



UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-489-501
POR 5/1/10 - 4/30/11
Public Document
O3: CH, VC

DATE: November 30, 2012

MEMORANDUM TO: Ronald K. Lorentzen
Assistant Secretary
for Import Administration

FROM: Christian Marsh *cm*
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Antidumping Duty Administrative Review: Circular Welded
Carbon Steel Pipes and Tubes from Turkey -- May 1, 2010,
through April 30, 2011

Summary

We have analyzed the case and rebuttal briefs of petitioner U.S. Steel Corporation (“U.S. Steel”) and respondent the Borusan Group,¹ as well as the rebuttal brief from respondent Toscelik,² for the final results of the 2010/11 administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Turkey (“the Order”). We also have analyzed the comments and rebuttal comments from Borusan, Toscelik, and U.S. Steel on the Department’s analysis of the targeted dumping allegation in this review for the final results.

We recommend that you approve the positions provided below in the “Discussion of Comments” section of this Issues and Decision Memorandum.

Background

On June 1, 2012, the Department of Commerce (“the Department”) published the preliminary results of the administrative review of the Order for the period May 1, 2010, to April 30, 2011. *See Circular Welded Carbon Steel Pipes and Tubes from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 77 FR 32508 (June 1, 2012) (“*Preliminary Results*”). At that time, the Department did not address the petitioner’s targeted dumping allegation. *See id.*, 77 FR at 32510. We invited interested parties to comment on our *Preliminary Results*. *See id.*, 77 FR at 32512.

¹ The Borusan Group includes Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Birlesik Boru Fabrikalari San ve Tic., Borusan Istikbal Ticaret T.A.S., Boruson Holding A.S., Boruson Gemlik Boru Tesisleri A.S., Borusan Ihracat Ithalat ve Dagitim A.S., and Borusan Ithicat ve Dagitim A.S. (collectively, “Borusan”).

² Toscelik Profil ve Sac Endustrisi A.S., Toscelik Metal Ticaret A.S., and Tosyali Dis Ticaret A.S. (collectively, “Toscelik”).



On August 1, 2012, we received a case brief from Borusan.³ On August 2, 2012, we received two company-specific case briefs from U.S. Steel.⁴ On August 3, 2012, we received a rebuttal brief from Toscelik, and on August 8, 2012, we received rebuttal briefs from Borusan and U.S. Steel.⁵

On October 23, 2012, the Department issued a post-preliminary analysis to address the petitioners' targeted dumping allegation.⁶ In that analysis, we preliminarily found for Borusan that (1) a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods existed; and (2) the average-to-average method could not take into account the observed price differences because there was a meaningful difference between the weighted-average dumping margins calculated using the average-to-average method and the average-to-transaction method. As a result, the average-to-transaction method was used to determine the weighted-average margin of dumping for Borusan.⁷ For Toscelik, we preliminarily found that a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods did not exist and, therefore, the Department did not consider whether the average-to-average method could account for any observed price differences.⁸ At that time, we invited parties to comment on the Department's analysis of the petitioners' targeted dumping allegation in this review.⁹

On October 27, 2012, we invited Borusan to submit certain cost data.¹⁰ Borusan submitted that data on October 29, 2012.¹¹

On November 5, 2012, U.S. Steel and Borusan submitted comments on the Department's analysis of the petitioners' targeted dumping allegation in the Post-Preliminary Analysis.¹² On November 8, 2012, U.S. Steel and Toscelik submitted rebuttal comments to these comments on the Post-Preliminary Analysis.¹³

³ See Borusan's case brief dated, August 1, 2012.

⁴ See U.S. Steel's case briefs for Borusan and Toscelik dated, August 2, 2012.

⁵ See Toscelik's August 3, 2012, rebuttal brief; see Borusan's August 8, 2012, rebuttal brief; U.S. Steel's August 8, 2012, rebuttal brief.

⁶ See the Department's "Circular Welded Carbon Steel Pipes and Tubes from Turkey 2010-2011 Administrative Review: Post-Preliminary Analysis and Calculation Memorandum," dated October 23, 2012 ("Post-Preliminary Analysis").

⁷ See *id.* at 3-4.

⁸ See *id.* at 4.

⁹ See Post-Preliminary Analysis at 5 and see also the Department's October 31, 2012, memorandum to the File setting the case and rebuttal brief due dates.

¹⁰ See the Department's October 27, 2012, section D supplemental questionnaire to Borusan.

¹¹ See Letter from Borusan to the Department, dated October 28, 2012, entitled "Response of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. to the Supplemental Questionnaire Regarding Targeted Dumping in the 2010-2011 Antidumping Administrative Review Involving Certain Welded Carbon Steel Standard Pipe from Turkey."

¹² See U.S. Steel's November 5, 2012, comments to the Department's Post-Preliminary Analysis ("U.S. Steel's Post-Prelim Comments"); Borusan's November 5, 2012, comments to the Department's Post-Preliminary Analysis ("Borusan Post-Prelim Comments").

¹³ See Toscelik's November 8, 2012, rebuttal comments to the Department's Post-Preliminary Analysis ("Toscelik's Post-Prelim Rebuttal Comments"); U.S. Steel's November 8, 2012, rebuttal comments to the Department's Post-Preliminary Analysis ("U.S. Steel's Post-Prelim Rebuttal Comments").

List of Comments

General Issues

Comment 1: Whether to Apply Targeted Dumping to Borusan and Toscelik

Company Specific Issues

Borusan

Comment 2: Home Market Window Period

Comment 3: G&A Expenses Calculation

Comment 4: Unpaid Exempted Duties as a Part of the Cost of Production

Toscelik

Comment 5: U. S. Credit Expense

Discussion of Comments

General Issues

Comment 1: Whether to Apply Targeted Dumping to Borusan and Toscelik

A. Case Briefs

U.S. Steel asserts that Borusan and Toscelik engaged in targeting dumping during the period of review (“POR”) and that the Department should apply the average-to-transaction method to calculate the weighted-average dumping margins for Borusan and Toscelik for the final results of this administrative review. Specifically, U.S. Steel contends that Borusan’s sales in a certain time period differed significantly from its sales of comparable merchandise in other time periods. As to Toscelik, U.S. Steel also avers that Toscelik’s sales in a certain time period differed significantly from its sales of comparable merchandise in other time periods. U.S. steel also alleges that the targeted dumping cannot be taken into account using the average-to-average method typically used in administrative reviews. As a consequence, U.S. Steel asserts that the Department should use the monthly average-to-transaction method for all sales to calculate Borusan’s and Toscelik’s weighted-average dumping margins for the final results.

Moreover, U.S. Steel contends that Borusan’s arguments in opposition to the targeted dumping allegation are without merit. Prior to the *Preliminary Results*, Borusan had contended that (1) the allegation was untimely and that (2) the Department should consider whether factors other than targeted dumping, such as changes in raw material costs, explain the pattern of price that differ significantly.¹⁴ As to timeliness, U.S. Steel avers that the Department has no regulatory

¹⁴ See Letter from Borusan to the Department, dated May 17, 2012, entitled “Administrative Review of the Antidumping Duty Order on Certain Welded Carbon Steel Pipe from Turkey for the Period 5/01/10-4/30/11;

deadline as to when an interested party must file a targeted dumping allegation and that the Department's previous regulations on this topic were withdrawn over three years ago. U.S. Steel also argues that neither section 777A(d)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), nor the Statement of Administrative Action accompanying the Uruguay Round Agreements Act ("SAA"),¹⁵ provide any such deadline, and that the Department's recent announcement which specifically provided for the possibility of the average-to-transaction method contained no time restrictions on the filing of a targeted dumping allegation.¹⁶ As to other factors, U.S. Steel argues that there is no legal basis for Borusan's claim that the Department must consider whether changes in raw material costs caused the changes in prices, that the Department previously rejected the same argument,¹⁷ and that the Act, the SAA, and legislative history require only that there be a pattern of prices that differ significantly among purchasers, regions, or time periods.

Borusan alleges that U.S. Steel's targeted dumping allegation is untimely. Borusan alleges that, in light of two investigation initiation notices, the Department has established a practice of requiring targeted dumping allegations to be filed 45 days prior to a preliminary determination in investigations, and the Department should follow the same deadline for administrative reviews. Thus, because U.S. Steel submitted the targeted dumping allegation on May 14, 2012, and the preliminary determination was due on May 31, 2012, the allegation was untimely. Borusan also avers that the allegation should be treated as untimely to preserve a respondent's right to timely comment on an allegation and to collect additional data, if needed.

Borusan also argues that movements in the cost of hot-rolled coil account for differences in Borusan's pricing of the subject merchandise over time. Borusan urges that the Department must consider other factors, such as cost changes, in its targeted dumping analysis. Borusan cites the SAA and *Borden, Inc. v. United States*, 4 F. Supp. 2d 1221, 1228 (Ct. Int'l Trade 1998) ("*Borden*"), in support of its claim. Borusan also acknowledges that it could submit cost data to support its claim. Borusan also argues that although the Department has taken inconsistent positions on whether to look at changes in raw material costs as the cause of price variations in its targeted dumping analysis, it previously accepted the principle that an allegation of targeted dumping by period can be rebutted with evidence that the rising costs were responsible for rising prices.¹⁸

Response to Targeted Dumping Allegations."

¹⁵ Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 (1994).

¹⁶ See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012) ("*Final Modification for Reviews*").

¹⁷ See *Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029 (March 23, 2012), and accompanying Issues and Decision Memorandum at Comment 1 ("*Nails from the UAE*"); see also *Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea*, 77 FR 17413 (Mar. 26, 2012), and accompanying Issues and Decision Memorandum at Comment 1 ("*Refrigerators from Korea*").

¹⁸ See *Polyvinyl Alcohol from Taiwan: Final Determination of Sales at Less Than Fair Value*, 76 FR 5562 (Feb. 1, 2011) and accompanying Issues and Decision Memorandum ("*Polyvinyl Alcohol from Taiwan*") at Comment 1.

B. Rebuttal Briefs

U.S. Steel repeats its earlier arguments on timeliness, noting that neither the regulation nor the *Final Modification for Reviews* impose deadlines for the submission of a targeted dumping allegation. Moreover, U.S. Steel contends that the two investigation initiation notices do not establish a practice and that the deadlines in investigations are much shorter than in an administrative review, thus rendering the deadlines in investigations inapposite to reviews. U.S. Steel also notes that sufficient time remains for the Department to conduct its analysis and for parties to submit comments. In fact, U.S. Steel contends that Borusan already has commented twice on this topic.

With respect to the cost of raw materials, U.S. Steel repeats the same arguments it raised in its case brief. Contrary to Borusan's claims, in *Polyvinyl Alcohol from Taiwan* and *Nails from the UAE*, U.S. Steel contends that the Department merely reiterated its position that it considers only whether there are a significant number of sales below the weighted-average price of all sales and does not look at the reasons for those price differences. Finally, U.S. Steel alleges that in *Borden* the Court of International Trade ("CIT") found that the petitioner failed to show the requisite pattern of price differences, unlike in the instant review.

Toscelik argues that section 777A(d)(1) of the Act does not permit targeted dumping analyses in administrative reviews, but only in investigations. Toscelik also asserts that the intention of the negotiators during the Uruguay Round was that targeted dumping analyses should only be applied in investigations and not in reviews, and this intention is incorporated in the SAA. Toscelik also avers that the Department's regulations reflect this intent. Toscelik contends further that there is no time limit for targeted dumping allegations in reviews because the Act, the SAA, and the regulations all recognized that the targeted dumping analyses occur only in investigations. Moreover, Toscelik contends the *Final Modification for Reviews*, which U.S. Steel views as allowing for claims of targeted dumping, does not trump the Act or the SAA. Toscelik also notes that the Department declined to conduct a targeted dumping analyses in the administrative reviews under consideration in a recent section 129 proceeding.

Borusan states that it fully responded to U.S. Steel's claims on targeted dumping in its case brief and does not wish to repeat them in its rebuttal brief. Borusan provided no comments on the other issues raised.

Comments and Rebuttal Comments on the Post-Preliminary Analysis

U.S Steel states that both Toscelik and Borusan satisfied the two-step *Nails* test¹⁹ for targeted

¹⁹ See *Certain Steel Nails from the People's Republic of China: Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances*, 73 FR 33977 (June 16, 2008) ("*Nails from the PRC*") and *Certain Steel Nails from the United Arab Emirates: Notice of Final Determination of Sales at Not Less Than Fair Value*, 73 FR 33985 (June 16, 2008) (collectively, "*Nails*"), as modified in more recent investigations, e.g., *Multilayered Wood Flooring From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 76 FR 64318 (October 18, 2011) ("*Wood Flooring from the PRC*"); see also *Mid Continent Nail Corp. v. United States*, Slip. Op. 2010-47 (Ct. Int'l Trade May 4, 2010) and *Mid Continent Nail Corp. v. United States*, Slip. Op. 2010-48 (Ct. Int'l Trade May 4, 2010).

dumping. U.S. Steel explains that the Department applied its average-to-transaction method in the *Nails* test in order to determine if a respondent engaged in targeted dumping. U.S. Steel argues that in the *Nails* test, the Department applied a two-step analysis, first, to see if there is “a pattern of export prices that differ significantly among purchasers, regions, or periods of time;” and second, to address “the significant difference” requirement, which provides that if more than 5 percent of the allegedly targeted sales pass the “price gap test,” then the significant difference requirement has been met.²⁰

U.S. Steel contends that the Department’s Post-Preliminary Analysis improperly went beyond the two-step analysis laid out in the *Nails* test and imposed an additional hurdle without explanation.²¹ Specifically, U.S. Steel argues that the Department determined specific percentages of U.S. sales that passed the *Nails* test for Toscelik and Borusan and used those resulting figures to determine that the data for Borusan, but not Toscelik, demonstrated a pattern of export prices that differ significantly among periods of time. U.S. Steel contends that the Department erred because it did not specify the percentage of targeted U.S. sales that is necessary in order for it to find that there was a pattern of prices for U.S. sales of comparable merchandise that differ significantly. U.S. Steel alleges further that the Department never has used this additional metric to determine whether export prices have been targeted and to do so now is arbitrary and not supported by agency practice or the statute. U.S. Steel maintains that Toscelik’s and Borusan’s U.S. sales data showed clear patterns of prices differences by time period and that both companies engaged in targeted dumping.

Moreover, U.S. Steel contends additional steps were considered and rejected by the Department in *Wood Flooring from the PRC*. In *Wood Flooring from the PRC*, U.S. Steel claims that the Department rejected a respondent’s request that the Department should require that a minimum of 10 percent of the sales quantity or value be found to be targeted before a targeted dumping allegation is sustained by the Department.²² The Department rejected that argument and explained that “establishing a *de minimis* standard would not be appropriate because once the Department finds any instances of targeted dumping, the Department has determined that application of the average-to-transaction methodology is necessary to fully analyze the extent of the dumping that is taking place.”²³ U.S. Steel also emphasizes that a *de minimis* standard is not required by the relevant statute. U.S. Steel cites the Department’s response to the same in *Wood Flooring from the PRC*, wherein we stated that “{t}he only limitations the statute places on the application of the average-to-transaction method are the satisfaction of the two criteria set forth in the provision.”²⁴

Borusan reiterates that the Department should not find targeted dumping of its U.S. sales in the instant review. Borusan asserts that the Department should modify its *Nails* test to examine

²⁰ See *Certain Oil Country Tubular Goods from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, Affirmative Final Determination of Critical Circumstances and Final Determination of Targeted Dumping*, 75 FR 20335 (April 19, 2010) and accompanying Issues and Decision Memorandum at 2 (“*OCTG from the PRC*”).

²¹ See *Nails from the PRC*, accompanying Issues and Decision Memorandum at 8.

²² See *id.*

²³ See *id.*

²⁴ See *id.*

whether differences in the cost of the primary raw material in standard pipe, hot-rolled coil, account for the differences in the prices of finished products observed between different time periods. Borusan maintains that the Department has previously found that “significant” changes in the cost of the hot-rolled coil were closely correlated with changes in the cost of hot-rolled coil. Borusan maintains that the Department previously found that quarterly costs of production should be used to determine the cost of production (“COP”) during the period of May 1, 2009 to April 30, 2010, and that the changes in the cost of manufacturing were correlated to changes in the price for the finished product.²⁵ As a consequence, Borusan contends that the Department should modify the *Nails* test to ensure that any price variation is attributable to targeted dumping and not changes in price due to significant cost changes.

Borusan further proposes one possible modification: the Department should deduct the monthly cost of one ton of hot-rolled coil consumed in production from the prices of subject merchandise before making the targeted dumping analysis. Borusan maintains that this will control for changes in hot-rolled coil costs and that the Department will not find targeted dumping in the instant case.

U.S. Steel reiterates that the Department previously has determined that it is not required to conduct an analysis as to why significant price variations exist in its targeted dumping analysis, including whether changes in raw material costs are the cause of such price variations. Citing *Nails from the UAE* and *Refrigerators from Korea*, U.S. Steel also maintains that the Department will not adjust U.S. prices by raw material costs for purposes of its targeted dumping analysis. U.S. Steel re-emphasizes that the additional requirements suggested by Borusan are not required by statute or legislative history. Therefore, U.S. Steel avers that the Department should find that both Borusan and Toscelik have engaged in targeted dumping.

Toscelik asserts that U.S. Steel errs when it alleges that the Department unlawfully added a third component to the targeted dumping analysis. Toscelik insists that the calculation to which U.S. Steel refers has always been a part of the targeted dumping analysis and that nothing new has been added to the analysis. Moreover, Toscelik argues that the Department has the discretion to modify the targeted dumping analysis in the present review, which appears to be the first time that the Department has applied the targeted dumping analysis in an administrative review. Toscelik also argues that U.S. Steel’s reliance upon other proceedings that concerned investigations are unpersuasive, given that the current proceeding is an administrative review. Toscelik also avers that the application of the targeted dumping analysis is not defined by statute, regulation, or legislative history; and, as a result, the Department enjoys discretion in developing its practice to analyze claims of targeted dumping in administrative reviews. Moreover, Toscelik states that U.S. Steel has overlooked the fact that administrative reviews serve a different purpose from investigations – whereas investigations set only cash deposit rates, administrative reviews set assessment rates as well as prospective cash deposit rates. Toscelik contends that the Department has unquestionable authority to treat administrative reviews

²⁵ See *Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Final Results of Antidumping Duty Administrative Review*, 76 FR 76939 (December 9, 2011), and accompanying Issues and Decision Memorandum at Comment 1.

differently from investigations and, as a consequence, the Department should affirm its position for Toscelik from the Post-Preliminary Analysis.

The Department's Position:

In these final results, and consistent with the Post-Preliminary Analysis, we continue to find for Borusan that a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among time periods exists. Further, we find that the average-to-average method cannot account for the observed price differences, and thus, we have used the average-to-transaction method to calculate Borusan's weighted-average dumping margin. For Toscelik, we continue to find that a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among time periods does not exist, and we have used the average-to-average method to calculate Toscelik's weighted-average dumping margin.

We address interested parties' comments in three parts, with the first section dedicated to the timeliness of U.S. Steel's allegation, the second dedicated to the framework under which the Department determines whether to use an alternative comparison method in administrative reviews as contemplated in 19 CFR 351.414(c)(1), and the third dedicated to our analysis of whether to use the average-to-transaction method to calculate a respondent's weighted-average dumping margin. Our reasoning is set forth below.

A. U.S. Steel's Allegation Was Timely Filed

The Department disagrees with Borusan's argument that U.S. Steel's allegation was untimely. Importantly, neither section 777A(d)(1)(B) of the Act nor the SAA provide any deadline as to when an interested party must file a targeted dumping allegation in either an investigation or an administrative review.²⁶ Similarly, the Department's regulations do not provide for such a deadline in an investigation or an administrative review. Moreover, when the Department recently announced that it would consider whether to use an alternative comparison method in administrative reviews on a case-by-case basis, the announcement contained no guidelines on the filing of a request to apply an alternative comparison method.²⁷ Further, the Department's current practice regarding the submission of a targeted dumping allegation in the initiation notice for an antidumping investigation is limited to antidumping investigations and not administrative reviews. Finally, by permitting Borusan to comment on the Post-Preliminary Analysis and to submit additional factual information in support of its comments, the Department has preserved Borusan's right to comment on the targeted dumping allegation.²⁸ For these reasons, the Department finds that U.S. Steel's allegation was timely filed.

²⁶ SAA, H.R. Rep. No. 103-316 at 842-43.

²⁷ See generally *Final Modification for Reviews*.

²⁸ See Letter from Borusan to the Department, dated October 28, 2012, entitled "Response of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. to the Supplemental Questionnaire Regarding Targeted Dumping in the 2010-2011 Antidumping Administrative Review Involving Certain Welded Carbon Steel Standard Pipe from Turkey"; see also Borusan Post-Prelim Comments.

B. Legal Framework For The Application of An Alternative Comparison Method in Administrative Reviews

In this review, U.S. Steel submitted an allegation of targeted dumping by Borusan and Toscelik prior to the *Preliminary Results*.²⁹ U.S. Steel asserted that there are patterns of U.S. sales prices for comparable merchandise that differ significantly among time periods.³⁰ As a consequence, U.S. Steel asked the Department to employ an alternative comparison method to calculate Borusan's and Toscelik's dumping margins in this review.³¹

Section 771(35)(A) of Act defines "dumping margin" as the "amount by which the normal value exceeds the export price or constructed export price of the subject merchandise." The definition of "dumping margin" calls for a comparison of normal value and export price or constructed export price. Before making the comparison called for, it is necessary to determine how to make the comparison.

Section 777A(d)(1) of the Act describes three methods by which the Department may compare normal value and export price (or constructed export price) and places certain restrictions on the Department's selection of a comparison method in antidumping investigations. The statute places no such restrictions on the Department's selection of a comparison method in administrative reviews. The Department's regulations at 19 CFR 351.414 describe the methods by which normal value may be compared to export price or constructed export price in administrative reviews: average-to-average, transaction-to-transaction, and average-to-transaction. These comparison methods are distinct from each other. When using transaction-to-transaction or average-to-transaction comparisons, a comparison is made for each export transaction to the United States. When using average-to-average comparisons, a comparison is made for each group of comparable export transactions for which the export prices or constructed export prices have been averaged together (*i.e.*, for an averaging group). The Department's regulations 19 CFR 351.414(c)(1) at fills the silence in the statute on the choice of comparison method in the context of administrative reviews. In particular, the Department has determined that in both antidumping investigations and administrative reviews, the average-to-average method will be used "unless the Secretary determines another method is appropriate in a particular case."³²

The antidumping duty statute, the SAA, and the Department's regulations do not address directly whether the Department should use an alternative comparison method in an administrative review based upon a targeted dumping analysis conducted pursuant to section 777A(d)(1)(B) of the Act.³³ In light of the statute's silence on this issue, the Department recently indicated that it would consider whether to use an alternative comparison method in administrative reviews on a case-by-case basis, but declined to "speculate as to either the case-specific circumstances that

²⁹ See Letter from U.S. Steel to the Department, dated May 9, 2012 (Toscelik Targeted Allegation); Letter from U.S. Steel to the Department, dated May 14, 2012 (Borusan Targeted Allegation).

³⁰ See Toscelik Targeted Allegation at 5; Borusan Targeted Allegation at 5 .

³¹ See *id.*

³² 19 CFR 351.414(c)(1).

³³ See section 777A(d)(1)(B) of the Act; SAA, H.R. Rep. No. 103-316 at 842-43; 19 CFR 351.414.

would warrant the use of an alternative methodology in future reviews, or what type of alternative methodology might be employed.”³⁴ At that time, the Department also indicated that it would look to practices employed by the agency in antidumping investigations for guidance on this issue.³⁵

In antidumping investigations, the Department examines whether to use an average-to-transaction method by using a targeted dumping analysis consistent with section 777A(d)(1)(B) of the Act:

The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if

- (i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and
- (ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

Although section 777A(d)(1)(B) of the Act does not strictly govern the Department’s examination of this question in the context of an administrative review, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in an administrative review is, in fact, analogous to the issue in antidumping investigations. Accordingly, the Department finds the analysis that has been used in antidumping investigations instructive for purposes of examining whether to apply an alternative comparison method in this administrative review.

We disagree with Toscelik’s argument that certain language in the SAA demonstrates that the Department should conduct targeted dumping analyses in investigations only. The language cited by Toscelik discusses only section 777A(d)(1)(A)(i) of the Act, which concerns the types of comparison methods that the Department may use in investigations. That provision is silent on the question of the choosing of a comparison method in administrative reviews. Section 777A(d)(1)(A) does not require or prohibit the Department from adopting a similar or different framework for choosing a comparison method in administrative reviews as compared to the framework required by the statute in investigations. The SAA states that “section 777A(d)(1)(B) provides for a comparison of average normal values to individual export prices or constructed export prices in situations where an average-to-average or transaction-to-transaction methodology cannot account for a pattern of prices that differ significantly among purchasers, regions or time periods.”³⁶ Like the statute, the SAA does not limit the proceedings in which

³⁴ See *Final Modification for Reviews*, 77 FR at 8106-07.

³⁵ See *id.* at 8102.

³⁶ See SAA, H.R. Rep. No. 103-316 at 843.

the Department may undertake such an examination.³⁷ Notably, Toscelik admits as much in its comments to the Post-Preliminary Analysis.³⁸

Toscelik's two other arguments on this issue are unavailing. As to Toscelik's reliance upon the Department's former regulation on targeted dumping in investigations, that previous regulation was withdrawn over three years ago and has no legal effect in the current proceeding, nor did it apply to administrative reviews in any event.³⁹ Moreover, that the Department declined to conduct targeted dumping analyses in recent section 129 proceedings is of no moment; those determinations are limited endeavors that make "the particular proceeding" by the Department "not inconsistent with the findings of the {WTO} panel or the Appellate Body."⁴⁰

Finally, we note that Borusan does not contest the Department's authority to conduct a targeted dumping analysis in administrative reviews,⁴¹ but rather argues that the Department should consider certain costs in its analysis, as discussed below.

C. Targeted Dumping Analysis of Borusan and Toscelik

In recent antidumping investigations where the Department has addressed targeted dumping allegations, the Department has employed the *Nails* test⁴² for each respondent subject to an allegation to determine whether a pattern of export prices or constructed export prices for comparable merchandise that differ significantly among purchasers, regions or time periods existed within the U.S. market.⁴³ The *Nails* test involves a two-step process, as described below, that determines whether the Department should consider whether the average-to-average method is appropriate in a particular situation. For both Borusan and Toscelik, the petitioners' targeted dumping allegation covered specific time periods.

In the first stage of the test, the "standard-deviation test," we determined the share of the alleged targeted time-period sales of subject merchandise (by sales volume) that are at prices more than one standard deviation below the weighted-average price of all sales under review, targeted and non-targeted. We calculated the standard deviation on a product-specific basis (*i.e.*, by control number (CONNUM)) using the weighted-average prices for the alleged targeted time period and

³⁷ *See id.*

³⁸ *See* Toscelik's Post-Prelim Rebuttal Comments at 2 ("there is no reference in either the statute or the SAA to the use of targeting in administrative reviews").

³⁹ *See Withdrawal of Regulatory Provisions Governing Targeted Dumping in Antidumping Duty Investigations*, 73 FR 74930 (December 10, 2008).

⁴⁰ *See* section 129(b)(2) or the Uruguay Round Agreements Act; *ThyssenKrupp Acciai Speciali Terni S.p.A. v. United States*, 603 F.3d 928, 933-34 (Fed. Cir. 2010) (upholding the Department's determination to limit the scope of a section 129 proceeding to issues before the WTO).

⁴¹ *See generally* Borusan's case brief; Borusan's rebuttal brief; Borusan's Post-Prelim Comments; Boruan's Post-Prelim Rebuttal Comments.

⁴² *See Nails*, as modified in more recent investigations, *e.g.*, *Wood Flooring*; *see also Mid Continent Nail Corp. v. United States*, Slip. Op. 2010-47 and *Mid Continent Nail Corp. v. United States*, Slip. Op. 2010-48.

⁴³ *See, e.g., Polyethylene Retail Carrier Bags from Taiwan: Final Determination of Sales at Less Than Fair Value*, 75 FR 14569 (March 26, 2010); *OCTG from the PRC; Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 75 FR 59217 (September 27, 2010).

the time periods not alleged to have been targeted. If that share did not exceed 33 percent, then we did not conduct the second stage of the *Nails* test. If that share exceeded 33 percent, on the other hand, then we proceeded to the second stage of the *Nails* test.

In the second stage, we examined all sales of identical merchandise (*i.e.*, by CONNUM) sold during the alleged targeted time period which passed the standard-deviation test. From those sales, we determined the total volume of sales for which the difference between the weighted-average price of sales for alleged targeted time period and the next higher weighted-average price of sales during the non-targeted time periods exceeds the average price gap (weighted by sales volume) for the non-targeted time periods. We weighted each of the price gaps between the non-targeted time periods by the combined sales volume associated with the pair of prices for the non-targeted time periods that defined the price gap. In doing this analysis, the alleged targeted time-period's sales were not included in the non-targeted time periods; the alleged targeted time-period's average price was compared only to the average prices for the non-targeted time periods. If the share of the sales that met this test exceeded five percent of the total sales volume of subject merchandise during the alleged targeted time period, then we determined that time-period targeting occurred.

As explained in the Post-Preliminary Analysis, if the Department determined that a sufficient volume of U.S. sales were found to have passed the two-step *Nails* test, then the Department considered whether the average-to-average method could take into account the observed price differences. To do this, the Department evaluated the difference between the weighted-average dumping margin calculated using the average-to-average method and the weighted-average dumping margin calculated using the average-to-transaction method.⁴⁴ Where there was a meaningful difference between the results of the average-to-average method and the average-to-transaction method, the average-to-average method would not be able to take into account the observed price differences, and the average-to-transaction method would be used to calculate the weighted-average margin of dumping for the respondent in question.⁴⁵ Where there was not a meaningful difference in the results, the average-to-average method would be able to take into account the observed price differences, and the average-to-average method would be used to calculate the weighted-average dumping margin for the respondent in question.

With respect to Toscelik, the Department continues to find that a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods does not exist, and therefore, the Department has not considered whether average-to-average method can account for the observed price differences.⁴⁶

With respect to Borusan, the Department continues to find that a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or time periods does exist, and has considered whether the average-to-average method

⁴⁴ See Post-Preliminary Analysis at 3.

⁴⁵ See *id.*

⁴⁶ See Memorandum from Victoria Cho to The File, entitled "Certain Welded Carbon Steel Pipe and Tube from Turkey – Post- Preliminary Results Analysis Memo for Toscelik Profil ve ac Endustrisi A.S. ("Toscelik")," dated October 16, 2012.

can account for the observed price differences. Further, the Department continues to find that there is a meaningful difference between the weighted-average dumping margins calculated using the average-to-average method and the average-to-transaction method. As a result, the Department has used the average-to-transaction method to calculate the weighted-average margin of dumping for Borusan in these final results.⁴⁷

We reject Borusan's arguments that the above findings are undermined by the observation that movements in the cost of hot-rolled coil account for differences in Borusan's pricing of the subject merchandise over time. The Act and the regulations do not provide detailed guidance on comparing different sets of U.S. prices for purposes of determining the existence of targeted dumping. The only obligations imposed on the Department in its analysis appear in section 777A(d)(1)(B) of the Act. Section 777A(d)(1)(B) of the Act requires the Department (1) to examine whether there is a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods and, if such a pattern exists, (2) to explain why such differences cannot be taken into account using the average-to-average or transaction-to-transaction comparison methods. The Act does not require the Department to discern why such patterns arise. Instead, the Act asks the Department to focus on U.S. sales alone – *i.e.*, export price or constructed export price. Despite Borusan's claims to the contrary, the SAA does not suggest otherwise.⁴⁸ Thus, contrary to Borusan's claim, the Act does not require the Department to consider whether changes in raw material costs caused the changes in U.S. prices. The Department consistently has reached the same conclusion in various investigations.⁴⁹ For these same reasons, the Department also rejects Borusan's proposal to modify the *Nails* test by deducting the monthly cost of hot-rolled coil consumed in production from the prices of subject merchandise before performing the targeted dumping analysis.

Borusan's argument that the fact that the Department relied upon its quarterly cost methodology in the administrative review of the time period immediately preceding the instant review indicates that the Department should make a similar determination in this review, that the prices across the quarters are not comparable, is without merit. The decision in the previous administrative review to employ the quarterly cost methodology was based upon the changing production costs in that POR, which has no relevance to the changes in the production costs in the instant POR.

Borusan also suggests that the Department can make an adjustment to the U.S. price to account for the changes in its production costs. The Department finds this inappropriate, given that such an adjustment is not provided for in the act or the Department's regulations.⁵⁰

Borusan's remaining arguments on the consideration of costs in a targeted dumping analysis are unavailing. First, Borusan cites *Borden* for the proposition that the Department must consider

⁴⁷ See Memorandum from Christopher Hargett to The File, entitled "Final Results of 2010 - 2011 Administrative Review of Welded Carbon Steel Pipes and Tubes from Turkey: Analysis Memorandum for the Borusan Group," dated November 30, 2012.

⁴⁸ See SAA, H.R. Rep. No. 103-316 at 842-43.

⁴⁹ See *Nails from the UAE*, and accompanying Issues and Decision Memorandum at Comment 1; *Refrigerators from Korea*, and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁰ See section 772(c) of the Act; see also 19 CFR 351.402.

other factors, such as cost changes, in its targeted dumping analysis. *Borden* stands for no such principle. The Court in *Borden* took issue with the Department's failure to articulate the standards by which it would determine whether a pattern of export prices exist pursuant to section 777A(d)(1)(B)(i) of the Act.⁵¹ In so doing, it did not compel the Department to consider whether other factors contributed to a pattern of export prices and, instead, properly allowed the Department to determine what factors it should consider in its analysis. Moreover, in the passage cited by Borusan, the Court merely acknowledged that the Department properly rejected the petitioners' targeted dumping allegation because they failed to provide sufficient evidence demonstrating the requisite pattern of export prices.⁵² Thus, *Borden* does not support Borusan's claim. Second, Borusan cites to *Polyvinyl Alcohol from Taiwan* in support of its argument that the Department previously accepted that a targeted dumping allegation could be rebutted with evidence that rising costs were responsible for rising prices. However, in that proceeding, the Department made no such statement. Rather, the Department emphasized that the costs for the input at issue had not changed during the period of investigation and remained close to the average costs for that input.⁵³ In so doing, the Department merely concluded that the party was in error as to the facts underlying its argument. To infer otherwise, as Borusan does, requires a presumption not supported by the determination.

Finally, we disagree with U.S. Steel that the Department went beyond its established practice in application of the *Nails* test in this case by assessing the percentage of targeted U.S. sales that passed the two steps of the test. The Department has examined in prior cases whether the results of the two steps are sufficient to find that further consideration of whether the average-to-transaction method is warranted.⁵⁴ Specifically, the Department previously has found that such an assessment of sufficiency of the results of the two steps is appropriate to determine in investigations whether section 777A(d)(1)(B)(i) of the Act is satisfied – *i.e.*, whether there is a pattern of export prices for comparable merchandise that differ significantly among purchasers, regions, or time periods – and finds that such an assessment is equally appropriate in the context of applying the *Nails* test in this administrative review.⁵⁵ Moreover, section 777A(d)(1)(B) of the Act does not require a specific test for determining whether targeted dumping occurred. As a result, and contrary to U.S. Steel's claims, the Department properly examined the results of the two steps of the *Nails* test for sufficiency of those result to support a finding that section 777A(d)(1)(B)(i) of the Act is satisfied. Thus, U.S. Steel's arguments are without merit.

⁵¹ See *Borden*, 4 F. Supp. 2d at 1228-31.

⁵² See *id.* at 1227.

⁵³ See *Polyvinyl Alcohol from Taiwan*, and accompanying Issues and Decision Memorandum at Comment 1.

⁵⁴ See, e.g., *Certain Stilbenic Optical Brightening Agents from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 76 FR 68154, 68156 (November 3, 2011) (“{W}e preliminarily determine that the overall proportion of {respondent}'s U.S. sales during the POI that satisfy the criteria of section 777A(d)(1)(B)(i) of the Act and our practice as discussed in *Nails* is insufficient to establish a pattern of EPs for comparable merchandise that differ significantly among certain customers or regions. Accordingly, the Department has determined that criteria established in 777A(d)(1)(B)(i) of the Act have not been met.”), unchanged in *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Determination of Sales at Less Than Fair Value*, 77 FR 17027, 17027-28 (March 23, 2012).

⁵⁵ *Certain Stilbenic Optical Brightening Agents from Taiwan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 76 FR at 68156.

Company Specific Issues

Borusan

Comment 2: Home Market Window Period

Borusan and U.S. Steel maintain that the Department did not assign the correct date for the earliest comparable sales in the home market and, consequently, has not captured all of the home market sales made by Borusan which may be used as a basis for normal value. Borusan states that the first sale to the United States took place in February 2010. Borusan and U.S. Steel argue that all home market sales taking place during the 90 days prior to the first U.S. sale should be included in the home market sales data. Accordingly, Borusan and U.S. Steel urge the Department to modify the margin program to include all of Borusan's home market sales, including those sales made from November 2009 to January 2010.

The Department's Position:

The Department agrees with Borusan and U.S. Steel. In examining U.S. market sales in an administrative review, the Department normally compares the export price (or constructed export price) to an average normal value for the identical or most similar foreign like product in a contemporaneous month.⁵⁶ The Department's regulations at 19 CFR 351.414(f) define a contemporaneous month to include the month of the U.S. sales, the three months preceding the month of the U.S. sales, and the two month following the month of the U.S. sale. In the *Preliminary Results*, the Department inadvertently did not include Borusan's home market sales starting three months prior to the first reported date of sale in the U.S.⁵⁷ Consequently, to correct this omission in the final results, the Department will modify its comparison market and margin program to include all of Borusan's home market sales, from November 2009 to June 2011.⁵⁸

Comment 3: G&A Expenses Calculation

U.S. Steel argues that the Department should exclude the revenue from (1) the sale of land and (2) profit from the previous year as offsets in the calculation of Borusan's general and administrative ("G&A") expense ratio. U.S. Steel cites to an example of the Department's practice, *Certain Cold-Rolled Carbon Steel Flat Products from Korea*,⁵⁹ in support of its claim on the sale of land. In that proceeding, U.S. Steel notes that the Department found that, because depreciation expense is not calculated on land and, consequently, not included in the COP, the Department does not consider it appropriate to include in COP the associated gain on the

⁵⁶ 19 CFR 351.414(e), (f)(1).

⁵⁷ See "Analysis Memo for the Borusan Group," dated May 24, 2012, at Attachment 1, page 3.

⁵⁸ See Memorandum from Christopher Hargett, through Robert James, to the File, entitled "Final Results of 2010 - 2011 Administrative Review of Welded Carbon Steel Pipes and Tubes from Turkey," dated November 30, 2012 ("Borusan Sales Calc Memo"), at Attachment 1.

⁵⁹ See *Final Results of the Antidumping Duty Administrative Review of Certain Cold-Rolled Carbon Steel Flat Products from Korea*, 67 FR 62124 (October 3, 2002) and accompanying Issues and Decision Memorandum at Comment 15 ("*Certain Cold-Rolled Carbon Steel Flat Products from Korea*").

disposal of the land when it is sold.⁶⁰ Further, U.S. Steel cites *Rebar from Turkey* in support of its assertion that the Department's practice in calculating the G&A expense ratio is to include only income items that relate to the current period, and because prior year profit does not relate to the current period, it should be excluded in the G&A expense ratio calculation.⁶¹

No other party commented on this issue.

The Department's Position:

We agree with U.S. Steel that the revenue from the sale of land and profit from the previous year should be excluded from the calculation of the G&A expense ratio.

In a supplemental questionnaire, we asked Borusan to identify each "extraordinary" income item that was included in the calculation of the G&A expense ratio and to explain why Borusan believed it was appropriate to include the item.⁶² Borusan responded by stating that the items at issue included income from "land sale" and "profit from the previous year." See Borusan's May 7, 2012, supplemental section D questionnaire response at 21-22. Borusan asserted that the Department's policy is to include "extraordinary" income items as offsets in the calculation of the G&A expense ratio if those items would not be considered "extraordinary" under U.S. generally accepted accounting principles ("GAAP"). See *id.* (citing *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 69 FR 64731 (November 8, 2004)). Borusan noted that none of the items listed as "extraordinary" income in Borusan's Turkish Lira financial statements, including items at issue, were considered "extraordinary" in Borusan's U.S. dollar financial statement prepared in accordance with International Accounting Standards ("IAS"). See *id.* Borusan concluded that, if the items were not considered extraordinary under IAS, then it is unlikely that they would be considered extraordinary under U.S. GAAP and, thus, the items were appropriately included in the calculation of the G&A expense ratio. See *id.*

In its May 7, 2012, supplemental questionnaire response, Borusan did not provide evidence or an explanation as to the nature of the land sale or profit from the previous year. See *id.* Moreover, as noted above, Borusan did not rebut U.S. Steel's comments on this issue.

The Department's practice is to offset G&A expenses for items that are related to the company's general operations and that are comprised of general activities associated with the company's core business, including the production of the merchandise under consideration.⁶³ In this case, absent persuasive evidence from Borusan to the contrary, we believe that the circumstances of the sale of land is similar to the disposal of a production facility where the resulting gain from the sale generates non-recurring income that is not part of a company's normal business

⁶⁰ See *id.*

⁶¹ See *Certain Steel Concrete Reinforcing Bars from Turkey*, 69 FR 64731 (November 8, 2004) and accompanying Issues and Decision Memorandum ("*Rebar from Turkey*") at Comment 20.

⁶² See Supplemental Section D Questionnaire, from the Department to Borusan, dated April 16, 2012, at 4.

⁶³ See *U.S. Steel Grp. a Unit of USX Corporation v. United States*, 998 F. Supp 1151, 1154 (Ct. Int'l Trade 1998) (citing *Rautaruukki Oy v. United States*, 1995 WL 170399 (Ct. Int'l Trade Mar. 31, 1995)).

operations and is unrelated to the general operation of the company. In such cases, we have excluded the gain from such a sale from the calculation of the G&A expense ratio.⁶⁴ Therefore, for these final results, we have excluded the offset for income related to Borusan's sale of land.⁶⁵

Further, the Department's established practice in calculating the G&A expense ratio is to include only income items that relate to the current period. See *Rebar from Turkey*, and accompanying Issues and Decision Memorandum at Comment 20. Because profit from the previous year does not relate to costs in the current period, we have excluded this revenue amount from the calculation of the G&A expense ratio calculation. See *Borusan Cost Calc Memo*, at 1.

Finally, as to Borusan's argument that these items should be included in G&A because they were not considered extraordinary items in Borusan's U.S. dollar financial statements, we disagree. Our decision relies on the details surrounding each item at issue, and whether the reported costs reasonably reflect the costs associated with the production and sale of the merchandise in accordance with section 777f(1)(A) of the Act, not whether IAS considers the item extraordinary or not.

Comment 4: Unpaid Exempted Duties as a Part of the Cost of Production

U.S. Steel argues that the Department should include the cost of unpaid exempted duties in the calculation of the COP in the final results. U.S. Steel cites *Circular Welded Carbon Steel Pipes and Tubes from Thailand* as support for its assertion that the Department's practice is to include any unpaid exempted duties in the calculation of COP.⁶⁶

No other party commented on this issue.

The Department's Position:

We agree with U.S. Steel that unpaid exempted import duties should be included in the calculation of COP. Section 772(c)(1)(B) of the Act directs the Department to increase U.S. price 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 exportation of the subject merchandise to the United States." The rebate or the exemption of the collection of such duties is commonly known as a duty drawback. It is the Department's practice to correspondingly increase the COP for duty drawback costs associated with the exempted duties, even though such costs were not actually paid and recorded in the company's normal books and records.⁶⁷ The

⁶⁴ See *Notice of Final Results of the Antidumping Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73437 (December 12, 2005) and accompanying Issues and Decision Memorandum at Comment 8.

⁶⁵ See Memorandum from James J. Balog, through Michael P. Martin, to Neal M. Halper, entitled "Cost of Production and Constructed Value Calculation Adjustments for the Final Results- Borusan Mannesmann Boru Sanayive Ticaret A.S.," dated November 28, 2012 ("Borusan Cost Calc Memo"), at 1.

⁶⁶ See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 75 FR 64696 (October 20, 2010) and accompanying Issues and Decision Memorandum ("*Circular Welded Carbon Steel Pipes and Tubes from Thailand*") at Comment 2.

⁶⁷ See *Circular Welded Carbon Steel Pipes and Tubes from Thailand*, and accompanying Issues and Decision

Court of International Trade has upheld this practice.⁶⁸

In this case, the Department is making an increase to Borusan's U.S. price for duty drawback. *See* Borusan Sales Calc Memo, at Attachment 1. As a consequence, we concurrently have increased Borusan's COP to reflect the duty drawback. *See id.* As explained above, our approach in this review follows the Department's established practice, which has been upheld by the Court of Appeals for the Federal Circuit. Thus, we have included the "duty" field from Borusan's cost file in the calculation of COP.

Toscelik

Comment 5: The Department Should Use a Certain Rate to Calculate Toscelik's U. S. Credit Expense

Toscelik reported that it did not have short term loans in U.S. dollars during the POR and, therefore, the Department should use the Federal Reserve Bank average interest rate to calculate its U.S. credit expense. U.S. Steel contends that the record proves that Toscelik in fact had these loans. U.S. Steel claims that the Department has recognized that loans that mature in less than one year are short-term loans and that, when possible, the Department should use the respondent's own short-term interest rate in the same currency as its sales to calculate U.S. credit expenses.

Toscelik rebuts by stating that it appropriately reported its U.S. credit expense. Toscelik claims that the loans proposed by U.S. Steel would have the Department rely upon dissimilar loans to calculate Toscelik's U.S credit expense. Specifically, the loans advanced by U.S. Steel have terms of 361 and 362 days, both of which are substantially longer than Toscelik's actual credit term. The Federal Reserve rate, which Toscelik claims it reported for its loans, has duration of two to 31 days. Therefore, Toscelik believes it was correct to use the Federal Reserve interest rates.

However, if the Department uses Toscelik's own borrowing rates, then it urges the Department to use the weighted average rate for all loans of 365 days or less. Finally, if the Department used only those rates offered by U.S. Steel, Toscelik argues that it would contravene the Department's practice, given that one of those loans occurred predominantly outside of the POR.

The Department's Position:

We agree with U.S. Steel and Toscelik in part. It is the Department's practice to use the respondent's own short-term interest rate in the same currency as its sales to calculate U.S. credit expenses. *See* Import Administration Policy Bulletin 98.2: Imputed Credit Expenses and

Memorandum at Comment 2.

⁶⁸ *See Saha Thai Steel Pipe (Public) Co. v. United States*, No. 08-00380, 2009 WL 3326637 at *4-6 (Ct. Int'l Trade Oct. 15, 2009), *aff'd*, 635 F.3d 1335 (Fed. Cir. 2011).

Interest Rates (February 23, 1998). Moreover, the Department has recognized that loans that mature in less than one year are considered “short-term” loans.⁶⁹

The record of the review contains evidence on certain Toscelik short-term interest rates during the POR.⁷⁰ Consistent with our practice, we will rely upon Toscelik’s own rates to calculate the company’s U.S. credit expense. The Department considers Toscelik’s own rates to better reflect its operations experience during the POR, as opposed to relying upon rates from the Federal Reserve that are not as specific to Toscelik. Moreover, because the Department considers short-term loans to be those loans that mature in less than one year, we have included all of Toscelik’s loans that are 365 days or less. Accordingly, we will calculate Toscelik’s U.S. credit expense by using the weighted-average rate for all of Toscelik’s loans of 365 days and less.⁷¹

Finally, with respect to Toscelik’s claim that one of its short-term loans occurred predominantly outside of the POR, the Department’s practice is to consider all loans occurring within the POR in our calculation of U.S. credit expenses, regardless of whether the particular loan occurred predominantly in the POR.⁷²

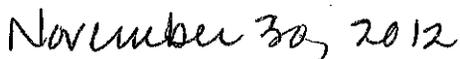
Recommendation:

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

Agree Disagree



Ronald K. Lorentzen
Acting Assistant Secretary
for Import Administration



Date

⁶⁹ See *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 69 FR 64731 (November 8, 2004) and accompanying Issues and Decision Memorandum at 18.

⁷⁰ See Toscelik January 27, 2012, supplemental questionnaire response at 7-8 and Exhibit 5.

⁷¹ See Memorandum from Victoria Cho, through Robert James, to the File, entitled “Final Results of 2010 - 2011 Administrative Review of Welded Carbon Steel Pipes and Tubes from Turkey,” dated November 30, 2012, at 2.

⁷² See Policy Bulletin 98.2, available at http://www.ia.ita.doc.gov/policy/bull98-2.htm#N_4_.