>5</sup> (2) Tosyali Ticaret;<sup>6</sup> (3) Toscelik Metal;<sup>7</sup> (4) Cayirova;<sup>8</sup> (5) Yucel Endustrisi;<sup>9</sup> (6) Yucelboru;<sup>10</sup> (7) Cinar Boru;<sup>11</sup> (8) Erbosan;<sup>12</sup> (9) Istikbal;<sup>13</sup> (10) Borusan Birlesik;<sup>14</sup> (11) Borusan Gemlik;<sup>15</sup> (12) Borusan Ihracat;<sup>16</sup> (13) Tubeco;<sup>17</sup> and (14) Borusan Ithicat.<sup>18</sup> On August 10, 2020, Commerce obtained U.S. Customs and Border Protection (CBP)

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<sup>2</sup> See Nucor Tubular Product Inc.'s Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey: Request for Administrative Review," dated May 28, 2020; see also Wheatland Tube Company's Letter, "Circular Welded Carbon Steel Pipe and Tubes from Turkey Request for Administrative Review," dated May 29, 2020. The twenty companies for which the petitioners requested an administrative review are: (1) Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan Mannesmann); (2) Borusan Istikbal Ticaret T.A.S. (Istikbal); (3) Toscelik Profil ve Sac Endustrisi A.S. (Toscelik); (4) Tosyali Dis Ticaret A.S. (Tosyali Ticaret); (5) Toscelik Metal Ticaret A.S. (Toscelik Metal); (6) Borusan Birlesik Boru Fabrikalari San ve Tic (Borusan Birlesik); (7) Borusan Gemlik Boru Tesisleri A.S. (Borusan Gemlik); (8) Borusan Holding; (9) Borusan Ihracat Ithalat ve Dagitim A.S. (Borusan Ihracat); (10) Borusan Ithicat ve Dagitim A.S. (Borusan Ithicat); (11) Borusan Mannesmann Yatirim Holding (Borusan Yatirim); (12) Tubeco Pipe and Steel Corporation (Tubeco); (13) Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan); (14) Kale Baglanti Teknolojileri San. ve Tic. A.S. (Kale Baglanti); (15) Noksel Celik Boru Sanayi A.S. (Noksel Celik); (16) Cayirova Boru Sanayi ve Ticaret A.S. (Cayirova); (17) Yucel Boru ve Profil Endustrisi A.S. (Yucel); (18) Yucelboru Ihracat ve Pazarlama A.S. (Yucelboru); (19) Kale Baglann Teknolojileri San. ve Tic. A.S. (Kale Baglann); and (20) Cinar Boru Profil San. Ve Tic. AS (Cinar Boru).

<sup>3</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 29, 2020.

<sup>4</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 41540 (July 10, 2020) (*Initiation Notice*).

<sup>5</sup> See Toscelik's Letter, "Circular Welded Carbon Steel Pipe from Turkey; Toscelik No Shipments Letter," dated June 3, 2020, and Yucel's Letter, "Circular Welded Carbon Steel Pipe from Turkey; Yucel No Shipments Letter," dated June 3, 2020.

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

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

<sup>8</sup> See Yucel's Letter, "Circular Welded Carbon Steel Pipe from Turkey; Yucel No Shipments Letter," dated June 3, 2020; see also Yucel's Letter, "Circular Welded Carbon Steel Pipe from Turkey; Comments Regarding No-Shipment Letters," dated September 22, 2020.

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

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

<sup>11</sup> See Cinar Boru Profil Sanayi ve Ticaret Anonim Sirketi's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey (A-489-501)," dated June 19, 2020.

<sup>12</sup> See Erbosan's Letter, "No Shipment Certification of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. ("ERBOSAN") in the 2019-2020 Administrative Review of the Antidumping Duty Order Involving Certain Welded Carbon Steel Standard Pipe from Turkey," dated July 9, 2020.

<sup>13</sup> See Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: No Shipments Letter," August 14, 2020. Note that, while we received no information from CBP regarding the existence of entries of subject merchandise from Istikbal during the POR, we continue to find Istikbal to be part of the single entity, Borusan, and we find no record evidence that warrants altering this treatment.

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

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

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

<sup>17</sup> *Id.*

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

data for U.S. imports of CWP from Turkey and, on August 12, 2020, Commerce released the CBP data for comment.<sup>19</sup> The CBP data revealed no evidence of shipments of CWP from Turkey produced and/or exported by the aforementioned companies during the POR.<sup>20</sup>

In the *Initiation Notice*, we stated that, in the event we limited the number of respondents for individual examination, we intended to select respondents based on CBP data.<sup>21</sup> We selected as our sole mandatory respondent the exporter/producer accounting for the largest volume of CWP from Turkey during the POR (*i.e.*, Borusan).<sup>22</sup>

We issued our standard antidumping questionnaire to Borusan on September 28, 2020.<sup>23</sup> Between October 29, 2020, and May 26, 2021, Borusan submitted timely responses to Commerce's original and supplemental questionnaire.<sup>24</sup> During the same time period, Wheatland submitted comments regarding Borusan's questionnaire responses.<sup>25</sup>

On December 15, 2020, Wheatland alleged that a particular market situation (PMS) existed in Turkey during the POR such that the costs of production (COP) of pipes and tubes are distorted and do not accurately reflect the COP in the ordinary course of trade.<sup>26</sup> Accordingly, Wheatland requested that Commerce use an alternative method for calculating COP and constructed value (CV) in this administrative review.<sup>27</sup> On April 22, 2021, we notified interested parties that we accepted petitioner's PMS new factual information on the record and established a deadline for interested parties to submit factual information to rebut, clarify or correct the information in Wheatland's PMS Allegation.<sup>28</sup> On May 10, 2021, Borusan submitted rebuttal comments to

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<sup>19</sup> See Memorandum, "Welded Carbon Steel Standard Pipe and Tube Products from Turkey: U.S. Customs and Border Protection Information for 2019-2020 Review Period," dated August 12, 2020 (CBP Data Memo).

<sup>20</sup> *Id.*

<sup>21</sup> See *Initiation Notice*.

<sup>22</sup> See Memorandum, "Administrative Review of the Antidumping Duty Order on Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Respondent Selection," dated September 22, 2020.

<sup>23</sup> See Commerce's Letter, Initial AD Questionnaire, dated September 28, 2020 (Commerce's Initial Questionnaire).

<sup>24</sup> See, *e.g.*, Borusan's Letters, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Response to Section A of the Initial Questionnaire," dated October 29, 2020 (SAQR); "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Response to Sections B-D of the Initial Questionnaire," dated November 25, 2020 (SBDQR); and "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Response to First Supplemental Questionnaire," dated May 26, 2021.

<sup>25</sup> See Wheatland's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey: Deficiency Comments on BMB's Sections B-D Response," dated December 9, 2020.

<sup>26</sup> See Wheatland's Letters, "Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Particular Market Situation Allegation – Qualitative Submission," dated December 15, 2020 (Wheatland's PMS Allegation); and "Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Particular Market Situation Allegation – Quantitative Submission," dated December 15, 2020 (Wheatland's Quantitative PMS Submission).

<sup>27</sup> *Id.*

<sup>28</sup> See Commerce's Letter, "2019-2020 Administrative Review of the Antidumping Duty Order on Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey," dated April 22, 2021 (Commerce's Letter on PMS Rebuttal Factual Info Comments).

Wheatland's PMS allegation.<sup>29</sup>

On March 25, 2021, we postponed the deadline for the preliminary results by 120 days, until July 30, 2021.<sup>30</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. PRELIMINARY DETERMINATION OF NO SHIPMENTS**

Between June 3, and August 14, 2020, we received no-shipment certifications from Toscelik Endustrisi, Tosyali Ticaret, Toscelik Metal, Cayirova, Yucel Endustrisi, Yucelboru, Cinar Boru, Erbosan, Borusan Birlesik, Borusan Gemlik, Borusan Ihracat, Tubeco, and Borusan Ithicat, in which each certified that they had no exports, sales, or entries of subject merchandise during the POR. Commerce obtained CBP data for U.S. imports of CWP from Turkey entering under case number A-489-501 during the POR (*i.e.*, May 1, 2019, through April 30, 2020), for all parties for which we initiated this administrative review.<sup>31</sup> We received no information from CBP that contradicts the claims of companies that they had no shipments during the POR. However, consistent with our practice, we will not rescind the review with respect to these companies, but rather, will complete the review with respect to them and issue appropriate liquidation instructions to CBP based on the final results of the review.<sup>32</sup>

### **V. COMPANIES NOT SELECTED FOR INDIVIDUAL EXAMINATION**

This review includes five companies that were not selected for individual examination and did not file a certification of no shipment: (1) Borusan Holding; (2) Borusan Yatirim; (3) Kale Baglann; (4) Kale Baglanti; and (5) Noksel Celik. None of these companies: (1) were the subject of a withdrawal of request for review; (2) requested to participate as a voluntary

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<sup>29</sup> See Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Rebuttal Factual Information to Wheatland's Particular Market Situation Allegation," dated May 10, 2021 (Borusan's PMS Rebuttal Comments).

<sup>30</sup> See Memorandum, "2019-2020 Antidumping Duty 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 March 25, 2021.

<sup>31</sup> See CBP Data Memo.

<sup>32</sup> See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

respondent; or (3) submitted a claim of no shipments.

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

Using section 735(c)(5)(A) of the Act as guidance, we have preliminarily assigned to the companies not individually examined in this review a weighted-average dumping margin of 26.22 percent, which is the weighted-average dumping margin calculated for Borusan.

## **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 Borusan’s sales of the subject merchandise 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 NVs to weighted-average EPs (or CEP) (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In a less-than-fair-value investigation, Commerce examines whether to compare weighted-average NVs with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern 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 a less-than-fair-value investigation.<sup>33</sup>

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<sup>33</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 Issues and Decision Memorandum (IDM)) at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286, 1322 (CIT 2014), *aff’d*, 862 F. 3d 1337 by the Court of Appeals for the Federal Circuit (CAFC) (CAFC 2017); and *JBF RAK LLC v. United States*, 790 F.3d 1358, 1363-65 (CAFC 2015) (“{t}he fact that the statute is silent with regard to administrative reviews does not preclude Commerce from filling gaps in the statute to properly calculate and assign antidumping duties”) (citations omitted).

In numerous AD investigations and administrative reviews, 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>34</sup> Commerce finds that the differential pricing analysis is instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, states) 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 POR 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 EP or CEP and NV for the individual dumping margins.

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

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<sup>34</sup> See, e.g., *Xanthan Gum from the People’s Republic of China: Final Determination of Sales at Less Than Fair*, 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); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

*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 described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

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

## B. Results of the Differential Pricing Analysis

For Borusan, based on the results of the differential pricing analysis, Commerce preliminarily finds that 76.1 percent of the value of U.S. sales pass the Cohen's *d* test,<sup>35</sup> and confirms the

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<sup>35</sup> See Memorandum, "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 (Preliminary Analysis Memorandum) at Attachment 1.

existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods. Further, Commerce preliminarily determines that there is no meaningful difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using the alternative comparison method based on applying the average-to-transaction method to all U.S. sales.<sup>36</sup> Thus, for these preliminary results, Commerce is applying the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Borusan.<sup>37</sup>

### Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered in-scope products produced and sold by Borusan in Turkey during the reporting period to be foreign like products for purposes of determining NV for the subject merchandise. Pursuant to 19 CFR 351.414(f)(3), we compared Borusan's U.S. sales to its home market sales of foreign like product sales made in the ordinary course of trade, where appropriate.

Borusan reported that only prime merchandise was sold in the home market and U.S. market.<sup>38</sup> The U.S. sales are compared to home market sales of either identical or most similar foreign like products in terms of physical characteristics, in the following order of importance: grade, nominal pipe size, wall thickness, surface finish, and end finish.<sup>39</sup>

### Date of Sale

Section 351.401(i) of Commerce's regulations states that in identifying the date of sale of the subject merchandise or foreign like product, Commerce normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business. However, Commerce may use a date other than the date of invoice if Commerce is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. Furthermore, if the shipment date precedes the invoice date, then Commerce will use the shipment date as the date of sale.<sup>40</sup>

With respect 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, Borusan has reported the shipment date as the date of sale where the shipment date preceded the invoice date

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<sup>36</sup> *Id.*

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

<sup>38</sup> See Borusan's SBDQR at B-11 and C9.

<sup>39</sup> See Commerce's Initial Questionnaire at B15-B18 and C12-C15.

<sup>40</sup> See *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; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from German*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

<sup>41</sup> See SAQR at A-22, and Borusan's SBDQR at C19.

because under these circumstances the shipment date best reflects the date on which the material terms of sale were established.<sup>42</sup>

Similarly, for its home market sales, Borusan has reported the invoice date as the date of sale, because record evidence indicates that the invoice date is the date by which material terms of sale, such as prices and quantities, have been finalized, and there is no indication that changes to material terms of sale occurred subsequent to invoice date.<sup>43</sup> Moreover, consistent with Commerce's practice, Borusan reported 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>44</sup> In accordance with our regulatory preference, for purposes of these preliminary results, we used Borusan's reported date of sale for both home market and U.S. sales.

### 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>45</sup> and issued *Proclamation 9705* that mandated, to address national security concerns, the imposition of a global tariff of 25 percent<sup>46</sup> 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 U.S. 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>47</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

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

<sup>43</sup> See Borusan's SBDQR at B22-B23.

<sup>44</sup> *Id.*

<sup>45</sup> See 19 U.S.C. § 1862.

<sup>46</sup> Please note that, effective August 13, 2018, section 232 tariff rate for certain steel articles, including the subject merchandise, imported from Turkey had increased from 25 percent to 50 percent. Section 232 duty rate of 50 percent remained in effect until May 20, 2019.

<sup>47</sup> See *Wheatland Tube Co. v. United States*, 495 F.3d 1355, 1363 (Fed. Cir. 2007) (*Wheatland*).

States import duties.”<sup>48</sup>

The CAFC then found reasonable Commerce’s analysis that section 201 duties were more akin to antidumping duties than “ordinary customs duties.”<sup>49</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>50</sup> In sustaining Commerce’s decision regarding section 201 duties in *Wheatland*, the CAFC also held that “{t}o 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>51</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>52</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>53</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>54</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

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<sup>48</sup> *Id.* at 1361.

<sup>49</sup> *Id.* at 1362.

<sup>50</sup> *Id.* at 1362-63.

<sup>51</sup> *Id.* at 1365.

<sup>52</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>53</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>54</sup> See *Proclamation 9705*, 83 FR at 11627.

are to be imposed in addition to other duties unless expressly provided for in the proclamations.<sup>55</sup> The Annex to *Proclamation 9740* refers to section 232 duties as “ordinary” customs duties, and it also states that “{a} 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 above and consistent with our treatment of 232 duties in *OCTG Ukraine*,<sup>56</sup> we have determined that section 232 duties should be treated as “United States import duties” for purposes of section 772(c)(2)(A) of the Act — and thereby as “U.S. Customs duties,” which are deducted from U.S. price.<sup>57</sup>

### 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.

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.<sup>58</sup>

With respect to section 232 duties, Borusan confirmed that it paid section 232 duties on its EP sales with entries made on or after March 23, 2018, the effective date of section 232 duties.<sup>59</sup> 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>60</sup> The inclusion of those 232

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<sup>55</sup> See *Proclamation 9705*, 83 FR at 11627; see also *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; and *Proclamation 9777*, 83 FR at 45025. The proclamations do not expressly provide that 232 duties receive different treatment.

<sup>56</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 Antidumping Duty Investigation on Certain Oil Country Tubular Goods from Ukraine,” dated February 15, 2019 at Comment 1.

<sup>57</sup> See Preliminary Analysis Memorandum.

<sup>58</sup> See Preliminary Analysis Memorandum; see also Borusan’s SBDQR at C21.

<sup>59</sup> See Borusan’s SBDQR at C66-C69.

<sup>60</sup> *Id.*; see also Preliminary Analysis Memorandum.

duties in the price of the sales at issue was supported by the U.S. sales database. 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.<sup>61</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.<sup>62</sup>

### 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>63</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>64</sup> In accordance with section 772(d)(1) of the Act, we calculated the 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>65</sup>

With respect to section 232 duties, Borusan confirmed that it paid section 232 duties on certain of its CEP sales with entries made on or after March 23, 2018, the effective date of section 232 duties.<sup>66</sup> 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>67</sup> The inclusion of those 232

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

<sup>62</sup> *Id.*

<sup>63</sup> See Borusan’s SBDQR at C21.

<sup>64</sup> See Preliminary Analysis Memorandum.

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

<sup>66</sup> See Borusan’s SBDQR at C64 to C65 and C66 to C69.

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

duties in the price of the sales at issue was supported by the U.S. sales database. Accordingly, we deducted from CEP, as appropriate, the amount of section 232 duties that Borusan reported, consistent with section 772(c)(2)(A) of the Act.<sup>68</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>69</sup>

### Duty Drawback

Borusan claimed a duty drawback adjustment to U.S. price.<sup>70</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>71</sup> The first element is that the import duty and its rebate or exemption be directly linked to, and dependent upon, one another; the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback or exemption granted for the export of the manufactured product.<sup>72</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 as described above for Turkey’s duty drawback program or Inward Processing Regime.<sup>73</sup> Also, consistent with the practice established in *Rebar Trade*,<sup>74</sup> we limited the amount of the duty drawback adjustment by the per-unit duty costs included in the respondents’ COP.<sup>75</sup>

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<sup>68</sup> See Preliminary Analysis Memorandum.

<sup>69</sup> See Preliminary Analysis Memorandum.

<sup>70</sup> See Borusan’s SBDQR at C45 – C49.

<sup>71</sup> See *Saha Thai Steel Pipe Public Co., v. United States*, 635 F.3d 1335, 1440-41 (Fed. Cir. 2011).

<sup>72</sup> *Id.*; see also *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>73</sup> See Borusan’s SBDQR at C45 – C49; see also Preliminary Analysis Memorandum.

<sup>74</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*) at 15-18.

<sup>75</sup> See Preliminary Analysis Memorandum.

## Normal Value

### A. Home Market Viability

In order to determine whether there was a sufficient volume of sales of CWP 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 normally compare the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(A) and (B) of the Act. If we determine that no viable home market exists, we may, if appropriate, use a respondent's sales of the foreign like product to a third country market as the basis for comparison market sales in accordance with section 773(a)(1)(C).

In the instant review, we determined that Borusan's respective aggregate volume of home market sales of the foreign like product was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise. Therefore, we used home market sale prices as the basis for NV for Borusan, in accordance with section 773(a)(1)(B) of the Act.

### 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. sale prices. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent).<sup>76</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>77</sup> In order to determine whether the comparison 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 and 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>78</sup> we consider the starting prices (*i.e.*, gross unit prices less all discounts and rebates) 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>79</sup> To determine whether comparison market sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.<sup>80</sup> If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales

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<sup>76</sup> See 19 CFR 351.412(c)(2).

<sup>77</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), and accompanying Issues and Decision Memorandum (*Orange Juice from Brazil*) at Comment 7.

<sup>78</sup> See 19 CFR 351.412(c)(1).

<sup>79</sup> See *Micron Tech., Inc. v. United States*, 243 F.3d 1301, 1314-16 (Fed. Cir. 2001).

<sup>80</sup> See 19 CFR 351.412(c)(2).

on which NV is based and the comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

When Commerce is unable to match U.S. sales of subject merchandise to the foreign like product in the comparison market at the same LOT as the EP or CEP, Commerce may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it possible, we make an 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>81</sup>

In this review, we obtained information from Borusan 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>82</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>83</sup>

In the home market, Borusan reported that it used one channel of distribution comprised of direct sales to distributors or industrial users.<sup>84</sup> Borusan reported that it performed the same selling activities for each type of customer within this channel of distribution.<sup>85</sup> Based on its reported selling function categories, we preliminarily find that Borusan 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 three channels of distribution: (1) EP sales to unaffiliated U.S. customers; (2) sales from Borusan's U.S. affiliate's inventory;<sup>86</sup> and (3) back-to-back sales through Borusan's U.S.affiliate.<sup>87</sup> Borusan did not report an LOT in its

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<sup>81</sup> See, e.g., *Orange Juice from Brazil* IDM at Comment 7.

<sup>82</sup> See Borusan SAQR at A18 – A21 and Exhibit A-6 and A-7.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at A18.

<sup>85</sup> *Id.* at A18 – A19.

<sup>86</sup> *Id.* at A19 – A22.

<sup>87</sup> See, e.g., Borusan SAQR at A17.

U.S. sales database, maintaining that there is only one LOT in the U.S. market.<sup>88</sup> For the three 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. 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). Consequently, the record evidence supports a finding that in both markets, Borusan performed essentially the same level of services. Accordingly, we determine that Borusan's U.S. sales and home market sales represent the same level of selling activities, and are, thus, at the same LOT. Therefore, for the preliminary results, we find that an LOT adjustment or a CEP offset is not warranted for Borusan.

### 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>89</sup>

Borusan reported some home market sales to affiliated customers during the POR.<sup>90</sup> To test whether those sales to affiliated customers 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 comparable merchandise, then we determine that sales to the affiliated parties were made 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 Borusan's 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>

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<sup>88</sup> See Borusan's SBDQR at C28.

<sup>89</sup> See 19 CFR 351.403(c).

<sup>90</sup> See Borusan's SAQR at A3 and SBDQR at B4.

<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's SAQR at A3.

## D. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, we requested cost information from Borusan in this review to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices less than the COP of the product.<sup>93</sup>

### 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 methodology 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) whether the change in the cost of manufacturing (COM) recognized by the respondent during the POR is deemed significant; (2) 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>94</sup>

Borusan stated that its subject merchandise sold during the POR was also produced during the POR (*i.e.*, between May 1, 2019, and April 30, 2020) and thus, its cost reporting period is based on the above period.<sup>95</sup>

### B. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP for Borusan based on the sum of the costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and financial expenses.<sup>96</sup> We relied on the annual COP data submitted by Borusan in its questionnaire responses for the COP calculation.<sup>97</sup>

### C. Test of Comparison Market Sales Prices

On a product-specific basis, pursuant to section 773(b) of the Act, we compared the weighted-average COPs to the home market sales prices of the foreign like product 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 home market sales prices that were exclusive of any applicable billing adjustments, discounts and rebates, where applicable, movement charges, actual direct and indirect selling expenses, and packing expenses.

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<sup>93</sup> See Commerce's Initial Questionnaire.

<sup>94</sup> See *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010), and accompanying IDM at Comment 6; see also *Stainless-Steel Plate in Coils from Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398 (December 11, 2008), and accompanying IDM at Comment 4.

<sup>95</sup> See Borusan's SBDQR at D-2 to D-3.

<sup>96</sup> See "Test of Comparison Market Sales Prices" section, below, for treatment of home market selling expenses.

<sup>97</sup> See Borusan's SBDQR at Exhibit D-1.

#### *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 "substantial quantities," in accordance with section 773(b)(2)(B) and (C) of the Act; and; (2) based on our comparison of prices to the weighted-average COPs for the reporting period, 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 more than 20 percent of Borusan home market sales were at prices less than the COP, and that 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 that were made in the ordinary course of trade, we based NV on home market prices. We calculated NV based on packed, delivered, or ex-works prices that Borusan reported for home market sales to unaffiliated customers that we determined were made within the ordinary course of trade. We also included home market sales to affiliated parties that were made at arm's-length prices and in the ordinary course of trade.

We adjusted the starting price, where appropriate, for billing adjustments, discounts, and rebates, in accordance with 19 CFR 351.401(c). We also made deductions from the starting price for movement expenses (*e.g.*, inland freight) in accordance with section 773(a)(6)(B)(ii) of the Act. 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>98</sup> In addition, we made adjustments for differences in circumstances of sale, where appropriate, by deducting direct selling expenses incurred for home market sales and adding U.S. direct selling expenses to NV (*e.g.*, credit expenses and bank charges), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.<sup>99</sup>

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

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

When comparing U.S. sale prices with home market sales of similar merchandise, we also made an adjustment for physical differences in merchandise in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.411(b). We based this adjustment on the difference in the variable cost of manufacturing for the foreign like products and the subject merchandise.<sup>100</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>101</sup>

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

In accordance with section 773(e) of the Act, and where applicable, we calculated CV based on the sum of Borusan's material and fabrication costs, G&A, and financial expenses, as detailed above in the Calculation of COP section, selling expenses, profit and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we have based selling expenses and profit on the amounts incurred and realized by Borusan in connection with the production and sale of the foreign like product at the same LOT as the U.S. sale, in the ordinary course of trade, for consumption in the home market.

We added an amount for export packing expenses. In addition, we made adjustments for differences in circumstances of sale, where appropriate, by deducting direct selling expenses incurred for home market sales and adding U.S. direct selling expenses to NV (*e.g.*, credit expenses), in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

#### *G. Particular Market Situation*

##### Background

In the 2017-2018 administrative review of CWP from Turkey, Commerce found that a PMS existed in Turkey which distorted the COP of CWP, based on our consideration of the cumulative effects of: (1) global overcapacity of steel and price suppression of steel inputs into subject merchandise; (2) Government of Turkey (GOT) control of Ereğli Demir Çelik Fabrikiler Tacet A.S. (Erdemir) and Iskenderun Demir ve Çelik A.S. (Isdemir); and (3) the GOT's subsidies to HRC producers in Turkey.<sup>102</sup> As noted above, in December 2020, Wheatland submitted factual information and a letter in which it argued that Commerce should find, based on these same three factors, that a PMS continues to exist in Turkey in the instant POR with respect to hot-rolled coil (HRC), the largest input used to produce CWP, and that we should

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<sup>100</sup> See 19 CFR 351.411(b).

<sup>101</sup> See Preliminary Analysis Memorandum.

<sup>102</sup> See *Circular Welded Carbon Steel Standard Pipe and Tube Products from Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017–2018*, 85 FR 3616 (January 22, 2020) (2017-2018 Administrative Review of CWP from Turkey), and accompanying at Comments 1 and 2.

make corrective adjustments to the respondents' reported costs.<sup>103</sup> Also in April 2021, we invited interested parties to submit factual information to rebut, clarify, or correct the factual information in the Particular Market Situation Allegation.<sup>104</sup> In May 2021, Borusan submitted factual information and comments concerning the Particular Market Situation Allegation.<sup>105</sup>

### Wheatland's Allegation

Wheatland asserts that Commerce should find in this review that the PMS allegation and the record evidence concerning the allegation remain largely unchanged from those that led to the finding of a PMS in the *2017-2018 Administrative Review of CWP from Turkey* and that Commerce should find a PMS exists in the instant review.<sup>106</sup> The petitioner also asserts that the same three factors that led Commerce to find that a PMS existed in the *2017-2018 Administrative Review of CWP from Turkey* are still present in the instant review. According to Wheatland, acquisition prices of HRC, the primary input into the production of CWP, were distorted in Turkey during this instant POR due to the following three factors: (1) the GOT's control over Erdemir and Isdemir, which account for the majority of domestic production of HRC in Turkey;<sup>107</sup> (2) Turkish government subsidies on HRC inputs;<sup>108</sup> and (3) Turkish imports of HRC from Russia and other countries that entered at prices distorted by dumping, subsidization, and global overcapacity but were not subject to any trade remedy measures in Turkey during the POR.<sup>109</sup> Wheatland maintains that Turkish imports of HRC from Russia at distorted prices as a result of Chinese overcapacity are a particularly acute problem in the Turkish market for HRC, as evidenced by a lower average unit value (AUV) and a higher quantity of imports of HRC during the POR, compared to imports of HRC in 2012.<sup>110</sup> Specifically, Wheatland maintains that Turkey's imports of HRC from the world rose 30.6 percent from 2012 to 2019, while the AUV fell by 18.5 percent.<sup>111</sup> According to Wheatland, the largest source of the increase in imports was by far Russia.<sup>112</sup> Wheatland also maintains that Turkey's imports of HRC from Russia more than tripled from 2012 to 2019, and Russia's share of Turkey's imports from the world rose from 15.7 percent in 2012 to 36.4 percent in 2019.<sup>113</sup> Wheatland asserts that the aforementioned factors, each individually and combined, created a PMS that rendered the costs of producing CWP in Turkey not reflective of costs in the ordinary course of trade during the POR.<sup>114</sup>

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<sup>103</sup> See Wheatland's PMS Allegation.

<sup>104</sup> See Commerce's Letter on PMS Rebuttal Factual Info Comments.

<sup>105</sup> See Borusan's PMS Rebuttal Comments.

<sup>106</sup> See Wheatland's PMS Allegation at 2-3.

<sup>107</sup> *Id.* at 4-7 (citing *2017-2018 Administrative Review of CWP from Turkey* IDM at Comment 1).

<sup>108</sup> *Id.* at 7-8 (citing *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Affirmative Determination*, 81 FR 53433, 53434 (August 12, 2016) (establishing a final subsidy rate of 6.01 percent for Erdemir and "all others" except Golakoghi Dis Ticaret A.S.) (*CVD HRSFP Turkey*)).

<sup>109</sup> *Id.* at 8-18.

<sup>110</sup> *Id.* at 10-11.

<sup>111</sup> *Id.* at Exhibit 8.

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

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 18.

Further, Wheatland argues that Commerce should, as it did in a previous administrative review of this order,<sup>115</sup> quantify the impact of the PMS on HRC by adjusting Borusan's reported COP using a global excess capacity-based regression analysis that it provided on the record. Wheatland states that this regression analysis quantifies the impact of global steel excess capacity on the price of HRC in Turkey and derives a corresponding percentage adjustment factor that, when applied to Borusan's costs of HRC, accounts for the distortions inherent to an overcapacity-driven PMS.<sup>116</sup> Wheatland argues that, as Commerce recognized in a prior segment of this proceeding, *i.e.*, the *2017-2018 Administrative Review of CWP from Turkey*, it has demonstrated that the relationship between global excess steel capacity and prices for HRC in Turkey continued during the instant POR. Furthermore, Wheatland notes that in this review, it has developed a regression analysis that demonstrates and quantifies the significant distortion in the Turkish HRC market caused by the global excess capacity crisis.<sup>117</sup> Wheatland contends that, as was the case in the *2017-2018 Administrative Review of CWP from Turkey*, it has formulated a PMS adjustment for this administrative review that accounts for the global overcapacity leading to PMS, seeking an adjustment for the overall distortion in the market.<sup>118</sup>

#### Interested Parties' Rebuttal Comments Regarding the PMS Allegation

Borusan argues that the three factors petitioners cite to support their PMS allegation (*i.e.*, (1) Turkish subsidies on HRC inputs; (2) GOT control of Erdemir and Isdemir; and (3) Turkish imports from Russia at distorted prices as a result of Chinese overcapacity), all fail to state the facts correctly and, therefore, fail to establish that there is any PMS in Turkey that warrants an adjustment to Borusan's costs of producing CWP.<sup>119</sup>

Borusan maintains that Commerce has concluded in numerous CVD investigations and administrative reviews involving Turkey, that the Turkish market for HRC is not distorted,<sup>120</sup> as evidenced by Commerce's calculation of a *de minimis* subsidy rate for Borusan in the *2018 Administrative Review of OCTG from Turkey*.<sup>121</sup> According to Borusan, the only Turkish subsidies found by Commerce on HRC that Wheatland cites were from a determination five years ago,<sup>122</sup> which is not sufficient evidence to support a PMS finding due to the length of time since the initial determination.<sup>123</sup>

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<sup>115</sup> See *2017-2018 Administrative Review of CWP from Turkey* IDM at Comment 2.

<sup>116</sup> See Wheatland's Quantitative PMS Submission at 2-12 and Exhibits 1-13.

<sup>117</sup> *Id.*

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

<sup>119</sup> See Borusan's PMS Rebuttal Comments at 3.

<sup>120</sup> See, e.g., *Oil Country Tubular Goods from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review, Rescission in Part, and Intent To Rescind in Part; 2018*, 86 FR 7069 (January 26, 2021) (*2018 OCTG Turkey*), and accompanying PDM, unchanged in *Oil Country Tubular Goods From the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2018*, 86 FR 24842 (May 10, 2021) (*Final 2018 OCTG Turkey*).

<sup>121</sup> *Id.*

<sup>122</sup> See *CVD HRSFP Turkey*.

<sup>123</sup> See Borusan's PMS Rebuttal Comments at 7-8 (citing *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No*

Borusan further disputes Wheatland’s claim that the GOT controls Erdemir and Isdemir. It argues that this claim has directly been refuted by numerous countervailing duty investigations and administrative reviews, all of which involve Erdemir to some degree, in which Commerce has found that there is no distortion in the Turkish HRC market caused by the GOT’s presence in the hot-rolled steel market.<sup>124</sup>

Moreover, as to Wheatland’s claim of the impact of overcapacity on the HRC market, evidenced by Turkish imports of Russian HRC, Borusan argues that Wheatland conveniently leaves out several important facts and fails to justify why Commerce should compare 2012 to 2019 import data when Commerce has found in several recent cases that a five-year period is instructive when analyzing the health of the steel industry.<sup>125</sup> According to Borusan, with a five-year comparison, one can see that imports from both Russia and China into Turkey have declined while AUVs have increased, and imports as a whole have increased by less than 1 percent.

Borusan maintains that Wheatland did not include Turkish import data from 2020 in its PMS allegation, even though four of the twelve months of the POR are in 2020, and any analysis of Turkish import data and any finding on distortion in the market during the POR must be based on data from the POR. Accordingly, Borusan submitted Turkish HRC import data that it maintains are sourced from the GOT for all imports of HRC into Turkey for 2020.<sup>126</sup> According to Borusan, Turkish imports of HRC decreased in 2020 compared to 2017 and 2019, and are essentially flat when compared to 2015.<sup>127</sup> Moreover, the AUVs for imports from all sources, including Russia, have increased between 2015 and 2020.<sup>128</sup> Borusan further maintains that reports from around the world indicate that there are shortages of steel in all major steel consuming markets; lead times are being extended out several months; and prices have hit historic record highs.<sup>129</sup>

On February 18, 2021, Borusan notified Commerce that the U.S. Court of International Trade (CIT) held in its review of the *2017-2018 Administrative Review of CWP from Turkey* that Borusan’s COP could not be adjusted for a PMS under section 773(b) of the Act and, thus, Commerce’s decision to adjust Borusan’s COP was contrary to law. Accordingly, Borusan argues, this CIT decision should lead Commerce to decline to initiate on Wheatland’s PMS

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*Shipments; 2018-2019*, 86 FR 15912 (March 25, 2021), and accompanying PDM at 10-15; *Welded Line Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 20484 (April 20, 2021), and accompanying PDM at 9-14).

<sup>124</sup> See Borusan’s PMS Rebuttal Comments at 15-19 (citing, e.g., *2018 OCTG Turkey* PDM at 14, in which Commerce stated “{g}iven the minority share of government production, the substantial levels of imports, and the lack of other record evidence indicative of distortion, we preliminarily find, consistent with our prior determinations noted above, that the HRS market in Turkey was not distorted by the government’s presence for this period.”).

<sup>125</sup> See Borusan’s PMS Rebuttal Comments at 9.

<sup>126</sup> *Id.* at 9-10 and Attachment 3.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 12.

allegation in this review, because this CIT decision addressed the same allegation made by the same domestic interested party with respect to the same respondent company.<sup>130</sup>

Finally, Borusan argues that, even if Commerce concludes that a PMS exists in Turkey, Wheatland's regression analysis is flawed and should not be used to adjust Borusan's costs. Borusan contends that the premise of the regression model, that Chinese overcapacity has driven down worldwide pricing, is flawed because in less than six months since the end of the review period, HRC prices in the United States are not only nearly double what they were in first quarter of 2020, but worldwide prices have risen to much higher levels. According to Borusan, the aforementioned facts contradict Wheatland's claim with respect to overcapacity and explain why Wheatland has disregarded 2020 data in its entirety, even though half the review period is in 2020.<sup>131</sup>

For the reasons noted above, Borusan argues that Wheatland has failed to prove that Russian imports, or other factors in the HRC market, have caused a PMS in Turkey that resulted in a distortion of the COP for Borusan. Additionally, Borusan argues that Wheatland's proposed upward adjustment is fundamentally flawed and cannot be used by Commerce. Accordingly, Borusan requests that Commerce find that Wheatland has not sufficiently supported its allegation that a PMS existed in Turkey during the POR.<sup>132</sup>

### Analysis

Section 504 of the Trade Preferences Extension Act of 2015 (TPEA) added the concept of the term "particular market situation" to the definition of "ordinary course of trade" under section 771(15) of the Act and, for purposes of CV, under section 773(e) of the Act. Through section 773(e) of the Act, "particular market situation" also applies to COP under section 773(b)(3) of the Act. Section 773(e) of the Act states that "if a particular market 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."

In this administrative review, Wheatland alleged that a PMS existed in Turkey during the POR which distorted the cost of HRC, a main input in the production of subject merchandise, based on the following factors: (1) the GOT's control of Erdemir and Isdemir; (2) Turkish subsidies on the HRC inputs; and (3) Turkish imports of HRC from Russia as a result of Chinese overcapacity. In the *2017-2018 Administrative Review of CWP from Turkey*, Wheatland alleged that a PMS existed in Turkey based on the same three factors. In the instant administrative review, we have analyzed Wheatland's aforementioned factors to determine whether PMS existed in Turkey during this POR. Based on our analysis, and the record evidence in this proceeding, we have preliminarily determined that a PMS exists in Turkey that distorts the COP

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<sup>130</sup> See Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. A-489-501: Notice of Supplemental Authority Regarding Particular Market Situations," dated February 18, 2021.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.* at 21.

of CWP. We found that record evidence, including HRC import data, has led us to believe that such an increase in imports has played a role in suppressing HRC prices in Turkey during the POR.

First, we analyzed worldwide steel overcapacity. The record shows that the global steel overcapacity crisis persisted during the POR (*see e.g.*, the statement from the 88th session of the OECD Steel Committee, held in September 2020).<sup>133</sup> We note that, to determine the impact of overcapacity on the imports of HRC in Turkey, Wheatland selected import data from seven years preceding the POR (*i.e.*, 2012),<sup>134</sup> and Borusan selected import data from four years preceding the POR (*i.e.*, 2015) to compare to HRC import data during the POR.<sup>135</sup> However, since in prior cases,<sup>136</sup> we compared import data from 5 years preceding the POR to the POR, in the instant case, we compared the HRC imports into Turkey from 2014 to 2019 to determine the impact of overcapacity on worldwide and Russian imports of HRC into Turkey.<sup>137</sup> We also note that, while Borusan submitted import data for the year 2020, that it claimed was sourced from the GOT, Borusan did not: (a) provide a specific GOT source from which it obtained such data; (2) provide supporting documentation for the data; or (3) explain the scope of the data (*e.g.*, no explanation as to which Harmonized Tariff Schedule (HTS) was used for compiling HRC import data from the GOT). Moreover, in support of its argument, Borusan compared HRC import data provided by the petitioner for the year 2015, which are sourced from “UN Comtrade,” to HRC import data for 2020, which, according to Borusan, were sourced from the GOT, even though it is unclear whether such a comparison was made on the same basis (*e.g.*, using the same HTS category and import data for the complete year of 2020). Accordingly, we limited our analysis to the comparison of import data for 2019, which reflects 8 out of 12 months of the POR, as a basis for comparing the HRC import data to 2014 data. Based on record evidence, we found that the impact of overcapacity on HRC imports is evident in Turkey where imports of HRC accounted for a significant portion of domestic consumption of HRC. For example, Turkey’s HRC worldwide imports by quantity increased 29.30 percent and its AUVs decreased 8.9 percent between 2014 and 2019.<sup>138</sup> Specifically, the import quantity of HRC from Russia, the largest exporter of HRC to Turkey during the POR, increased by 163 percent, while the AUV decreased by 11.48 percent from 2014 to 2019.<sup>139</sup> Contrary to Borusan’s claims, record evidence supports a determination that rising imports of low-priced HRC from Russia in particular contributed to the existence of PMS in Turkey during the POR.

Further, like Russia, a number of other countries were driven by global excess capacity to export unfairly traded steel to Turkey during the POR, further distorting Turkey’s overall market for HRC.<sup>140</sup> Record evidence indicates that countries including Ukraine, Korea, Japan, India, China,

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<sup>133</sup> See Wheatland’s PMS Allegation at Exhibit 5, 88th Session of the OECD Steel Committee – Chair’s Statement (September 2020).

<sup>134</sup> See Wheatland PMS Allegation at 7-8 and Exhibit 8.

<sup>135</sup> See Borusan’s PMS Rebuttal Comments at 9-10 and Attachment 3.

<sup>136</sup> See, *e.g.*, 2017-2018 Administrative Review of CWP from Turkey.

<sup>137</sup> See Preliminary Analysis Memorandum.

<sup>138</sup> *Id.* See also Wheatland’s PMS Allegation at Exhibit 8.

<sup>139</sup> *Id.*

<sup>140</sup> *Id.* at 12-18.

and Russia, which together represent over 54 percent of Turkey's total imports of HRC in 2019, had trade remedy measures imposed against them by third countries during the POR.<sup>141</sup> While HRC imports from these countries are subsidized and/or dumped, such practices were not offset by any Turkish trade remedy measures during the POR. Therefore, the GOT did not address the distortions in the Turkish market for HRC resulting from the PMS.

For the reasons noted above, we have preliminarily found that a PMS existed in Turkey during the POR, due to overcapacity. Accordingly, a PMS adjustment to Borusan's reported cost of producing CWP is warranted in these preliminary results, as described in the "Quantification of the Particular Market Situation" section of this decision memorandum. We note, however, that Commerce will continue to evaluate record information involving PMS and may solicit additional information involving the consumption of HRC in Turkey for purposes of its final results of this administrative review. For example, it is useful to look at import penetration, *i.e.*, an analysis of the Turkish market share captured by Russian imports of hot-rolled steel (Russian imports of hot rolled steel as a percentage of Turkish apparent consumption<sup>142</sup> of hot-rolled steel).

As to GOT's ownership of Erdemir and Isdemir, and in light of Commerce's more recent determinations, we find no clear record evidence to suggest that such ownership results in a distortion to the HRC market in Turkey. Further, as Borusan noted, in the *2018 Administrative Review of OCTG from Turkey*, Commerce determined that, given the minority share of the GOT's ownership of production of hot-rolled steel, the substantial level of imports, and the lack of other record evidence indicative of distortion, the HRS market in Turkey was not distorted by the GOT's presence.<sup>143</sup> Wheatland also argues that the GOT subsidizes HRC, as evidenced by Commerce's determination in the countervailing duty investigation of hot-rolled steel flat products from Turkey, occurring approximately five years earlier.<sup>144</sup> However, we find that such a determination, in and of itself, is no longer sufficient evidence to support a PMS finding, due to the length of time since the initial determination and the fact that such a determination has been superseded by other more recent CVD determinations, in which Commerce found no subsidies. For instance, in the 2018 countervailing duty administrative review of OCTG from Turkey, Commerce calculated a *de minimis* subsidy rate for Borusan.<sup>145</sup> Accordingly, we preliminarily find that the factors involving the GOT's ownership of Erdemir and Isdemir and the alleged provision of subsidies are not supported by sufficient record evidence as factors contributing to the PMS in Turkey during the instant POR.

As to Borusan's argument that Commerce should not pursue Wheatland's PMS allegation, we note that Commerce has consistently explained, and the CAFC has agreed, that each administrative review results in a separate determination based upon the administrative record in

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<sup>141</sup> *Id.*

<sup>142</sup> Apparent consumption is equal to domestic production plus imports minus exports.

<sup>143</sup> See *2018 OCTG Turkey* PDM at 14, unchanged in the *Final 2018 OCTG Turkey*.

<sup>144</sup> See *CVD HRSFP Turkey*.

<sup>145</sup> See, *e.g.*, *2018 OCTG Turkey* PDM, unchanged in the *Final 2018 OCTG Turkey*.

that review.<sup>146</sup> Thus, Commerce could reach a different conclusion from one administrative review to the next based upon different facts on the record. Moreover, the Court’s decision in the litigation of the *2017-2018 Administrative Review of CWP from Turkey* is not yet final and conclusive, and the CAFC has not yet addressed Commerce’s interpretation of the statute with respect to PMS adjustments for purposes of the sales-below cost test under the Act. As discussed above, we have considered the facts on the record of this administrative review when determining whether a PMS existed in Turkey during the POR for purposes of these preliminary results, and not the facts on the record of previous proceedings.

### Quantification of the Particular Market Situation

Having preliminarily determined that a PMS exists for Borusan’s production costs for CWP, we then examined whether there was sufficient record evidence to quantify the impact of the PMS to employ an alternative calculation methodology, as contemplated by section 504 of the TPEA. We preliminarily determine that there is sufficient evidence to quantify the impact of the PMS and apply an upward adjustment to Borusan’s reported costs for their HRC inputs, as discussed below.

Wheatland argues that Commerce should quantify the impact of the PMS on HRC by adjusting the respondents’ costs using a global excess capacity-based regression analysis that it provided on the record, as it did in a previous administrative review of this order. Wheatland states that this regression analysis quantifies the impact of global steel excess capacity on the price of HRC in Turkey and derives a corresponding percentage adjustment factor that, when applied to the respondents’ costs of HRC, accounts for the distortions inherent to an overcapacity-driven PMS. According to Wheatland, the methodologies it applied to the regression analysis in this instant review are similar to those submitted in the 2017-2018 administrative review of this order.<sup>147</sup>

Regarding the regression analysis, Borusan argues that there are myriad flaws in the model proposed by Wheatland, the most fundamental of which is the fact that it does not include data from 2020.<sup>148</sup> However, the POR includes only the first four months of 2020, such that including data from all of 2020 would involve a significant amount of data from beyond the POR. Commerce has stated previously that such an approach would be inappropriate.<sup>149</sup>

Therefore, after reviewing and considering all of the data, regression models, and arguments on

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<sup>146</sup> See *Qingdao SeaLine Trading Co., Ltd. v. United States*, 766 F.3d 1378, 1387 (Fed. Cir. 2014) (“{E}ach administrative review is a separate exercise of Commerce’s authority that allows for different conclusions based on different facts in the record.”); see also *Stainless Steel Sheet and Strip in Coils from Taiwan; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 7519 (February 13, 2006), and accompanying IDM (“each administrative review of the order represents a separate administrative proceeding and stands on its own”); and *Fresh Garlic from the People’s Republic of China Final Results of Antidumping Administrative Review and Rescission of New Shipper Review*, 67 FR 11283 (March 13, 2002), and accompanying IDM (“what transpired in previous reviews is not binding precedent in later reviews”).

<sup>147</sup> See Particular Market Situation Quantitative Submission at 3.

<sup>148</sup> See Rebuttal Factual Information to Wheatland’s Particular Market Situation Allegation at 19.

<sup>149</sup> See, e.g., *Certain Oil Country Tubular Goods from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 41949 (July 13, 2020), and accompanying IDM at 50.

the record, Commerce finds that Wheatland's regression is adequate for the purpose of quantifying a PMS adjustment for these preliminary results. Commerce will continue to evaluate the submitted regression models as we continue to develop the concepts and types of analysis that are necessary to address allegations of PMS under section 773(e) of the Act.

## VII. CURRENCY CONVERSION

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

## VIII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

7/30/2021

X



Signed by: CHRISTIAN MARSH

\_\_\_\_\_  
Christian Marsh  
Acting Assistant Secretary  
for Enforcement and Compliance