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MEMORANDUM TO: David M. Spooner  
Assistant Secretary  
for Import Administration

FROM: Stephen J. Claeys  
Deputy Assistant Secretary  
for Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Results of the  
Antidumping Duty New Shipper Review: Certain Welded Carbon  
Steel Pipe and Tube from Turkey

### **Summary**

We have analyzed the case and rebuttal briefs of the petitioner<sup>1</sup> and the respondent<sup>2</sup> for the final results of the antidumping duty new shipper review covering certain welded carbon steel pipe and tube (“pipe and tube”) from Turkey. We recommend that you approve the position we have developed in the “Department’s Position” section of this memorandum.

### **Background**

On May 3, 2006, the Department of Commerce (“the Department”) published in the Federal Register the preliminary results of this antidumping duty new shipper review of pipe and tube from Turkey.<sup>3</sup> The period of review (“POR”) is May 1, 2004, through April 30, 2005. On June 2, 2006, we received a case brief from petitioner. On June 9, 2006, we received a rebuttal brief from respondent. We did not receive a request for a hearing from interested parties.

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<sup>1</sup> The petitioners are Allied Tube and Conduit Corporation, IPSCO Tubulars, Inc., Sharon Tube Company, and Wheatland Tube Company (collectively, “petitioner”).

<sup>2</sup> The respondent in this new shipper review is Toscelik Profil ve Sac Endustrisi A.S., Toscelik Metal Ticaret A.S., and its affiliated export trading company, Tosyali Dis Ticaret A.S. (collectively, “Toscelik”).

<sup>3</sup> See Notice of Preliminary Results of Antidumping Duty New Shipper Review: Certain Welded Carbon Steel Pipe and Tube from Turkey, 71 FR 26043 (May 3, 2006) (“Preliminary Results”).

## **List of Comments**

Comment 1: *Bona Fides* of Toscelik's U.S. Sale

## **Discussion of Issues**

### **Comment 1:**

Petitioner argues that Toscelik's single sale to the United States was not commercially reasonable based on its analysis of the totality of the circumstances of the sale and reiterates its prior request that the Department rescind the current new shipper review.<sup>4</sup> Specifically, petitioner argues that Toscelik's request for a new shipper review was based on a single shipment to the United States and asserts that the price of this sale is artificially high, the quantity is extremely low, and the freight expense is uncommercially high. Citing a Court of International Trade ("CIT") decision, petitioner states that the Department's assesses whether a sale is representative of a new shipper's commercial behavior by applying a "totality of circumstances" test to determine whether or not a particular transaction is considered "atypical of normal business practices" or "commercially reasonable."<sup>5</sup>

Petitioner analyzed the proprietary import data collected by the U.S. Customs and Border Protection ("CBP"), which was included in the Department's *bona fides* analysis memorandum.<sup>6</sup> Petitioner notes that the price of Toscelik's one U.S. sale is not consistent with the average price of all imports from Turkey. Petitioner asserts that the price of Toscelik's U.S. sales is not commercially reasonable and was designed for the purpose of establishing a new deposit rate.

Petitioner claims that the range of values reported in the Department's analysis of the CBP data does not accurately represent the commercial value of imports, due to the extreme values of the aberrational data. Petitioner argues that the Department's "commercial reasonableness" analysis of the CBP data should lead the Department to exclude certain distortive entries from its analysis. Petitioner states that if the distortive priced entries are removed from the Department's analysis, the remaining CBP data shows that most of the U.S. imports had a lower average unit value ("AUV") than Toscelik's entry. Petitioner also argues that based on a comparison of the prices of Toscelik's home market sales and its U.S. sale, petitioner asserts that Toscelik's home market prices were less than the average U.S. AUV, as reported by the CBP import data included in the

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<sup>4</sup> See Petitioners's letter dated October 18, 2005, regarding the *bona fides* of Toscelik's U.S. sale.

<sup>5</sup> See Windmill International Pte., Ltd. v. United States, 193 F. Supp 2d 1303, 1313 (CIT 2002) ("Windmill").

<sup>6</sup> See the Department's *bona fides* analysis memorandum ("*Bona Fides* Memorandum") dated April 24, 2006.

Department's *Bona Fides* Memorandum. Therefore, petitioner concludes that this comparison shows that the price of Toscelik's U.S. sale was not commercially reasonable.

Petitioner states that Toscelik's shipment of subject merchandise to the U.S. was less than a normal commercial quantity for international shipments of the subject merchandise. In addition, petitioner notes that the average shipment quantity per exporter was significantly higher than Toscelik's shipment quantity during the POR. Petitioner asserts that the exclusion of several of the smallest exporters to the U.S. by volume from the CBP data included in the *Bona Fides* Memorandum shows that Toscelik's U.S. sale is commercially unreasonable.

Petitioner notes that the freight charge on Toscelik's U.S. sale was larger than the average charge for the sum of international freight, brokerage, and handling from Turkey to the U.S.. Citing the decision in Windmill, petitioner asserts that a large freight charge has been cited by the Department as a factor for determining that U.S. sales are not commercially reasonable. Petitioner states that in the Windmill case, the extraordinarily high air freight cost and other expenses were cited as the Department's reasons for determining that Windmill's sale was not *bona fide*.

Toscelik rebuts petitioner's arguments that its U.S. sale is not commercially reasonable, claiming that it is, in fact, a *bona fide* and completely ordinary transaction. Toscelik states that Toscelik's customer is a widely known international trading company. Toscelik states that the sale consisted of 21 bundles of pipe. In regard to freight, Toscelik states that the pipes were shipped in a container by ocean freight from the port of Mersin, Turkey to the U.S.. In addition, Toscelik states that the U.S. customer pre-sold the pipes before they were even shipped to the U.S. as evident from the U.S. customs entry documents, which identify the importer's customer as the ultimate consignee rather than the importer itself. Toscelik argues that this strongly suggests that this was an ordinary transaction with a normal commercial price for that particular period of time.<sup>7</sup>

Toscelik argues that the Department explicitly allows exporters to request a new shipper review based on a single shipment. Citing the Department's regulations, Toscelik states "a new shipper review may be initiated based on a single transaction."<sup>8</sup> Toscelik asserts that even though a new shipper review may enable an exporter to increase its participation in the U.S. market, that exporter still remains subject to future administrative reviews. Toscelik notes the Department's statements that "a new shipper obtaining a dumping margin of zero would not be excluded from the order. Instead, its merchandise would remain subject to the antidumping ("AD") order, and if the new shipper later began to sell at dumped prices, antidumping duties could be assessed with interest for any underpayment of estimated duties." Id.

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<sup>7</sup> See Toscelik's February 6, 2006, second supplemental questionnaire response at page 26 and Exhibit 1.

<sup>8</sup> See Antidumping Duties: Final Rule, 62 FR 27296, 27319 (May 19, 1997), 19 CFR 351.214 (b)(1).

Toscelik notes that the CIT affirmed the Department's use of the totality-of-the-circumstances test in determining whether a new shipper has established "the *bona fides* of a sale," in the course of its new shipper reviews. Toscelik states that the CIT affirmed the Department's determination to consider three factors in its totality-of-the-circumstances analysis: 1) aberrationally high sales prices, 2) aberrationally low sales quantity and 3) other factors, such as the customer's background and conduct, that indicate that the transaction was not commercially reasonable.<sup>9</sup>

Also, Toscelik argues that its U.S. price was commercially reasonable. Toscelik argues that the petitioner's claim of Toscelik's U.S. price being aberrational is incorrect. Toscelik states that its Cost and Freight (CFR) unit price is not comparable to the Free Alongside Ship (FAS) or Free on Board (FOB) figures in the U.S. import statistics because it is inclusive of freight from the plant in Iskenderun through the port of Mersin and on to the U.S. Referencing the Department's analysis in the *Bona Fides* Memorandum, Toscelik states the FOB Mersin actual value is actually comparable to the figures reported in the CBP database appended to the Department's *Bona Fides* Memorandum. Furthermore, Toscelik asserts that coil costs and pipe prices were quite volatile during the POR and the difference between Toscelik's FOB United States price and the global POR AUV provided by petitioner does not call into question the commercial reasonableness of Toscelik's U.S. price.<sup>10</sup>

Toscelik asserts that the quantity of its U.S. sale is, in fact, commercially reasonable. Toscelik states that the petitioner did not challenge whether the size of Toscelik's shipment was within the range of other commercial transactions exported from Turkey to the U.S.. Instead, Toscelik argues that petitioner is incorrect in its assertion that the total quantity shipped to the U.S. should be of the same order of magnitude as the total quantity of home market sales. Toscelik states that the only meaningful comparison of this type would be a comparison between the average size of Toscelik's home market sales and the size of its U.S. sale. Referencing the Department's analysis, Toscelik states that it ranks within the range in terms of quantity out of the total companies that exported pipe and tube to the U.S. during the POR.<sup>11</sup> Therefore, Toscelik indicates that its U.S. sale is ten times bigger than its average home market sale.

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

Based on the totality of circumstances surrounding Toscelik's sale to the U.S. and consistent with the Department's analysis in its *Bona Fides* Memorandum, we agree with Toscelik and find Toscelik's U.S. sale to be a commercially reasonable and *bona fide* transaction.

As the Department has previously stated in its *Bona Fides* Memorandum, "single sales, even

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<sup>9</sup> See *Hebei New Donghua Amino Acid Co. v. U.S.*, 374 F. Supp.2d 1333, 1339 (CIT 2005).

<sup>10</sup> See the Department's cost verification report, Exhibit 10 at pages 286, 318.

<sup>11</sup> See *Bona Fides* Memorandum at Comment 4.

those involving small quantities, are not inherently commercially unreasonable and do not necessarily involve selling practices atypical of the parties' normal selling practices."<sup>12</sup> In addition, the sales price of subject merchandise per MT is not aberrationally high. Based on proprietary data from CBP, Toscelik's sales price is comparable to average prices of the U.S. sales per MT. See Bona Fides Memorandum at page 6.

In determining whether Toscelik's sale was commercially reasonable, we first examined the price charged for its sale compared to home market prices and the AUV of U.S. sales, as suggested by the petitioner. Based on an analysis of a single transaction in Toscelik's home market sales database, petitioner states that Toscelik's home market prices were lower than the average U.S. AUV. As a result of this difference, petitioner asserts the price of Toscelik's U.S. sale was not commercially reasonable. However, the Department analyzed Toscelik's home market database (TOSHM03) using the same exchange rate cited by petitioner in its case brief and the Department arrived at a different conclusion than petitioner. Specifically, the Department used the prices included in the "TOSHM03" database submitted by Toscelik and calculated an average U.S. price that is very comparable to the AUV of U.S. imports included in the *Bona Fides* Memorandum.<sup>13</sup>

With respect to petitioner's characterization of Toscelik's quantity of sale, we also find such quantity is not atypical of Toscelik's normal business practices. Specifically, the majority of Toscelik's home market sales are made with invoices that have a total quantity that is less than the sale in question. Therefore, we find the quantity of Toscelik's one sale to the U.S. is comparable to the size of Toscelik's sales in its home market, and consistent with Toscelik's business practices in the home market.

Also, petitioner argues that certain "distortive entries" should be removed from the Department's analysis of the CBP import data to more accurately reflect the commercial value of imports. Petitioner asserts that if these allegedly distortive entries are removed from the Department's analysis, the Department would find that Toscelik's U.S. sale is commercially unreasonable. Even if the Department were to eliminate allegedly "distortive entries" (*i.e.*, lower quantity entries of less than 25 MTs and higher-priced entries with AUVs greater than 850 \$/MTs) from in the CBP data, the Department does not reach the conclusion suggested by petitioner. Specifically, we found petitioner's analysis did not include the AUV for a certain Turkish manufacturer, which was within a reasonable range of Toscelik's AUV and higher than the threshold AUV identified by petitioner. Moreover, the entry for the exporter reported by CBP was disregarded in petitioner's analysis altogether, despite the fact that the specific exporter's shipment was higher in volume than Toscelik's U.S. sale. Furthermore, the entered value of

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<sup>12</sup> See also Certain Cut-to-Length Carbon Steel from Romania: Rescission of Antidumping Duty Administrative Review, 63 FR 47234 (September 4, 1998).

<sup>13</sup> See petitioner's case brief at pages 6-7, footnote 4 and *Bona Fides* Memorandum at page 6, Attachment 1.

Toscelik's U.S. sale is only slightly higher than the entered value of sales made by the specific exporter not named by the petitioner, as reported by CBP. In addition, we note that even with regard to major Turkish exporters whose AUVs are lower than Toscelik's, a disaggregation of such import data indicates there are a meaningful number of shipments with comparable unit values and quantities. Therefore, we find that excluding allegedly distortive entries from the Department's analysis that the petitioner would not change the Department's conclusion that Toscelik's sale is commercially reasonable. As first stated in the *Bona Fides* Memorandum, we continue to find that Toscelik's U.S. sale falls within a reasonable range of quantity, total value and individual unit value of shipments when compared to imports from other manufacturers in Turkey.

In addition, although Toscelik's freight charge is higher than the average calculated by petitioners, the Department verified Toscelik's reported freight expenses and found the container shipment to be consistent with Toscelik's typical business practices.<sup>14</sup> Furthermore, the freight expenses were higher than the average freight of U.S. imports from Turkey due, in part, to the fact that Toscelik's U.S. sale was shipped by container rather than full vessel load and included inland freight expenses from the port of Mersin, Turkey. *Id.*

Finally, petitioner's comparison of the freight issue in the Windmill decision is inapposite to this case. In Windmill, the Court upheld the Department's determination to rescind a new shipper review where the importer shipped subject merchandise by costly air transport rather than by ship, in an atypical quantity, atypical terms resulting in a loss to the purchaser, and solely for the purpose of having the merchandise enter before the end of the POR. *See Windmill*, 193 F. Supp. 2d at 1312. Toscelik's shipment was shipped via container to an established international trading company and purchased by the final customer, as identified on the U.S. customs entry documentation. Therefore, we do not find that the facts of the Windmill case support a similar conclusion with respect to the commercial reasonableness of Toscelik's U.S. sale.

Given the totality of the circumstances, we find Toscelik's sale to the U.S. during the POR was commercially reasonable and *bona fide* transaction. This finding is based on the Department's analysis of Toscelik's U.S. sale and is in accordance with the Department's practice and regulations. Therefore, the Department finds that the record of this proceeding does not support rescission of this new shipper review, as suggested by petitioner.

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<sup>14</sup> *See* Sales Verification Exhibit S-26, page 584. *See also* Exhibit 24 of Toscelik's August 29, 2005 questionnaire response.

**Recommendation**

Based on our analysis of the comments received, we recommend adopting the above position. If this recommendation is accepted, we will publish the final results in the Federal Register.

AGREE \_\_\_\_\_ DISAGREE \_\_\_\_\_

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David M. Spooner  
Assistant Secretary  
for Import Administration

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Date