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DEPARTMENT OF COMMERCE

International Trade Administration

C-489-502

Circular Welded Carbon Steel Pipes and Tubes from Turkey: Notice of Court Decision Not in Harmony With Final Results of Countervailing Duty Administrative Review and Notice of Amended Final Results of Countervailing Duty Administrative Review; 2011

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce

SUMMARY: On April 1, 2015, the United States Court of International Trade (the Court) issued *Toscelik II*,<sup>1</sup> which sustained the Final Remand Results<sup>2</sup> that the Department of Commerce (the Department) issued in connection with *Toscelik I*, concerning the Department's final results of administrative review of the countervailing duty order on circular welded carbon steel pipes and tubes from Turkey covering the period of review January 1, 2011, through December 31, 2011 (POR).<sup>3</sup> At issue were benefits that *Toscelik Profil ve Sac Endustrisi AS* (*Toscelik*) received in connection with land that *Toscelik* acquired from the Government of Turkey in 2008 and 2010. In the Final Remand Results, the Department restored the benchmark originally calculated for the 2008 land subsidy in the *2010 CVD Review*<sup>4</sup> and further explained aspects of the benchmark used to value the 2010 land subsidy. In addition, pursuant to a

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<sup>1</sup> See *Toscelik Profil Ve SAC Endustrisi A.S. v. United States*, Court No. 13-00371, Slip. Op. 15-28 (CIT April 1, 2015) (*Toscelik II*).

<sup>2</sup> See Final Results Of Redetermination Pursuant To Court Remand, Court No. 13-00371, Slip Op. 15-28 (February 13, 2015) (Final Remand Results), which is available at <http://enforcement.trade.gov/remands/index.html>.

<sup>3</sup> See *Toscelik Profit ve Sac Endustrisi AS v. United States* Court No. 13-00371; Slip Op. 14-126 (CIT October 29, 2014) (*Toscelik I*); *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013) (*Final Results*) and accompanying Issues and Decision Memorandum (Final IDM).

<sup>4</sup> See *Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 6, 2012) (*2010 CVD Review*) and accompanying Issues and Decision Memorandum (2010 CVD Review IDM).

voluntary remand request, the Department examined and corrected, as necessary, duplication errors in the dataset used to calculate the land benchmark.<sup>5</sup>

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken*,<sup>6</sup> as clarified by *Diamond Sawblades*,<sup>7</sup> the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Results*. The Department is also amending the *Final Results* with respect to Toscelik.

DATES: Effective date: April 11, 2015

FOR FURTHER INFORMATION CONTACT: John Conniff, AD/CVD Operations Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482-1009.

SUPPLEMENTARY INFORMATION:

#### Background

On October 30, 2013, the Department issued the *Final Results*.<sup>8</sup> Toscelik challenged certain aspects of the *Final Results* at the Court. In *Toscelik I*, the Court held that the Department may not alter the nonrecurring benefit stream for the 2008 land parcel in a subsequent review—as the Department did in the *Final Results* when it changed the 2008 land subsidy benchmark—absent a demonstration that the original determination “is clearly erroneous and would work a manifest injustice.”<sup>9</sup> The Court also granted the Department's voluntary remand request to examine possible double-counting errors in the land benchmark dataset, and

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<sup>5</sup> See Final Remand Results at 5-12.

<sup>6</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>7</sup> See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

<sup>8</sup> See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013) (*Final Results*) and accompanying Issues and Decision Memorandum (Final IDM).

<sup>9</sup> See *Toscelik I* at 10.

instructed the Department to supply additional explanation regarding the use of simple averaging, the expansion of the dataset with additional prices, and the use of different benchmark prices for the 2008 and 2010 parcels.<sup>10</sup>

On February 13, 2015, the Department filed the Final Remand Results with the Court, in which it restored the benchmark originally calculated for the 2008 land subsidy in the *2010 CVD Review* and further explained aspects of the benchmark used to value the 2010 land subsidy. In addition, the Department examined and corrected as necessary duplication errors in the dataset used to calculate the benchmark for the 2010 land subsidy.<sup>11</sup> On April 1, 2015, the Court entered judgment sustaining the Final Remand Results.<sup>12</sup>

#### Timken Notice

In *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, 626 F.3d at 1381, the CAFC held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The Court’s judgment in *Toscelik II* sustaining the Final Remand Results constitutes a final decision of the Court that is not in harmony with the Department’s *Final Results*. This notice is published in fulfillment of the publication requirement of *Timken*.

#### Amended Final Results

Because there is now a final court decision, the Department is amending the *Final Results* with respect to Toscelik. The revised net subsidy rate for Toscelik during the period January 1, 2011, through December 31, 2011, is as follows:

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<sup>10</sup> *Id.* at 14-16.

<sup>11</sup> *See* Final Remand Results at 5-12.

<sup>12</sup> *See Toscelik II* at 6.

<b>Producer/Exporter</b>	<b>Total Net Subsidy Rate</b>
Toscelik Profil ve Sac Endustrisi A.S.	<i>de minimis</i>

Since the Court’s ruling is final and no party has appealed, the Department will instruct U.S. Customs and Border Protection to assess without regard to countervailing duties unliquidated entries of subject merchandise for the producer/exporter listed above during the POR.

Cash Deposit Requirements

Since the *Final Results*, the Department has established a new cash deposit rate for Toscelik.<sup>13</sup> Therefore, the cash deposit rate for Toscelik does not need to be updated as a result of these amended final results.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

July 16, 2015.

Date

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<sup>13</sup> See *Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Rescission of Countervailing Duty Administrative Review*, in Part, 79 FR 51140 (August 27, 2014).