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MEMORANDUM

DATE: August 23, 2002

TO: Faryar Shirzad
Assistant Secretary for
Import Administration

FROM: Richard W. Moreland
Deputy Assistant Secretary, Group I
Import Administration

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Turkey

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Background

On February 8, 2002, the Department of Commerce ("the Department") published the preliminary determination in this investigation. (See Carbon and Certain Alloy Steel Wire Rod from Turkey: Preliminary Negative Countervailing Duty Determination ("Preliminary Determination") 67 FR 5976 (February 8, 2002)). The "Analysis of Programs" and "Subsidies Valuation Information" sections below describe the subsidy programs and the methodologies used to calculate the benefits from these programs. We have analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which also contains the Department's responses to the issues raised in the briefs. We recommend that you approve the positions we have developed in this memorandum. Below is a complete list of the issues in this investigation for which we received comments and rebuttal comments from parties:

Comment 1: General Incentives Investment Program ("GIEP")
Comment 2: Investment Allowances
Comment 3: Value-Added Tax ("VAT") Programs
Comment 4: Customs Duty Exemption

Comment 5: Taxes, Dues, and Fees Exemptions
Comment 6: Foreign Exchange Loan Assistance
Comment 7: Financing Guarantees
Comment 8: Inward Processing Regime Customs Duty Exemption
Comment 9: Turkish Export-Import Bank ("Eximbank") Programs

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life ("AUL") of the renewable physical assets used to produce the subject merchandise. 19 CFR 351.524(d)(2) creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (the "IRS Tables"). For wire rod, the IRS Tables prescribe an AUL of 15 years. None of the responding companies or interested parties disputed this allocation period. Therefore, we have used the 15-year allocation period for all respondents.

Attribution of Subsidies

19 CFR 351.525(a)(6) directs that the Department will attribute subsidies received by certain affiliated companies to the combined sales of those companies. Based on our review of the responses, we find that "cross ownership" does not exist with respect to certain Colakoglu Metalurji, A.S. ("Colakoglu") or Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi, A.S. ("Habas") affiliates, as discussed below.

Colakoglu: Colakoglu reports that it has numerous subsidiaries and affiliations with various companies. However, our analysis indicates no basis to attribute any subsidies received by these other subsidiaries or affiliates to the production of the subject merchandise. Specifically, although cross-ownership may exist with these other companies, they do not produce the subject merchandise as required in 19 CFR 351.525(b)(6), nor do they meet any of the other criteria specified in 19 CFR 351.525(b)(6).

Habas: Habas reports that it has numerous subsidiaries and affiliations with various companies. However, our analysis indicates no basis to attribute any subsidies received by these other subsidiaries or affiliates to the production of the subject merchandise. Specifically, although cross-ownership may exist with these other companies, they do not produce the subject merchandise as required in 19 CFR 351.525(b)(6), nor do they meet any of the other criteria specified in 19 CFR 351.525(b)(6).

Adjusting for Inflation

During the POI, the inflation rate in Turkey exceeded 25 percent, as shown in the IMF's International Financial Statistics ("IFS"). Adjusting the subsidy benefits and the sales figures for inflation neutralizes any potential distortion in our subsidy calculations caused by high inflation and the timing of the receipt of the subsidy. Consistent with the methodology used in the Preliminary Determination, we calculated the *ad valorem* subsidy rates for each program by multiplying the benefit in the month of receipt by the rate of inflation from the month of receipt until the end of the POI. We adjusted the monthly sales values in the same way and added these adjusted values, thus obtaining total sales for the POI valued at December 2000 prices. In these calculations, we used the Wholesale Price Index ("WPI") as reported in the IFS.

Benchmark Interest Rates

We note that short-term interest rates in Turkey fluctuated significantly from January 1, 2000 to December 31, 2000, the period of investigation ("POI"). Consequently, we have calculated monthly benchmark rates. Therefore, for example, the interest rate paid on a government loan obtained in January 2000 has been compared to the interest rate paid on a benchmark loan obtained the same month.

The Department uses company-specific interest rates, where possible, to determine whether government-provided loans under investigation confer a benefit. (See 19 CFR 351.505(a)(2)). In this case, Habas provided the interest rates it paid on short-term U.S. dollar-denominated and short-term TL-denominated commercial loans. However, the short-term TL-denominated commercial loans were taken out in only a few months. In accordance with 19 CFR 351.505(a)(2), we used these interest rates as the benchmark rate for Habas' U.S. dollar- and, for the available months, TL-denominated loans. Colakoglu did not provide any company-specific benchmark interest rates.

Where no company-specific benchmark interest rates are available, 19 CFR 351.505(a)(3)(ii) directs us to use a national average interest rate as the benchmark. The Government of the Republic of Turkey ("GRT") does not maintain or publish data concerning the predominant national average short-term interest rates in Turkey. Therefore, we have calculated benchmark interest rates for TL denominated loans based on the short-term interest rates in Turkey for 2000 as reported weekly by The Economist. This methodology is consistent with Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey: Final Results of Countervailing Duty Administrative Review, 65 FR 49230 (August 11, 2000) ("1998 Pipe Final") and Certain Pasta From Turkey: Final Results of Countervailing Duty Administrative Review, 66 FR 64398 (December 13, 2001) ("1999 Pasta Final").

Pursuant to 771(5)(E)(ii) of the Act, the Department uses a "comparable commercial loan that the recipient could actually obtain on the market" as the benchmark in determining whether a government provided loan confers a benefit. In the preamble of the Department's regulations, it

states that it is the Department's practice to normally compare effective interest rates rather than nominal rates in making this comparison. (See Countervailing Duties; Final Rule, 63 FR at 65362 (November 25, 1998) ("Preamble"). However, where effective rates are not available, the Preamble reads that we will compare nominal rates or, as a last resort, nominal to effective rates.

Our benchmark rates drawn from The Economist do not include commissions or fees paid to intermediary banks, *i.e.*, are nominal rates. Therefore, for our final determination, we compared the benchmark interest rates to the companies' reported rates, exclusive of commissions and fees, *i.e.*, we made our comparison on a nominal basis. (See Comment 9, *infra*).

Analysis of Programs

I. *Programs Determined to Be Countervailable*

A. Deduction from Taxable Income for Export Revenue

According to Article 40 of the Income Tax Law, documented expenditures made to earn business income are deductible from taxable income. On January 1, 1995, the GRT established an addendum to paragraph 1 of Article 40 of the income tax law. This addendum (no. 4108) allows a tax deduction for certain expenses (*e.g.*, expenses paid in cash, such as gas, hotel rooms, and food) to companies that operate internationally. The tax deduction is limited to 0.5 percent of foreign revenue.

Consistent with Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Reviews, 63 FR 18885, 18886 (April 16, 1998) ("1996 Pipe Final"), we have determined that this tax exemption is a countervailable subsidy. First, the exemption provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act and 19 CFR 351.509(a) because it represents revenue forgone by the GRT. The exemption provides a benefit in the amount of the tax saving to the company pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a). Also, the subsidy is specific under section 771(5A)(B) of the Act because its receipt is contingent upon export performance.

Of the companies investigated, only Habas utilized this tax exemption on the tax return it filed during the POI. The Department typically treats tax exemptions as recurring grants in accordance with 19 CFR 351.524(c)(1). To calculate the countervailable subsidy under this program, we divided the tax savings realized during the POI by the company's export sales during the POI, adjusting for inflation as described in the Subsidies Valuation Information section, *supra*. On this basis, we determine the countervailable subsidy from this program for Habas to be 0.11 percent, *ad valorem*.

B. Turkish Eximbank Programs

1. Pre-Shipment Export Loans

Through this program, the Turkish Eximbank extends short-term U.S. dollar- and TL-denominated loans to exporters through intermediary commercial banks. Turkish Eximbank allocates certain credit lines to these intermediary banks. The intermediary commercial banks, which take the risk that the borrower may default, can require additional fees to offset this risk and may also charge a commission. Exporters, manufacturers-exporters, and export-oriented manufacturers are eligible to participate in this program provided they exported a specified amount during the previous calendar year and they commit to future exports within a specified period of time. Like all other export-related short-term loans, the pre-shipment export loans are exempted from the Resource Utilization Support Fund contribution ("KKDF"), Banking and Insurance tax ("BIST"), and stamp tax. In the Preliminary Determination, the Department countervailed the exemptions of KKDF and BIST granted on Eximbank loans. However, based on information obtained at verification, we have determined that the KKDF and BIST exemptions received on export loans are non-countervailable. (For further discussion of these programs, see "Foreign Exchange Loan Assistance," *infra*, and Comment 6).

In the Preliminary Determination, the Department found that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act because the interest rate paid on these loans is less than the amount the recipient would pay on a comparable commercial loan. (See also, 1999 Pasta Final, Decision Memorandum (December 13, 2001)). The loans provide a financial contribution in the form of a direct transfer of funds from the GRT, pursuant to section 771(5)(D)(i) of the Act, that bestow a benefit in the amount of the difference between the benchmark interest rate and the interest rate and fees paid by the recipient companies. (See section 771(5)(E)(ii) of the Act). In the Preliminary Determination, we found the pre-shipment export loans to be specific in accordance with section 771(5A)(B) of the Act because receipt of these loans is contingent upon export performance. During verification, and in prior determinations, we found these loans are not tied to a particular export destination and have, therefore, treated this program as an untied export loan program which renders it countervailable regardless of whether or not the loans were used for exports to the United States. (See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey: Preliminary Results of Countervailing Duty Administrative Review, 65 FR 18070, 18072 (April 6, 2000)("1998 Pipe Prelim"). In this final determination, no new information has been provided that would warrant reconsideration of these determinations.

During verification of the GRT and Habas, we learned that the loans Habas reported receiving from the Turk Eximbank as part of the Pre-Shipment Loan Program were really loans issued through the Foreign Trade Corporate Company Credit Facility Program. (See Memorandum from S. Anthony Grasso and Jennifer D. Jones through John Brinkmann to File, "Results of Verification of Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S." ("Habas Verification Report"), dated June 27, 2002, at page 5; Memorandum from Jennifer D. Jones and S. Anthony

Grasso through John Brinkmann to File, "Results of Verification of the Government of the Republic of Turkey" ("GRT Verification Report"), dated July 1, 2002, at pages 4-5). Therefore, for this final determination, we are addressing the Turkish Eximbank loan information provided by Habas under the Foreign Trade Corporate Company Credit Facility Program, *infra*.

Pursuant to 19 CFR 351.505(a), we have calculated the benefit as the difference between the payments of interest that Colakoglu made on its pre-shipment export loans during the POI and the payments the company would have made on comparable commercial loans. We divided the resulting benefit by the value of the company's exports during the POI, adjusting for inflation as described in the Subsidies Valuation Information section, *supra*. On this basis, we determine the countervailable subsidy from this program to be 0.03 percent *ad valorem* for Colakoglu.

2. Foreign Trade Corporate Companies Credit Facility

The Foreign Trade Corporate Companies Credit Facility was implemented to assist large export trading companies in their export financing needs. This program is specifically designed to benefit Foreign Trade Corporate Companies ("FTCC") and Sectoral Foreign Trade Companies ("SFTC"). An FTCC is a company whose export performance equaled or exceeded U.S. $50 million in the previous year. An SFTC is a company that includes at least ten small- and medium-scale enterprises operating together in similar sectors. The goal of the Foreign Trade Corporate Companies Credit Facility is to promote exportation and diversify export products and markets while enabling the exporters to benefit from favorable borrowing rates which increase the competitiveness of exporters in foreign markets. For eligible companies, the Turkish Eximbank will provide short-term export credits based on their past export performance. Through this credit program, the Turkish Eximbank extends short-term export credit directly to exporters in TL and foreign exchange ("FX") up to 100 percent of FOB export commitments, with a repayment period up to 180 days. Additionally, companies are exempt from taxes, duties, and related fees associated with the operations and processes of obtaining these credits under the provisions of the Export Encouragement Decree and Communiques.

During verification of the GRT response, we learned that Habas is classified as a FTCC, and as such, along with Colakoglu Dis Ticaret, A.S. ("COTAS," an incorporated trading company affiliated with Colakoglu), was eligible for export credits under this program. During the POI, both Colakoglu and Habas received Eximbank short-term export credits under this program. In the Preliminary Determination, the Department countervailed the exemptions of KKDF and BIST granted on Eximbank loans. However, based on information obtained at verification, we have determined that the KKDF and BIST exemptions received on export loans are non-countervailable. (For further discussion of these programs, see "Foreign Exchange Loan Assistance," *infra,* and Comment 6).

We have determined that this program is a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the

Act in the amount of difference between the payments of interest that Colakoglu and Habas made on their Foreign Trade Corporate Company Credit Facility loans during the POI and the payments the company would have made on comparable commercial loans. The program is specific pursuant to section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance. In addition, during verification, we found that these loans are not tied to a particular export destination and have, therefore, treated this program as an untied export loan program which renders it countervailable regardless of whether or not the loans were used for exports to the United States. (See GRT Verification Report at 6).

Pursuant to 19 CFR 351.505(a), we have calculated the benefit as the difference between the payments of interest that Colakoglu and Habas made on their Foreign Trade Corporate Company Credit Facility loans during the POI and the payments the company would have made on comparable commercial loans. Pursuant to 19 CFR 351.525(b)(2), this benefit was divided by each company's total exports during the POI, adjusting for inflation as described in the Subsidies Valuation Information section, *supra*. On this basis, we determine the countervailable subsidy from this program to be 0.08 percent *ad valorem* for Colakoglu, and 0.08 percent *ad valorem* for Habas.

3. Past Performance Related Export Credits

This program is similar to the Foreign Trade Corporate Companies Credit Facility described above. However, the Past Performance Related Export Credits ("PPREC") program is designed to meet the working capital needs of exporters, manufacturers-exporters, and export oriented manufacturers other than FTCCs and SFTCs, (described, *supra*). Under the PPREC, the Turkish Eximbank offers loans to firms that had a minimum of U.S. $1,000,000 in exports during the previous year. The loans under this program are denominated either in TL (established in 1997) or a foreign currency (established in 1994), are extended directly to the companies, and have a maturity of 180 days. As in all export credits, Past Performance Related Export Credits also can benefit from tax, duty, and charge exemptions under the provisions of the related Export Encouragement Decree and Communiques. In the Preliminary Determination, the Department countervailed the exemptions of KKDF and BIST granted on Eximbank loans. However, based on information obtained at verification, we have determined that the KKDF and BIST exemptions received on export loans are non-countervailable. (For further discussion of these programs, see "Foreign Exchange Loan Assistance," *infra*, and Comment 6).

We have determined that this program is a countervailable subsidy within the meaning of section 771(5) of the Act. The loans provide a financial contribution in the form of a direct transfer of funds from the GRT, pursuant to section 771(5)(D)(i) of the Act. The loans bestow a benefit in the amount of the difference between the benchmark interest rate and the interest rate and fees paid by the recipient companies pursuant to section 771(5)(E)(ii) of the Act. The program is specific pursuant to section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

We did not countervail this program in the Preliminary Determination because according to the GRT, none of the loans received by Colakoglu under this program were used for shipments of subject merchandise to the United States. However, during verification, we found that these loans are not tied to a particular export destination and have, therefore, treated this program as an untied export loan program which renders it countervailable regardless of whether or not the loans were used for exports to the United States. (See GRT Verification Report at 3, 7; Colakoglu's Verification Report at 7).

Pursuant to 19 CFR 351.505(a), we have calculated the benefit as the difference between the payments of interest that Colakoglu made on its Past Performance Related Export Credits during the POI and the payments the company would have made on comparable commercial loans. This benefit was divided by each company's total exports during the POI pursuant to 19 CFR 351.525(b)(2), adjusting for inflation as described in the Subsidies Valuation Information section above. On this basis, we determine the countervailable subsidy from this program to be 0.02 percent *ad valorem* for Colakoglu.

C. General Incentives Encouragement Program ("GIEP")

Under the GIEP, companies engaging in a wide variety of investment projects can obtain an investment incentive certificate for the project which conveys eligibility for other benefits from the GRT on the certificate holder. The GIEP covers all investment activities related to the production of goods and services, research and development, environmental protection, improvement of quality and standards and support of small- and medium-sized enterprises. During the POI, the following programs, for which respondent companies were eligible, operated under the umbrella of the GIEP: Investment Allowances; VAT Exemption on Machinery and Equipment; Customs Duty Exemption; and Taxes, Dues and Fees Exemption. Because respondent companies do not fit the GRT's definition of small- and medium-sized enterprises, they were ineligible for the Credits for Small- and Medium-Sized Enterprises Program under the GIEP.

In order to receive an investment incentive certificate, an investor submits an application to the General Directorate of Incentives and Implementation ("GDII"), an agency within the Undersecretariat of Treasury. The application for a certificate includes, among other items, a description of the investment project, a current capacity report for certain investments, and a list of the machinery and equipment that the company plans to buy in connection with the project. At verification, we learned that the GRT approves almost all applications for investment incentive certificates. In order to receive an investment incentive certificate, a company need only properly complete the application, provide the requisite documentation, and invest in a project which falls within the scope of the GIEP. As noted above, the GIEP "covers all investment activities related to the production of goods and services, research and development, environmental protection, improvement of quality and standards, and support of the small- and medium-sized enterprises." (See GRT Verification Report at Exhibit 6). Each certificate specifies which benefit programs the certificate holder is eligible for and the conditions of

eligibility. These certificates are granted on a project basis; therefore, a company may have more than one certificate. The Department has previously found that some elements of the GIEP and the General Incentives Program ("GIP")(*i.e.*, the predecessor program to the GIEP)) are countervailable and others are non-countervailable. (See Final Affirmative Countervailing Duty Determination: Certain Pasta from Turkey, 63 FR 30366, 30369-30372 (June 14, 1996)("Pasta Investigation Final")).

The threshold requirement for eligibility of any GIEP benefit program is the receipt of an investment incentive certificate. The eligibility criteria for the VAT Exemption on Machinery and Equipment Program and Customs Duty Exemption is identical to the eligibility criteria for the GIEP. (For further discussion, see "VAT Exemption on Machinery and Equipment Program" and Comment 3; "Customs Duty Exemption" and Comment 4, *infra*). We note that a predecessor to the current VAT Exemption on Machinery and Equipment Program, the VAT Support Program, operated differently from the current VAT program, thus meriting separate analysis. (For further discussion, see VAT Support Program and Comment 3, *infra*).

Certain programs operating under the GIEP contain eligibility criteria that the GIEP itself does not contain. Eligibility for the Taxes, Dues, and Fees Exemption Program is based on export criteria additional to the threshold GIEP criteria. (For further discussion of the Taxes, Dues, and Fees Exemption Program, see "Programs Determined to be Countervailable," *supra* and Comment 5, *infra*). The Investment Allowance Program's operation has been modified by six decrees since 1994. Regardless of which of the six decrees authorized a certain allowance, a company may qualify for an investment allowance through various methods only after meeting the GIEP threshold eligibility requirements. (For further discussion, see Investment Allowance Program and Comment 2, *infra*).

1. Investment Allowance

In 1963, the Turkish Income Tax Law, Articles 1-5, initiated the investment allowance which permits a company which has qualified for an investment incentive certificate to deduct certain investment expenditures from its taxable income. These allowances fall under the umbrella of GIEP. The Investment Allowances used to calculate the deductions to taxable income on respondent companies' income tax due during the POI, were authorized by the GIEP under Decree 94/6411, and its amendments, and Decree 98/10755. For investment incentive certificates relevant to the POI the regional designations and relevant investment allowance percentages were: (1) Developed Regions–40 percent allowance; (2) Developed Region–100 percent increased allowance in Organized Industrial Regions[1]; (3) Normal Region–100 percent allowance; and (4) Special Importance Sector Investments–100 percent allowance.

At verification, we learned that neither respondent company was eligible for or received benefits

[1]For an explanation of Organized Industrial Zones, see GRT Verification Report at 11.

during the POI under Decree 2000/1821, the legislation applicable to investment incentive certificates issued in the POI. Under Decree 2000/1821, in order to raise tax revenue, the GDII reduced the level of allowances within Normal Regions to 60 percent and also instituted a 200 percent allowance for certain investments. These allowance levels are available only to companies that receive investment incentive certificates issued under Decree 2000/1821.[2] Moreover, we learned at verification that during a certain time period, due to an economic crisis, a temporary reduction to the investment allowance occurred.

A significant portion of the investment incentive certificates that respondent companies used to calculate the investment allowance deduction on tax returns filed during the POI were approved because the investments were "Special Importance Sector" investments. The Department has previously treated these allowances as not countervailable. (See, e.g., 1998 Pipe Final, 65 FR 49230, 49231). For the reasons explained in the "Investment Allowance" section under "Programs Determined to Be Not Countervailable," *infra*, we are continuing to treat investment allowances received under the Special Importance Sector as not countervailable.

The investment allowance which Colakoglu used during the POI was entirely based on expenditures for investment incentive certificates issued under the Special Importance Sector provisions. (For further discussion, see "Investment Allowance" under "Programs Determined to Be Not Countervailable," *infra*). The investment allowance which Habas used during the POI resulted from a number of investment incentive certificates issued under various provisions of the Investment Allowance Program. The majority of Habas' certificates were issued under the Special Importance Sector provision, thus the majority of the investment allowance calculated on the tax return filed during the POI flowed from this provision and are not countervailable. (For further discussion, see "Investment Allowance" under "Programs Determined to Be Not Countervailable," *infra*). Certain portions of Habas' investment allowance flowed from a certificate issued under a temporary provision related to an economic crisis in Turkey. Under the temporary provision, the investment allowance for all regions was reduced to twenty percent. (For further discussion, see "Investment Allowance" under "Programs Determined to Be Not Countervailable," *infra*). Finally, the remaining portion of the Habas' investment allowance calculated on the tax return filed during the POI flowed from investment certificates issued under the GIEP provision which grants a 100 percent allowance to companies located within Normal Regions.

Because Habas received a 100 percent allowance based on its location in a Normal Region, we find this portion of the investment allowance to be countervailable. Because the 100 percent

[2] See Preliminary Determination, 67 FR 5976, 5982 which describes the Investment Allowance Program levels as: "(1) a 40 percent allowance is available in developed regions; (2) a 100 percent allowance is available in Priority Development Regions and Organized Industrial Regions; and (3) an allowance of up to 200 percent for certain industrial investments of at least US $250 million."

allowance provided to companies in the Normal Region is sixty percent higher than the minimum forty percent allowance provided to companies in the Developed Region, the difference results in a higher tax savings to the company due to its geographic location. Therefore, we determine that the sixty percent difference results in a countervailable subsidy under section 771(5A)(D)(iv) of the Act. We also find that a financial contribution exists according to section 771(5)(D)(ii) because the GRT has foregone revenue otherwise due. According to 19 CFR 351.509, a benefit exists to the extent that the tax paid by Habas is less than the tax it would have paid absent the investment allowance. We also determine that the benefits under this program are recurring because once a company has a fixed asset investment project approved, it becomes eligible to deduct an investment allowance from its corporate income tax returns; therefore, the receipt of the benefit is automatic and continues year to year. (See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe From Turkey: Preliminary Results and Partial Recission of Countervailing Duty Administrative Reviews, 62 FR 64808, 64810 (December 9, 1997)("1996 Pipe Prelim").

To calculate the benefit for Habas, we first multiplied the portion of the investment allowance calculated on Habas' tax return which flowed from the one hundred percent allowance, granted to Habas because of its location in the Normal Region, by 60 percent, which is the amount Habas receives above the 40 percent allowance provided to all industries throughout Turkey under the decrees which authorized the 100 percent allowances taken during the POI. We then computed the company's tax rate. A company filing a corporate tax return in Turkey is normally required to pay two separate corporate taxes. The first is a 30 percent Corporate Income Tax. The second is a contribution to "the Fund," which is calculated as 10 percent of the actual corporate tax paid. The sum of these taxes normally equals a total corporate tax rate of 33 percent. We then multiplied the countervailable portion of the investment allowance deduction by the tax rate of 33 percent, and obtained the tax savings for the company. Next, we divided the tax savings by the company's total sales, adjusting for inflation as described in the Subsidies Valuation Information section, *supra*. On this basis, we determine the countervailable subsidy to be 0.14 percent *ad valorem* for Habas.

2. VAT Support Program

Under the VAT Support Program, the GRT rebated the payment of VAT on certain domestically purchased goods to companies that qualified for an investment incentive certificate under the GIP (*i.e.*, the predecessor program to the GIEP). According to the GRT, this program functioned as part of the Resource Utilization Support Premium ("RUSP") of the GIP. (See GRT Verification Report). The RUSP was terminated by Decree 98/10755 and companies became ineligible to apply for payments on any expenditures made after December 31, 1996. Although this program was terminated, companies can receive residual payments for purchases made prior to the termination.

We note that in the Preliminary Determination, this program was conflated with its predecessor, the "Incentive Program on Domestically Obtained Goods Program," and treated as not used

based on the fact that neither respondent company received VAT rebate payments during the POI. (See Preliminary Determination, 67 FR 5976, 5983). We also note that, instead of categorizing both the terminated VAT Support Program and the VAT Exemption on Machinery and Equipment Program under the name "VAT Support Program," we have analyzed them distinctly for the final determination because the operation and authorizing decrees of each program are distinct. The VAT Exemption on Machinery and Equipment Program is discussed under "Programs Determined to Be Not Countervailable," *infra*.

In 1998 Pipe Prelim, 65 FR 18070, 18072, as confirmed in 1998 Pipe Final, and 1999 Pasta Final, 66 FR 64398, 64399, we determined that the VAT Support Program was countervailable; under section 771(5)(D)(ii) of the Act, the VAT rebates provided a financial contribution in the form of revenue forgone by the GRT. We found the program to be specific under section 771(5A)(C) of the Act because the receipt of the rebates was contingent upon the use of domestically produced goods. We also found that a benefit was conferred by the GRT in the amount of the grant. The Incentive Premium on Domestically Obtained Goods Program, which functioned in a similar manner, was found countervailable for the same reasons in 1996 Pasta Investigation Final, 63 FR 30366, 30369. We continue to follow this analysis in the instant investigation.

In prior determinations, the Department has treated benefits received under this program as recurring subsidies according to 19 CFR 351.524(c)(1). We have continued to treat these subsidies as recurring benefits that are expensed in the year of receipt, pursuant to 19 CFR 351.524(a). Because no benefits were received in the POI, we have determined that the program was not used. However, the petitioners argue that these benefits are non-recurring, according to 19 CFR 351.524(c)(2)(iii), because they claim the subsidies in question were tied to the capital structure of the firm. Based on the payment amounts reported by the GRT for the VAT Support Program, even if we were to agree with the petitioners and analyze exemptions under this program as non-recurring subsidies, because the payments received in each reported year are less than 0.5 percent of relevant sales, these benefits would be expensed in the year of receipt according to 19 CFR 351.524(b)(2), and there would be no benefit remaining to be allocated in the POI. (For further discussion, see Comment 3, *infra*).

D. Inward Processing Certificate Exemptions

An Inward Processing Certificate Exemption program was first established in Turkey on January 24, 1980, by the Export Promotion Decree numbered 8/82. On December 23, 1999, the GRT issued "Resolution Concerning Domestic Processing Regime," Resolution Number 99/13819, with the intent of increasing Turkish exports by allowing procurement of raw materials at world market prices. Under this program, companies are exempt from paying customs duties and VAT on raw material imports to be used in the production of exported goods. In place of payments, a company will provide a letter of guarantee worth twice the value of the imported raw material. The guarantee letter is returned to the company upon fulfillment of the export commitment. Additionally, during the course of verification of the GRT and the respondent companies, we

learned that under this program companies are exempt from paying the KKDF on imported inputs purchased using an acceptance credit, due-dated letter of credit, and/or cash against goods method of payment.

To participate in this program a company must hold an "Inward Processing Certificate," which lists the amount of raw materials to be imported and the amount of product to be exported. The key factors determining eligibility for this exemption are whether a company has fulfilled its commitments made in previous inward processing certificates granted to the company and whether the kind and amount of the good to be exported is appropriate to the kind and amount of raw material to be imported. In cases where excessive raw materials are requested, the GRT will calculate and approve an appropriate amount of raw material that may be imported under tax-exempt status, commensurate with the kind and amount of finished product to be exported. Additionally, according to the import processing system, the value of imported raw material cannot exceed the value of the committed export.

Regarding the customs duty exemption granted under this program, pursuant to 19 CFR 351.519(a)(1)(ii), a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input. Regarding the VAT exemptions granted under this program, pursuant to 19 CFR 351.518(a)(1), a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste, or if the exemption covers taxes other than indirect taxes that are imposed on the input. Regarding the KKDF exemption granted under this program, pursuant to 19 CFR 351.517(a) in the case of the exemption or remission upon export of indirect taxes, a benefit exists to the extent that the Secretary determines that the amount remitted or exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

At the Preliminary Determination, we concluded that the customs duty and VAT exemptions did not constitute countervailable subsidies because at that time there was no indication that either company used these raw material inputs for domestically-marketed goods. We did not make a preliminary determination on the KKDF exemption described above because we were not aware of this exemption at that time.

For the final determination, as discussed below in Comment 8, we find one input imported by Habas under this program received exemptions which constitute a benefit pursuant to 19 CFR 351.318(a)(1) and 19 CFR 351.519(a)(1)(ii) as that input is not consumed in the production of wire rod. As further discussed in Comment 8, we find that the KKDF exemption granted on certain methods of payment used in purchasing imported raw materials under this program does not constitute a subsidy pursuant to 19 CFR 351.517(a), because the KKDF tax exempted upon export does not exceed the amount of KKDF tax levied on like products when sold for domestic consumption. (For further discussion, see Comment 8, *infra)*.

For the final determination, we find the exemptions from paying the customs duty and VAT charges on the input in question to be countervailable subsidies within the meaning of section 771(5) of the Act. These exemptions, according to section 771(5)(D)(ii) of the Act, provide a financial contribution in the form of revenue forgone by the GRT and provide a benefit, according to 771(5)(E) and 19 CFR 351.519(a)(1)(ii), for the customs duty exemption, and 19 CFR 351.518(a)(1), for the VAT exemption, to the extent that the exemptions extend to an input that is not consumed in the production of the exported product. Also, this subsidy program is specific in accordance with 771(5A)(B) of the Act because eligibility in the program is contingent upon export performance.

The Department typically treats customs duty and tax exemptions as recurring grants in accordance with 19 CFR 351.524(c)(1). Thus, to calculate the countervailable subsidy, we divided the customs duty and tax exemptions realized during the POI by the company's export sales during the POI, adjusting for inflation as described in the Subsidies Valuation Information section, *supra*. On this basis, we determine the countervailable subsidy from this program to be 0.09 percent *ad valorem* for Habas.

II. Programs Determined to Be Not Countervailable

A. General Incentives Encouragement Program ("GIEP")

As explained above under "General Incentives Encouragement Program," once a company has received an investment incentive certificate, it may become eligible for a number of programs operated under the umbrella of the GIEP: Investment Allowances, VAT Exemptions on Machinery and Equipment, Customs Duty Exemptions, and Taxes, Dues, and Fees Exemptions. (See GIEP under "Programs Determined to Be Countervailable, *supra*).

Because certain of the investment allowances have further eligibility requirements (*i.e.*, the investment must occur in a particular geographic area) and because the VAT Support Program makes benefits available only for domestically sourced inputs, we have addressed those programs separately. (See GIEP under "Programs Determined to Be Countervailable"). However, for the remaining programs under the GIEP umbrella, benefits are available solely on the basis of having an investment incentive certificate. Therefore, for these programs, we examine whether the investment incentive certificates are provided to a specific enterprise or industry or groups of enterprises or industries within the meaning of section 771(5A)(D) of the Act.

In order to determine whether the investment incentive certificates that confer GIEP benefits are *de jure* or *de facto* specific to an enterprise or industry, according to section 771(5A)(D) of the Act, we examined the following factors: (1) whether the authority providing the subsidy or the enabling legislation expressly limits access to the subsidy to an enterprise or industry; (2) whether the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number; (3) whether an enterprise or industry is a predominant user of the subsidy; (4) whether an enterprise or industry receives a disproportionately large amount of the

subsidy; and (5) whether the manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

Based on our examination of the record, we have determined that this program's enabling legislation does not expressly limit access to an enterprise or industry; therefore, the GIEP is not *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act. Although the Investment Allowance Program under the GIEP has certain regional categorizations, some of which may bestow countervailable benefits, these do not affect the global nature of the umbrella GIEP program, which is not limited to an enterprise or industry in a designated region. Therefore, we find the GIEP is not regionally specific under section 771(5A)(D)(iv)of the Act.

The petitioners have argued that investment incentive certificates issued under Decree 94/6411 are *de jure* specific because they are contingent on export. However, the language on which petitioners base their argument is limited to, as the respondents argue, a subset of a subset of eligibility criteria. Neither respondent company qualified for an investment incentive certificate under this criterion. (For further discussion, see Comment 2, *infra)*. Therefore, we determine that the investment incentive certificates received by respondents are not contingent upon export.

At verification we examined the distribution of all investment incentive certificates issued from 1991-2000. We reviewed data covering over twenty thousand investment incentive certificates on both a sector (*e.g.*, manufacturing) and sub-sector (*e.g.*, iron and steel industry) basis and determined that the actual recipients of the subsidy, whether considered on an enterprise or industry basis, were not limited in number according to section 771(5A)(D)(iii)(I) of the Act. Based on this information, we determine that neither the respondent companies, nor the steel industry as a whole were predominant users of the program, nor recipients of a disproportionately large amount of subsidy. Furthermore, the record evidence in this investigation indicates that investment incentive certificates were widely and evenly distributed with no one sector, enterprise, or region receiving or using a disproportionate number of certificates. We also found no evidence on the record indicating that the authority providing the subsidy exercised discretion in a manner that favored certain enterprises or industries over others. Thus, we find the GIEP, during the time period 1991-2000, is not *de facto* specific within the meaning of section 771(5A)(D)(ii) of the Act.

Therefore, for programs beneath the GIEP umbrella with no eligibility criteria additional to the that for the GIEP itself, we determine that the benefits received under investment incentive certificates issued between 1991-2000 are not specific pursuant to section 771(5A) of the Act and, therefore, not countervailable according to section 771(5) of the Act.

1. Investment Allowance

As discussed in the description of the Investment Allowance program under "Programs

Determined to Be Countervailable," *supra*, a significant portion of the investment incentive certificates that respondent companies used to calculate the investment allowance deduction on tax returns filed during the POI were approved because the investments were "Special Importance Sector" investments. The Special Importance Sector provision allows companies to receive a 100 percent deduction regardless of regional location or industrial designation. At verification we learned that the GIEP legislation does not use the term "sector" to mean a particular industry or set of industries, rather "special sector" simply refers to certain types of investments which are made across economic sectors. For example, "infrastructure" investments are considered Special Importance Sector investments regardless of a company's categorization within economic sectors. When applicable, the categorization of Special Importance Sector is noted on the face of the relevant investment incentive certificate.

Because the criteria governing the minimum investment allowance are identical to those of the GIEP itself, our analysis of the minimum investment allowance is identical to that for the GIEP umbrella. Based on our finding that the GIEP is not countervailable, we also find that the minimum investment allowance available during the POI, either 40 percent in Developed Regions or 20 percent under the temporary economic crisis provision, is not countervailable. (For further discussion, see GIEP under "Programs Determined to Be Not Countervailable," *supra*, and Comment 2, *infra).*

2. VAT Exemptions on Machinery and Equipment

The VAT Exemption on Imported and Locally Purchased Machinery and Equipment, entitles holders of investment incentive certificates issued on or after August 1, 1998, to claim full VAT exemption on all machinery and equipment acquired for the investment project, regardless of whether it is imported or domestically produced. Both respondent companies hold investment incentive certificates allowing them to use this exemption. Because eligibility for this program is solely based on receipt of an investment incentive certificate, consistent with the 1999 Pasta Final, 66 FR 64398, we have analyzed this program in the same manner as the GIEP itself and, therefore, find it not countervailable. (For further discussion, see GIEP under "Programs Determined to Be Not Countervailable," *supra*, and Comment 3, *infra).*

3. Customs Duty Exemptions

After receiving an investment incentive certificate under the GIEP, a company may present its certificate upon clearing customs to receive exemption on customs duties. Both respondent companies hold investment incentive certificates allowing them to use this exemption. Because eligibility for this program is solely based on receipt of an investment incentive certificate, consistent with the 1999 Pasta Final, 66 FR 64398, we have analyzed this program in the same manner as the GIEP itself and, therefore, find it not countervailable. (For further discussion, see GIEP under "Programs Determined to Be Not Countervailable," *supra*, and Comment 4, *infra*).

4. Taxes, Dues, and Fees Charges Exemptions

At verification, the GRT stated that this program is part of the GIEP because a company receives "taxes, dues, and fees" exemptions on financial transactions, such as letters of guarantee and loans, received under an investment incentive certificate. (See GRT Verification Report at 14-15). In order to benefit from this program, in addition to holding an investment incentive certificate, a company must demonstrate that it can achieve U.S. $10,000 of exports within two years of the completion of its investment. These exemptions are conferred under Temporary Article 2 of the Law No. 3505 (December 31, 1988). This export commitment distinguishes this program from the other aspects of the GIEP.

In the Preliminary Determination, based on the facts on the record at that time, we preliminarily determined that this program granted exemptions from paying the taxes (*i.e.*, BIST, KKDF, and stamp tax) that generally are assessed when obtaining standard credits through banks, as well as exemptions from other official dues, such as land registration and company registration. During verification of the GRT, we learned that the exemptions granted under this program do not include the BIST or the KKDF but only exemptions from paying the stamp tax and various state fees in accordance with Communique 4, which was published in the Official Gazette on December 27, 1998. (See the GRT Verification Report, at 15). Therefore, for this final determination we are revising our findings made in the Preliminary Determination.

At the verification of Habas, officials stated that "the main benefit of the taxes, dues, and fees provision...is the exemption from paying the stamp tax on documents such as credit contracts and letters of guarantee." (See Habas Verification Report at 13). As noted in our verification report, Habas took out letters of guarantee from a Turkish bank during the POI for loans issued by foreign banks for investments into Habas' facilities. Under this program, Habas was exempt from paying the stamp tax which normally would be assessed on the letters of guarantee received during the POI.

Regarding the stamp tax exemption granted under this program, pursuant to 19 CFR 351.517(a), "{i}n the case of the exemption or remission upon export of indirect taxes, a benefit exists to the extent that the Secretary determines that the amount remitted or exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." For the reasons discussed in Comment 5, we find the stamp tax to be an indirect tax pursuant to 19 CFR 351.102(b). We do not consider the stamp tax as it is applied under this program to be a prior-stage cumulative indirect tax pursuant to 19 CFR 351.518 as implied by the petitioners. (We have addressed the petitioners' position in Comment 5, *infra*). Additionally, we find that the stamp tax exemption is only allowed for investment incentive certificate holders that make an export commitment. Therefore, this exemption is contingent "upon export," and as such, meets the export requirement of 19 CFR 351.517(a).

Finally, because record evidence confirms that the amount of stamp tax exempted for investment incentive certificate holders that make an export commitment does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption, we have determined that no benefit is conferred by these exemptions under 19 CFR

351.517(a). Therefore, under section 771(5) of the Act the exemption of the stamp tax on financial transaction related to investment incentive certificate holders that make an export commitment, is not countervailable. (For further discussion, see Comment 5, *infra*).

At verification of Colakoglu, company officials stated that Colakoglu had never utilized the taxes, dues, and fees exemptions offered on its open investment incentive certificates during the POI. (See Colakoglu Verification Report at 16). We confirmed this to be true during verification by reviewing Colakoglu's investment incentive certificates and financial accounts. (See Colakoglu Verification Report at 17). Therefore, for the final determination, we find no benefit conferred to Colakoglu during the POI.

B. Export Credit Bank of Turkey Subsidies

1. Export Credit Insurance Program

Through this program, exporters can obtain short-term export credit insurance from the Turkish Eximbank. These are one-year blanket insurance policies which cover up to 90 percent of losses incurred due to political risk (*e.g.*, cancellation of the buyer's import permit or license and losses resulting from war, revolution, etc...) and commercial risk (*e.g.*, the insolvency of the buyer or the refusal or failure of the buyer to take delivery of the goods). The insurance provided under this program is a post-shipment insurance because the Turkish Eximbank becomes liable only if the loss occurs on or after the date of shipment.

The premium rates differ depending on the following factors: (1) whether the buyer is a public or a private entity; (2) the risk classification of the buyer's country; (3) the payment terms; and (4) the length of the credit period. Previously, it was obligatory for companies taking pre-shipment export loans (see above) to use the export credit insurance program. However, since February 1997, use of the export credit insurance program is voluntary for borrowers under the pre-shipment export loan programs.

In the 1999 Pasta Final, 66 FR 64398, the Department found that for the calendar year 1999 the premiums paid for the export credit insurance and other income generated by the program exceeded the insurance claims paid to participating companies. Upon review of information provided by the GRT in the current investigation, we find that for the year 2000 the premiums paid for the export credit insurance and other income generated by the program also exceeded the insurance claims paid to participating companies and the operating costs of the program. Additionally, we confirmed this finding at verification of the GRT. (See GRT Verification Report at 7-8). On this basis, consistent with the 1999 Pasta Final, 66 FR 64398, and in accordance with 19 CFR 351.520(a)(1), we find the export credit insurance program to be not countervailable because it does not confer a benefit.

C. Foreign Exchange Loan Assistance

1. KKDF Exemption

At verification, we found that commercial borrowers pay the KKDF tax into the Resource Utilization Support Fund from which the GRT issues loans for a wide variety of purposes. (See GRT Verification Report, Exhibit 28). Communique 6 of the Central Bank of Turkey sets the rate for contributions to the KKDF and provides an exemption from KKDF, under Communique 6, Article 2(6), for credits used to finance exports. During the POI, the KKDF rate charged on financial transactions increased from 3 percent to 5 percent, effective November 25, 2000. Furthermore, we confirmed at verification that KKDF is levied differently on TL loans than on FX loans. For TL loans, KKDF is levied on the principal amount at the time of the receipt of the loan. For FX loans, KKDF is levied on the interest amount upon its accrual. 19 CFR 102(b) defines an indirect tax as "a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge." At verification, we confirmed that KKDF is neither a direct tax nor an import charge, therefore as "any other tax," it is an indirect tax. (For further discussion see "Analysis of KKDF, BIST, and Stamp Tax," and Comment 6, *infra*).

2. BIST Exemption

The GRT normally charges the Banking and Insurance Tax, or "BIST," on all transactions with banks, special finance corporations, and insurance corporations at the rate of 5 percent of the interest charged on the transaction. Upon setting the interest rate on a loan, a bank considers BIST as part of the cost of issuing the loan. The BIST is applied identically to both TL and FX transactions. Banks, special finance corporations, and insurance corporations are required to pay BIST monthly to the GRT and to file a monthly BIST return on which they calculate BIST owed on transactions conducted during the prior month. Article 4 of the Resolution on Exemptions of Taxes, Duties, and Fees on Exports exempts transactions related to export from both the BIST and the stamp tax. (We note that although similar in name, this resolution is unrelated to the "Taxes, Dues, and Fees Exemption Program," discussed under GIEP, *supra*). For FX transactions where a company must purchase foreign currency, an additional 0.1 percent is charged on the foreign currency transaction amount. (See GRT Verification Report).

In the Preliminary Determination, the Department treated the foreign currency expenditure tax exemption ("FCET") independently of BIST based on the response of Colakoglu. However, at verification of the GRT, we learned that the FCET is a component of the BIST. Specifically, for loan transactions which require a company to purchase FX to repay a loan, the BIST includes an additional amount charged as a percentage of the foreign exchange purchased. Additionally, we determined that if a company holds its own foreign exchange reserves with which to repay a loan and, therefore, does not purchase foreign exchange for loan repayment, then the FCET is not incurred. Thus, for our final determination, we have analyzed the FCET exemption as part of BIST. (For further discussion see "Analysis of KKDF, BIST, and Stamp Tax," and Comment 6, *infra*).

3. Stamp Tax Exemption

On a variety of transactions, including those related to loans, the GRT normally charges a stamp tax of 0.75 percent. In the Preliminary Determination and 1999 Pasta Final, 66 FR 64398, 64399, we found this exemption to be not countervailable because we found it to be an indirect tax exemption on export-related transactions in accordance with 19 CFR 351.517(a). We continue to determine that the stamp tax is an indirect tax as defined in 19 CFR 351.102(b). Furthermore, because the exemption of the stamp tax does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption, the exemption is not countervailable in accordance with 19 CFR 351.517(a). (For further discussion see "Analysis of KKDF, BIST, and Stamp Tax," and Comment 6, *infra*).

4. Analysis for KKDF, BIST, and Stamp Tax Exemptions

During the POI, Colakoglu received and paid interest on U.S. dollar export-related loans from various commercial banks. Habas received and paid interest on both TL and U.S. dollar export-related loans from various commercial banks. Additionally, both companies received and paid interest on Eximbank loans during the POI. (For further discussion, see "Turkish Eximbank Programs," *supra*). Both companies received exemptions of KKDF, BIST, and stamp tax on export-related loans, regardless of whether the loans were issued at preferential or commercial rates.

In the Preliminary Determination, the Department found that exemptions from contributions to the KKDF and BIST conferred a countervailable subsidy within the meaning of section 771(5) of the Act. Also, in the Preliminary Determination, the Department found that exemption from the stamp tax was not countervailable based on 19 CFR 351.517(a). For the final determination, we have analyzed the KKDF, BIST and stamp tax identically, as articulated below.

19 CFR 351.102(b) defines an indirect tax as "a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax or any other tax other than a direct tax or an import charge." Based on information obtained at verification, and consistent with the Preliminary Determination and prior cases, we determine that the KKDF contribution, BIST, and stamp tax are indirect taxes. According to 19 CFR 351.517(a), "{i}n the case of the exemption or remission upon export of indirect taxes, a benefit exists to the extent that the Secretary determines that the amount remitted or exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." We note that the petitioners argue that KKDF, BIST, and stamp tax are "prior-stage cumulative indirect taxes" the exemptions of which should be analyzed under 19 CFR 351.518. We have addressed petitioners' arguments in Comment 6, *infra.*

We note that in order to receive Eximbank loans, (*i.e.*, Pre-Shipment Export Loans, Foreign Trade Corporate Companies Credit Facility, and Past Performance Related Export Credits), a

company must meet stringent eligibility criteria which confirms its status as an exporter and confirms upon closing of the loan that the disbursed funds were in fact used to finance export transactions. Moreover, if either an intermediary bank, which issues exempted Eximbank loans, or a commercial bank, also issuing exempted export loans, were unable to confirm that a company's exempted loans were used for export transactions, then the bank (for KKDF or BIST), or the company (for stamp taxes), would be legally required to pay the exempted taxes to the GRT. (See GRT Verification Report at 16). The bank would then seek reimbursement from the company who had misused the loans. 19 CFR 351.517(a) requires that an exemption of an indirect tax be granted "upon export."[3] Because the GRT requires that banks who exempt KKDF, BIST, and stamp tax on export-related financial transactions do so only "upon export" and because the bank or customer would be required to pay any exempted taxes to the GRT if the bank could not confirm that the financial transactions were in fact related to export, we find that the "upon export" requirement of 19 CFR 351.517(a) is met. (See GRT Verification Report at 16-19).

Furthermore, because record evidence confirms that the amount of KKDF contribution, BIST and stamp tax exempted on export-related loans does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption, we have determined that no benefit is conferred by these exemptions under 19 CFR 351.517(a). Therefore, under section 771(5) of the Act the exemptions of KKDF, BIST, and stamp tax on financial transactions related to export, are not countervailable. (For further discussion, see Comment 6, *infra*.)

III. Programs Determined Not To Have Been Used

A. GIEP

1. Credits for Small- and Medium-Enterprises

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[3]The words "upon export" in 19 CFR 351.517(a) are not restricted to a temporal dimension, and do not require the indirect taxes to be remitted at the moment of export, or immediately after export, in order to fall within the purview of the rule. As noted in the Preamble to the CVD regulations, 63 FR at 65383, section 351.517 is based on paragraph (g) of the Illustrative List of Subsidies in the WTO Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). The Preamble specifically states that, "{i}n accordance with paragraph (g), the non-excessive exemption or remission upon export of indirect taxes does not constitute a subsidy. See note 1 of the SCM Agreement." See 63 FR at 65383. Note 1 of the SCM Agreement provides that "the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy." In other words, it is the export requirement, not the timing of the exemption or remission, that matters.

2. Incentives Granted to Less Developed and Industrial Belt Regions
    a. Law 4325 Land Allocation
    b. Electricity Discounts
    c. Special Incentives for East and Southeast Turkey

B. Export Credit Bank of Turkey Subsidies

1. Buyers' Credits

IV. Program Determined to Have Been Terminated

A. General Incentives Program

1. Resource Utilization Support Premium "RUSP"
    a. RUSF Vat Rebates of 15% for Domestically Sourced Machinery & Equipment
    b. RUSF Payments of 15% of a Company's Investment
    c. Payments to Exporters in the amount of 4% of FOB Value of Certain Export Receipts
2. Fund Based Credits
3. Energy Support Payments
4. Incentives on Domestically Obtained Goods

B. Export Credit Bank of Turkey Subsidies

1. Revolving Export Credits

C. Freight Premium (previously named "Payments for Exports on Turkish Ships" or "State Aid for Exports Program")

D. Advanced Refunds of Tax Savings

Analysis of Comments

Comment 1: General Incentives Encouragement Program ("GIEP")

Petitioners' Argument: The petitioners argue that the Department did not separately examine

whether the GIEP as a whole is countervailable. Rather, the petitioners argue that the Department found that some parts of the program were countervailable and some parts were not countervailable. The petitioners also argue that the Department erroneously determined that certain programs under the GIEP were not used. The petitioners further argue that the Department's decision to not countervail the GIEP in its entirety was due to confusion on the record generated by respondents' inconsistent responses. Morever, the petitioners maintain that even if the Department fails to countervail the GIEP in its entirety, the Department should countervail the Investment Allowance Program. (See "Investment Allowance Program," *infra*). The petitioners maintain that record evidence indicates that the subsidies available under the umbrella of the GIEP (*i.e.*, Investment Allowance; VAT Support for the Purchase of Machinery and Equipment; and Taxes, Dues, and Fees Exemption) are countervailable as *de jure* specific domestic subsidies in accordance with section 771(5A)(D)(i).

Specifically, the petitioners argue that all subsidies received under the GIEP "are in fact countervailable as *de jure* specific domestic subsidies in accordance with section 771(5A)(D)(i) of the Act because they are expressly limited to 'industries not otherwise excluded.'" The petitioners contend that the GIEP is specific under 771(5A)(D)(i) of the Act because the enabling legislation excludes certain enterprises or industries from participating in the program. The petitioners cite to the Notice of Final Affirmative Countervailing Duty Determination: Polyethylene Terephthalate Film, Sheet and Strip from India ("PET Film from India") 67 FR 34905 (May 16, 2002) and Comment 9 and Comment 11 of the Issues and Decision Memorandum incorporated therein, to support their assertion that the Department has found a subsidy program specific where enterprises or industries are excluded from participating in a program. In PET Film from India, 67 FR 34905, 34907-34909, the petitioners contend that the Department found the Government of Maharashtra's package scheme of incentives to be countervailable because the program specifically excluded industries that were 100 percent owned by the Government of India ("GOI") from receiving any benefits. The petitioners also contend that the Department found the Government of Uttar Pradesh's sales tax incentives to be specific because "'{t}he benefits of this program are limited to industries not otherwise excluded.'" The petitioners argue that in the instant case, the decrees authorizing the GIEP specifically exclude certain industries from receiving benefits "just like in PET from India."

The petitioners contend that under Decree 98/10755, Article 5, "subsidies" are limited to investments made in Organized Industrial Zones, Normal Development Regions, Priority Development Regions, and certain investments in Developed Regions. Therefore, the petitioners argue that GIEP programs are limited to specific industries in specific regions. The petitioners contend that this conclusion is consistent with a 1991 European Commission finding that both GRT "subsidies tied to investment certificates" and investment incentive allowances are specific.

Moreover, the petitioners argue that subsidies conferred under GIEP Decree 94/6411 constitute specific export subsidies under section 771(5A)(B) of the Act. Specifically, the petitioners argue that Article 4(c) of this decree identifies "Sectors That Have Special Importance" as including those which "create export possibilities." The petitioners maintain that respondent companies

received certain benefits for special sector investments which includes export performance as one of the conditions of eligibility. Additionally, the petitioners argue that export performance is a condition of eligibility for certificates issued under Decree 97/9688 and that the Department should find subsidies conferred thereunder to be countervailable export subsidies under section 771(5A)(B) of the Act.

Respondents' Argument: The respondents argue that "the GIEP is an umbrella regional development program, which qualifies as a 'green light' subsidy and, as such not countervailable." The respondents argue that the Department's preliminary decision not to countervail the GIEP upholds earlier determinations. (See 1996 Pasta Investigation Final). The respondents dispute the petitioners' claim that the respondents' questionnaire responses were inconsistent. Rather, the respondents maintain that they responded to the questions as they were posed and note that the initial questionnaire was based on the allegations contained in the petition. The respondents assert that the petition itself was "confusing, redundant and misleading."

The respondents note, as a correction to the Department's GRT Verification Report, that Colakoglu is located in the Developed Region of Kocaeli and Habas is located in the Normal Region of Izmir. Finally, Colakoglu states that for certain investment incentive certificates, the allowance was received based on sectoral importance, however it contends that the region in which these investments are located grants the same level of allowance regardless of sector.

In response to petitioners' argument that Decree 98/10755, Article 5, limits GIEP subsidies to "industries not otherwise excluded," and thus is *de jure* specific under 771(5A)(D)(i) of the Act, the respondents argue that the Act makes no reference to "industries not otherwise excluded," and that Decree 98/10755, Article 5, does not limit benefits to an enterprise or industry. Specifically, the respondents maintain that subsidies are available to industries located in Normal Regions, Priority Development Regions, Organized Industrial Zones, and to a variety of investments in Developed Regions. In response to petitioners' citation to a European Union finding from 1991, the respondents argue that the European Union's interpretation of the WTO Agreement on Subsidies and Countervailing Measures ("SCM Agreement") differs from the United States' interpretation of the SCM Agreement which prevents the petitioners' comparison. Additionally, the respondents argue that the European Union's finding was based on different facts and should have no bearing on the Department's decision.

The respondents maintain that Article 4(c) of Decree 94/6411 does not grant subsidies contingent on export performance. The respondents state in their rebuttal brief that "it is clear...that in order to be considered a specific export subsidy, the subsidy must be contingent on export performance, or that export performance is a prerequisite for receiving the subsidy, or that a company cannot receive the subsidy unless it meets an export performance criterion." The respondents argue that Decree 94/6411, Article 4(c) allows investments unrelated to export to qualify for investment incentive certificates. The respondents argue that the language cited by petitioners, "export possibilities" is included in a subset of a subset of all the criteria that may be

fulfilled for program eligibility. Furthermore, the respondents argue that "export possibilities" as defined in Decree 94/6411 do not translate to "export performance" as defined in the Act. Additionally, the respondents contend that not only is export performance unnecessary for receiving an investment incentive certificate, under certain instances, it is not sufficient for receiving one.

In response to the petitioners' argument that Colakoglu received a certificate for "special sector investments" under eligibility criteria which include export performance, the respondents state that this certificate was received because Colakoglu's investment necessitated high technology , had high value-added, and raised employment. Moreover, the respondents argue that the receipt of this certificate was not contingent on making certain export commitments, but that certain programs under the GIEP required this commitment.

Department's Position: We disagree with the petitioners' claim that we have failed to examine the countervailability of the GIEP program in its entirety. As our detailed analysis of the GIEP indicates, we have examined the GIEP program in its entirety and, when appropriate, have separately analyzed individual programs beneath the GIEP umbrella. (See "Analysis of Programs," *supra*, for our analysis of both the GIEP umbrella program, and our analysis of the Investment Allowance Program, VAT Support Program, VAT Exemption of Machinery and Equipment Program, Customs Duty Exemption Program, and Taxes, Dues, and Fees Exemption Program). In instances where we found that a program beneath the GIEP umbrella imposed eligibility requirements in addition to the eligibility requirements imposed by the GIEP umbrella, we performed an independent analysis of that program. For example, because the Taxes, Dues, and Fees Program requires companies to commit to a certain export amount, we found it to be export specific. Similarly, because the VAT Support Program only applied to domestically purchased machinery and equipment, we found it to be specific because it is an import substitution subsidy. In instances where a program only required the receipt of an investment incentive certificate for eligibility, we analyzed its specificity according to the specificity of the GIEP in its entirety. After examining the specificity of the GIEP in its entirety, through the distribution of investment incentive certificates issued between 1991 and 2000, we found the umbrella GIEP to be not countervailable. However, we have found certain programs with eligibility criteria additional to that of the GIEP umbrella to be countervailable.

Regarding petitioners' argument that our determination in PET Film from India, 67 FR 34905 should lead us to find the GIEP countervailable under 771(5A)(D)(i) of the Act, we disagree. In PET Film from India, the Department found certain programs provided by the State of Maharashta to be countervailable based in part on their *de jure* limitation to certain areas of Maharashta. For other programs provided by the State of Uttar Pradesh, the Department found them to be countervailable based on their limitation to certain industries. No such limitations exist in the GIEP. Rather, as we stated in the GRT Verification Report, "approval is a pro-forma process." The receipt of an investment incentive certificate is not limited by region nor is it limited to certain industries. (See GRT Verification Report). We also agree with the respondents that the Act makes no reference to specificity based on "industries otherwise

excluded." A complete reading of PET Film from India, indicates that thirteen specified industries were excluded from the State of Uttar Pradesh's program and that the State of Maharashta's program was limited to industries within designated geographical regions. Neither fact pattern applies to the instant case.

In addition, the regional designations referred to by petitioners in Article 5, Decree 98/10755 essentially divide the entire Republic of Turkey into three designated regions, all of which may receive investment incentive certificates regardless of location. The regional designations only have practical importance in relation to Article 3 of the same decree. Article 3 provides definitions for Developed, Normal, and Priority Regions. We note that the Normal Region is defined as "{provinces} situated outside the Developed Region and Priority Development Region classifications," thus, all areas within Turkey are eligible for the GIEP. Moreover, the petitioners' reference to Decree 94/6411 is to a clause which simply defines one element of "Special Importance Sector" investments under which neither respondent company qualified for benefits. Furthermore, there is no evidence that the GIEP is contingent upon export within the meaning of the Act. The Special Importance Sector designation takes on practical importance as a provision of the Investment Allowance program which entitles an investment incentive certificate holder to receive a 100 percent investment allowance regardless of the region. In 1998 Pipe Final, 65 FR 49230-49231, we found that Special Importance Sector investments under the Investment Allowance program were not countervailable. Other than the Investment Allowance Program, GIEP programs do not distinguish benefit levels based on whether the certificate holder has invested in a "Special Importance Sector" project. Although a finding that the GIEP in its entirety is countervailable would implicitly determine that the programs beneath its umbrella are also countervailable, the finding that a program beneath the umbrella is countervailable does not make the GIEP itself, or other GIEP benefits, countervailable. Therefore, even if we were to reverse our prior finding that Investment Allowances granted to Special Importance Sector investments are non-countervailable, we would continue to analyze the GIEP without reference to requirements unique to the Investment Allowance Program.

Furthermore, we agree with respondents that the 1991 European Commission finding cited by the petitioners is inapplicable to the facts and laws of the instant proceeding. Nothing in the Act or the Department's regulations requires us to accord any precedential value to countervailing duty determinations of foreign authorities. Additionally, we agree with the respondents that Colakoglu is located in the Developed Region of Kocaeli and Habas is located in the Normal Region of Izmir and note that the GRT Verification Report contained a scrivener's error.

Finally, we note that respondents' argument that the GIEP is a regional development program that qualifies as a "green light" subsidy is rendered moot by the expiration of these "green light" provisions on June 30, 2000. (See section 771(5B)(G)(i) of the Act). As a result, we continue to follow the methodology developed in Certain Pasta From Turkey: Preliminary Results of Countervailing Duty Administrative Review, 66 FR 41553, 41557 (August 8, 2001) ("1999 Pasta Prelim") (unchanged in final review), and have analyzed the GIEP according to distribution of investment incentive certificates. (For further discussion, see GIEP under "Analysis of

Programs," *supra*).

Comment 2: Investment Allowances

Petitioners' Argument: The petitioners contend that, assuming *arguendo*, if the Department failed to countervail the GIEP in its entirety, the Investment Allowance program should be countervailed because it conferred specific countervailable subsidies on respondent companies during the POI. The petitioners argue that the verification findings show that respondent companies received specific subsidies under 771(5A)(D)(iii) of the Act. (See GRT Verification Report at 14). Specifically, the petitioners argue that respondent companies received disproportionate amounts of investment allowance. In support of their contention, the petitioners cite to proprietary data contained in the GRT Verification Report which includes information on investment allowances calculated on a sample of 1999 tax returns.

Furthermore, the petitioners argue that the data examined by the Department at verification were based on the distribution of the investment certificates and not on the distribution of investment allowances. The petitioners argue that these data are flawed because investment certificates issued under non-steel sectors benefitted the production of subject merchandise. The petitioners further argue that the Department should rely on the more accurate data showing the distribution of actual investment allowance benefits rather than the data on the distribution of incentive certificates which demonstrate that respondent companies received a disproportionately large share of investment allowances. The petitioners argue that these data do not account for the fact that respondent companies received investment certificates, which benefitted subject merchandise, under more than one industry sector. Therefore, for the final determination, the petitioners argue that the Department should rely on data showing the distribution of actual investment allowances.

Additionally, the petitioners argue that under section 771(5A)(D)(iv) of the Act, subsidies granted by a government to firms located in designated geographical regions are specific. The petitioners argue that in prior countervailing duty cases involving Turkey, the Department found that investment allowances were provided at varying levels of benefit based on location and, therefore, benefits were conferred on companies in preferential regions. (See, e.g., Certain Welded Carbon Steel Pipe and Tube Products from Turkey: Final Affirmative Countervailing Duty Determination, 51 FR 1268 (January 10, 1986) ("1986 Pipe Final")). The petitioners argue that Habas received investment allowances which were provided on a regionally specific basis under Decree 94/6411. Specifically, the petitioners argue that Habas received a 100 percent allowance under this certificate because it was located in an industrial belt of a normal region. The petitioners cite to 1986 Pipe Final, 51 FR 1268, 1271, to support their assertion that the Department should countervail the amount of the investment allowance that exceeds the generally-available deduction.

Finally, in addressing the calculation of the net countervailable subsidy provided by the Investment Allowance Program, the petitioners argue that the Department should not deduct

taxes paid on the investment allowance. The petitioners maintain that the offset claimed by respondents for taxes paid on the investment allowance is not specified among the offsets authorized by section 771(6) of the Act. The petitioners further maintain that 19 CFR 351.503(e) provides that "the Secretary will not consider the tax consequences of the benefit" in calculating the amount of benefit. The petitioners also maintain the Department's practice is to disregard the secondary income tax consequences of countervailable subsidies. (See, e.g., Certain Steel Products from Belgium: Final Affirmative Countervailing Duty Determination, 58 FR 37273, 37289 (July 9, 1993) and Fresh and Chilled Atlantic Salmon from Norway: Final Affirmative Countervailing Duty Determination, 56 FR 7678 (February 25, 1991)). Therefore, because deducting the secondary tax consequences associated with the respondent companies' receipt of the investment allowances is contrary to the clear language of the statute and regulations, and the Department's practice, the Department should not exclude the secondary tax consequences when calculating the net countervailable subsidy for this program.

Respondents' Argument: The respondents argue that this program is neither *de jure* nor *de facto* specific based on the distribution of the GIEP certificates. Therefore, it is not countervailable. Specifically, the respondents maintain that the Department confirmed at verification that the distribution of the certificates during 1991-2000 demonstrated this program's lack of specificity. Furthermore, the respondents maintain, contrary to the GRT Verification Report, that the assessment of withholding tax occurs regardless of whether or not a company declares dividends.

The respondents maintain that the investment allowance program should not be countervailed because it is not *de facto* specific under section 771(5A)(D)(iii). The respondents assert that the petitioners' argument that both Colakoglu and Habas received disproportionate amounts of investment allowances is based on a flawed calculation. (See Respondents' Rebuttal Brief at 13).

Furthermore, the respondents argue that certain investment allowances are not specific under section 771(5A)(D)(iv) of the Act. The respondents refute the petitioners' claim that the only criterion used to distribute investment allowances granted under decrees prior to Decree 97/9688 was region. The respondents argue that Decree 94/6411 contains non-regional criteria for investment allowance distribution. Moreover, Article 4(c) states that Special Importance Sectors can benefit from allowances without regard to region.

Finally, the respondents argue that the Department verified "that the withholding tax is not considered a 'tax consequence' under Turkish Tax Law, but rather an inextricable element of the corporate tax assessment system." The respondents also note that the benefit from the allowance would be the difference between the amount of tax paid using the allowance and the amount of tax paid without using the allowance. The respondents argue that any deduction on a Turkish corporate tax return reflects on the amounts of corporate and withholding tax payable. Therefore, assuming *arguendo,* if the Department were to find the investment allowance program countervailable, it should deduct withholding taxes paid on the investment allowance in calculating the amount of benefit received.

Department's Position: We disagree with the petitioners' contention that we should countervail the entire Investment Allowance Program because it is specific under 771(5A)(D)(iii) of the Act. The petitioners base this contention on data gathered at verification reflecting a sample of 1999 Corporate Tax Returns. Because the investment allowance deduction taken on a company's tax return is determined by multiplying a company's actual expenditures under the relevant investment incentive certificates by the set investment allowance percentage granted by the GRT (*i.e.*, 40 percent or 100 percent), the total amount of deduction is dependent on a company's actual expenditures. Simply stated, a company whose expenditures are greater, receives a greater absolute allowance. Therefore, the more accurate measure of specificity is to examine the distribution of investment allowances both on a percentage basis and based on the manner in which investment incentive certificates are distributed by the GRT. We note that this method is consistent with our prior determinations. (See 1996 Pipe Prelim, 62 FR 64808, 64810).

As to the petitioners' argument that the distribution information gathered at verification is flawed, we disagree. As discussed above, the accurate measure of specificity is distribution of investment allowances on a percentage basis, rather than on absolute amounts. Furthermore, at verification we noted that companies could receive investment incentive certificates under more than one industrial sector. As a result, we reviewed distribution data from industrial sectors other than the steel and iron sector. As a sample, we included distribution information relevant to the instant investigation from an industrial sector unrelated to steel and iron production in our verification report. (See GRT Verification Report at Exhibit 11).

We agree with the petitioners' argument that Habas received certain portions of the investment allowance calculated on its tax return filed during the POI on a regionally specific basis. Because Habas received a 100 percent allowance based on its location in a Normal Region, we find this portion of the investment allowance to be countervailable. Because the 100 percent allowance provided to companies in the Normal Region is sixty percent higher than the minimum forty percent allowance provided to companies in the Developed Region, the difference results in a higher tax savings to the company due to its geographic location. Therefore, we determine that the sixty percent difference results in a countervailable subsidy under section 771(5A)(D)(iv) of the Act.

Furthermore, we agree with the respondents' argument that benefits received under the Special Importance Sector provisions are not countervailable because they are not specific. The Special Importance Sector provision allows companies to receive a 100 percent deduction regardless of regional location or industrial designation. As discussed in detail under our discussion of this program in "Analysis of Programs," *supra*, because this program as a whole is not specific and because respondent companies qualified for Special Importance Sector benefits under Article 4(c) criteria unrelated to export, these benefits are not countervailable. We note that the instant determination is consistent with the Department's prior treatment of Special Importance Sector allowances. (1998 Pipe Final, 65 FR 49230, 49231).

Finally, as to the manner in which withholding taxes paid on Investment Allowances should be

treated, we agree with the petitioners that the additional cost associated with the withholding tax incurred upon use of the investment allowance should not be deducted from the benefit conferred by the use of the investment allowance deduction because such a deduction is not allowed under section 771(6) of the Act.

Comment 3: VAT Programs (*i.e.*, VAT Support Program and VAT Exemption on Machinery and Equipment).

Petitioners' Argument: The petitioners contend that the Department erroneously determined in the Preliminary Determination that the VAT Support Program (previously known as the "Incentive Program on Domestically Obtained Goods Program") was not used during the POI. Furthermore, by mistakenly focusing on the current VAT exemption program at verification rather than the preceding VAT rebate program, the petitioners argue that the Department failed to ascertain the full amount of payments under this program. In the final determination, the petitioners argue that the Department should conclude the respondents did benefit from the VAT Support program during the POI and AUL periods, and determine the program conferred a countervailable subsidy as defined in the Department's regulations.

The petitioners argue that, despite official replacement of the VAT rebate program with the VAT Exemption on Machinery and Equipment program in 1998, the respondents continued to benefit from the older program during the POI. The petitioners cite to documentation examined at verification provided by the GRT indicating the amount of VAT rebates paid during the POI as well as the investment certificate number appropriate to each payment as proof of benefit during the POI. In this instance, the petitioners assume payment date to be the date the company paid the VAT and not the date the VAT was rebated. Accordingly, the petitioners claim the continued circulation of these "unclosed" certificates from a prior VAT rebate program stands as evidence the respondents received benefits from this program during the POI since the Department determined in prior cases that such rebate programs are countervailable. The petitioners also cite to 1999 Pasta Final in which the Department found that companies in Turkey could continue to receive benefits under the old system where the investment incentive certificate was issued before August 1, 1998.

The petitioners also claim that, because the respondents benefitted from VAT rebates tied to the purchase of "capital assets," the Department should consider these subsidies as a nonrecurring benefit to the respondents. The petitioners cite to Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Affirmative Countervailing Duty Determination, 66 FR 50410 (October 3, 2001), in arguing the Department can determine a subsidy program previously considered recurring as nonrecurring at the final determination when the subsidy is tied to the purchase of "capital assets." As a result, the petitioners claim, the Department should review the respondents' participation in any VAT program over the length of the AUL period, 1986-2000, in the terms of the original VAT rebate program. Citing to what they believe to be inconsistencies in the data submitted by the respondents, the petitioners claim the Department would most likely find that the respondents benefitted from the prior VAT rebate program during the POI.

Respondents' Argument: The respondents argue that the petitioners' arguments are based on a misinterpretation of the laws applicable to the prior VAT rebate program and the current VAT exemption program. The respondents maintain that the previous VAT support program was terminated by the enactment of the new VAT exemption program. Moreover, the respondents argue that the petitioners' claim that the GRT presented evidence indicating that VAT Support payments were made in the POI obscures the fact that there were no payments made in the POI. The respondents maintain that the GRT evidence clearly supports the fact that no payments were made to respondent companies during the POI.

The respondents also claim the Department should reaffirm its interpretation from prior cases that the VAT Support program constitutes a recurring subsidy because "once a company has received an investment incentive certificate it becomes eligible for the Incentive Premium benefits. The receipt of benefits is automatic and continues from year to year." In addition, the respondents argue that the Department found in prior cases that the possibility of finding that payments from this program met the requirements of 19 CFR 351.524(c)(2)(iii) did not outweigh the fact that the program did not meet the requirements of 19 CFR 351.524(c)(2)(i) or (ii). The respondents claim no new information in this case would change this determination.

Lastly, the respondents argue the Department should not countervail payments made through this program prior to 1996 because the payments were made under the GIEP program. Since the Department determined the GIEP program was not countervailable, the respondents argue, the Department should determine the VAT Support program is not countervailable.

Department's Position: We note that the program which has been referred to on the record of the instant case as the "VAT Support Program" is actually two distinct programs. First, the VAT Support Program, which is a terminated portion of the GIEP, and second, the VAT Exemption on Machinery and Equipment Program, an ongoing portion of the GIEP. Therefore, we will address both petitioners' and respondents' arguments separately as they relate to each program.

VAT Support Program

We agree with the respondents and continue to treat the VAT Support Program as a recurring subsidy under 19 CFR 351.524. Consistent with our decision in 1999 Pasta Final, 66 FR 64398, 64399, we found in the instant investigation that once a company has received an investment incentive certificate, it becomes eligible for the VAT Support Program without meeting any further requirements. In other words, the receipt of benefits under this program are automatic and companies do not have to apply for new certificates each year (See also, 1998 Pipe Prelim, 65 FR 18070, 18073 (April 6, 2000) unchanged in 1998 Pipe Final, 65 FR 49320, 49231). Moreover, the exemption of direct and indirect taxes are normally considered recurring benefits according to 19 CFR 351. 524(c). Although the petitioners argue that the residual benefits received under this now-terminated program should be treated as non-recurring, thus allowing the capture of subsidies received by respondent companies during the entire AUL, we disagree. We note that based on the GRT's report of payments to respondent companies from 1996

through 2001, even if we were to treat these subsidies as non-recurring based on 19 CFR 351.524(c)(2)(iii), the benefits would be expensed to the year of receipt based on 19 CFR 35.524(b)(2) because the total amount approved under the program during each year is less than 0.5 percent of relevant sales. Furthermore, we determined at verification that it was impracticable to examine every item which respondent companies purchased under this program to determine which of these items were "provided for, or tied to the capital structure or capital assets of the firm." (See 19 CFR 524(c)(2)(iii)).

VAT Exemption on Machinery and Equipment Program

Because the eligibility criteria for the VAT Exemption on Machinery and Equipment Program are identical to those of the GIEP umbrella, consistent with 1999 Pasta Final, 66 FR 64398, 64399, Issues and Decisions Memorandum at 6, we have analyzed the countervailability of this program according to the same analysis applied to the GIEP, *i.e.*, by examining the specificity of the investment incentive certificates issued between 1991 and 2000. Therefore, we find the subsidies conferred by this program to be not countervailable based on our determination that the GIEP itself is not countervailable. At verification, we found that the only qualification for receiving benefits under the VAT Exemption Program was the receipt of an investment incentive certificate. The VAT exemption is available for both imported goods and domestically-purchased goods, thus it is distinct from the terminated VAT Rebate Program which was only available for domestically-purchased goods, and therefore was specific. For a detailed analysis of the GIEP and distribution of the investment incentive certificates, see GIEP under "Analysis of Programs" and Comment 1, *supra.*

Comment 4: Customs Duty Exemption

Petitioners' Argument: The petitioners argue the Department should reverse the decision made at the Preliminary Determination that the Customs Duty Exemption program did not constitute a countervailable subsidy. The petitioners argue that Customs Duty Exemptions were granted in cases where the respondents purchased imported machinery and equipment. Accordingly, the Department should consider the benefit tied to the purchase of "capital assets." As such, the petitioners argue the Department should treat these benefits as non-recurring benefits in accordance with 19 CFR 351.524(c)(2)(iii).

The petitioners claim that because these exemptions constitute a nonrecurring benefit, the Department must examine all exemptions received by the respondents during the entire AUL period of 15 years. The petitioners cite to two instances where they maintain record evidence indicates that the respondents received benefits prior to the POI.

The petitioners disagree with the respondents' contention that Turkey's membership in the European Customs Union ("ECU"), which allows duty-free imports from other ECU countries, prevents the Department from finding a countervailable benefit during the POI. The petitioners claim that evidence discovered at verification indicates the respondents benefitted from these

exemptions prior to 1996, the year Turkey became a member of the ECU. Therefore, any benefits received prior to 1996 and during the AUL, constitute non-recurring countervailable subsidies.

Respondents' Argument: The respondents argue the petitioners seek to mis-classify the duty-free treatment of imported equipment prior to 1996 as a non-recurring benefit to force the Department into finding the exemption confers a countervailable subsidy. The respondents contend that the petitioners' argument assumes that the benefit yielded by the exemption of customs duty is a non-recurring benefit. In fact, the respondents argue, the Department found in a prior case that the exemption of indirect taxes and import duties constitutes a recurring benefit.

Moreover, the respondents argue that the petitioners' claim that the exemption of import duties was "tied" to the purchase of machinery and equipment is inaccurate. The respondents argue that the exemption of customs duties in the time period mentioned by the petitioners fell under the GIP program which offered benefits that were not limited to capital equipment, nor were they tied to certain imports.

Similarly, the respondents argue that any exemptions received prior to 1996 were under a program found non-countervailable by the Department in other investigations. The respondents argue that the Department found this program to be not specific as defined in the Department's regulations.

Department's Position: We agree with respondents that the Customs Duty Exemption program is not specific and, therefore, not countervailable. The only requirement for a company's receipt of benefits under this program, is the receipt of an investment incentive certificate. Therefore, consistent with past investigations, most recently, 1999 Pasta Prelim, 66 FR 41553, 41557, unchanged in 1999 Pasta Final, 66 FR 64398, 64399, we have analyzed the countervailability of Customs Duty Exemptions according to the same analysis applied to the GIEP, *i.e.*, by examining the specificity of the investment incentive certificates issued between 1991 and 2000. Therefore, consistent with prior decisions, we have found the Customs Duty Exemption to be not countervailable. The petitioners have not articulated a basis for finding this program specific apart from their claim that the GIEP as a whole should be found specific, and therefore countervailable. Given our finding that the GIEP itself is not specific and not countervailable, the petitioners' argument that we should find this program non-recurring is unavailing. Regardless of whether we treat this program as recurring, and examine only the POI, or non-recurring, and examine the entire AUL, the treatment of a subsidy as recurring or non-recurring does not constitute a finding of specificity as required by section 771(5) of the Act. Without such a finding, no basis exists which would allow us to find that this program is countervailable. Moreover, even if we were to find this program countervailable, at verification we learned that since 1996, the respondent companies have imported almost all their purchases duty-free from other members of the ECU, thus negating their need to use these exemptions.

Comment 5: Taxes, Dues and Fees Exemption Program

Petitioners' Argument: The petitioners argue that the Department confirmed at verification that both Colakoglu and Habas were eligible to receive exemptions on stamp taxes, the KKDF and the BIST under the Taxes, Dues, and Fees Exemption Program. The petitioners argue that the Department should affirm its preliminary finding with respect to KKDF and BIST exemption. However, they argue further that the Department should also find that the stamp tax is countervailable.

The petitioners argue that the Department departed from its established practice of finding the stamp tax countervailable in the 1999 Pasta Final without providing any explanation or reasoning as to why the Department had found the stamp tax non-countervailable. Therefore, the petitioners presume that the Department considers stamp taxes to be indirect taxes "levied with respect to the production or distribution" of the product in accordance with 19 CFR 351.517(a). Instead, the petitioners argue that these taxes are charged on financial transactions rather than goods, and as such, constitute prior-stage, cumulative indirect taxes. The petitioners state that in section III.1.b of the Stamp Tax Law, the GRT identifies stamp taxes levied on documents that may relate to products and the distribution thereof, such as bills of lading and shipping bonds, but argue that stamp taxes on goods are distinguishable from stamp taxes on financial transactions. The petitioners cite to the GATT Working Party Report on Border Tax Adjustments for the proposition that "taxes levied directly on products or their distribution are eligible for tax adjustment."

The petitioners argue that the stamp taxes at issue should be analyzed as prior-stage cumulative indirect taxes. As such, the petitioners argue that these exemptions are countervailable because the underlying tax would be charged on inputs which are not consumed in the production process. Furthermore, the petitioners argue that the Department's treatment of these tax exemptions in the Preliminary Determination is inconsistent with the GATT treatment of such indirect taxes. The petitioners state that an indirect tax levied on goods or services used directly or indirectly in making a product is considered a prior-stage indirect tax and that where no mechanism exists for the subsequent crediting of such a tax, it is a cumulative indirect tax according to 19 CFR 351.102. The petitioners contend that in determining whether the exemption of a prior-stage cumulative indirect tax constitutes a countervailable subsidy, the Department must examine whether the exemption extends to inputs not consumed in the production of the exported product. (See 19 CFR 351.102, 351.518(a)(1)). The petitioners maintain that record evidence in this proceeding indicates that "the stamp taxes under investigation in this proceeding constitute countervailable subsidies because they are prior-stage, cumulative indirect taxes that extend to inputs not consumed in the production of the exported product." The petitioners argue that the Department's treatment of these taxes in the Preliminary Determination implies that loans used to finance an investment are "consumed in production" under 19 CFR 351.102. Furthermore, the petitioners state that the Department deviated from its practice of countervailing exemptions of prior-stage cumulative indirect taxes levied on investments not consumed in production by not countervailing such exemptions on financing used to purchase machinery and equipment. (See Preliminary Determination at 5981). The petitioners argue that the Department's practice is to countervail the exemption of indirect taxes

on financial transactions. The petitioners cite to the 1986 Pipe Final, 51 FR 1268, 1272 and note that the Department countervailed the BIST exemption because it was not a tax "'on physically-incorporated inputs'." Moreover, the petitioners contend that the Department countervailed an indirect tax on financial transactions because it was not an indirect tax on a physical input of an exported product. (See Silicon Metal from Brazil: Final Negative Countervailing Duty Determination ("Silicon Metal from Brazil"), 56 FR 26988 (June 12, 1991)).

Additionally, the petitioners argue that stamp taxes are "*taxes occultes*" and as such are countervailable. The petitioners cite to the Border Tax Report at 100-101, which they claim supports their contention that stamp taxes should not be exempted or rebated on export.

Finally, the petitioners argue that the Department should countervail the full amount of exemptions under the Taxes, Dues, and Fees Program that benefitted the respondent companies during the POI. Regarding Colakoglu, the petitioners argue that an examination of its total export financing outstanding during the POI indicates that the company received more exemptions than the Department countervailed in the Preliminary Determination. Specifically, the petitioners argue that the Department assumed that certain financing related to the company's export financing, however, the petitioners claim that the total amount of outstanding financing reported by Colakoglu represents total financing inclusive of financing for capital goods. Therefore, the petitioners argue that the Department should countervail the exemption of stamp tax, the KKDF and the BIST on the total outstanding loans reported by Colakolgu. Regarding Habas, the petitioners argue that the Department should affirm its preliminary finding that Habas was exempt from paying stamp tax, the KKDF and the BIST on guarantees received for certain investments and should countervail the exemptions received on these guarantees.

Respondents' Arguments: The respondents argue that stamp taxes are indirect taxes as defined by 19 CFR 351.517 and that nothing on the record of the instant proceeding indicates that the exemptions thereof are excessive. Therefore, the respondents argue that the exemption of stamp taxes are not countervailable. The respondents maintain that the Department's regulations distinguish the treatment of prior-stage cumulative indirect taxes (see 19 CFR 351.102(b) and 351.518) from indirect taxes (see 19 CFR 351.102(b) and 351.517). Moreover, the respondents argue that the Department should examine the process or transaction for which the exemption is provided in analyzing these taxes under 351.517 or 351.518. The respondents argue that in order to determine the benefit of prior-stage cumulative indirect taxes under 19 CFR 351.518, the Department must analyze "inputs that are not consumed in the production of the exported products." Whereas, to determine the benefit of indirect tax exemptions on export under 19 CFR 351.517, the Department must analyze whether the exemption "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." Furthermore, the respondents argue that the SCM Agreement incorporates the same distinction between taxes applicable to production and taxes applicable to distribution. (See SCM Agreement, Annex I(g) and (h); and 1986 Pipe Final, 51 FR 1268, 1272). Therefore, the respondents argue that loan financing for an export sale transaction is an integral part of the distribution of subject merchandise rather than the production of subject merchandise. Because

the sale and delivery of a product constitutes distribution, financing of the sale and delivery of a product in tied directly to distribution.

The respondents maintain that the petitioners make arguments to countervail exemptions under the Taxes, Dues, and Fees program as indirect taxes at "stages of production prior to export." However, the respondents argue that although such indirect tax exemptions might be countervailable, if standing alone, under 19 CFR 351.510(a), the exemptions addressed by the petitioners are integrally linked to the GIEP and therefore, are not countervailable because the GIEP is not countervailable. To support their argument that these exemptions are integrally linked to the GIEP, the respondents cite to 19 CFR 351.502(c) which includes four criteria for determining integral linkage. These criteria are that the subsidy programs: (1) have the same purpose; (2) bestow the same type of benefit; (3) confer similar levels of benefits on similarly situated firms and (4) were linked at inception. Regarding the first factor, the respondents argue that the GIEP is intended to encourage investment and development, and that the investment incentive certificates qualify the holder to take advantage of exemptions of "such indirect taxes as the stamp tax, KKDF, BIST, and FCET." The respondents argue that "{t}he exemption program is intended to assist the Certificate holder in its efforts to invest and/or further develop an investment which is the same purpose of the overall GIEP." Regarding the second factor, the respondents argue that the benefits bestowed by the GIEP generally are of the same type as the benefits bestowed by the exemption of indirect taxes not related to export. The respondents argue that each of these "seeks to make investment and development for qualified firms as easy and unencumbered by government charges as possible." Regarding the third factor, the respondents argue that benefits under the GIEP and the tax exemptions confer similar levels of benefits to similarly situated firms because they are generally available to all certificate holders on a uniform basis. Regarding the fourth factor, the respondents argue that since the beginning of the GIEP, certain transactions have been exempted from taxes. Therefore, the respondents argue that these exemptions should be analyzed in the context of the GIEP. The respondents maintain that GIEP benefits are generally available, administered even-handedly, with no enterprise or industry using or receiving a disproportionately large amount of benefits.

Department's Position: In regard to the petitioners' allegations that the taxes, dues, and fees program allows exemption from paying the KKDF and BIST, we disagree. As noted in the GRT Verification Report, at page 15, "...the taxes, dues, and fees exemption granted under this program did not include the BIST or the KKDF but referred to the stamp tax and various state fees." Therefore, the petitioners' arguments related to BIST or KKDF exemptions falling under the Taxes, Dues, and Fees Program are inapplicable and incorrect.

The Taxes, Dues, and Fees Program falls under the umbrella of the GIEP. As part of the GIEP, this program relates to internal financial investments. However, this program is different from all of the other programs beneath the GIEP umbrella because it contains an export prong: in order to benefit from the taxes, dues, and fees exemption, a company must hold an investment incentive certificate and demonstrate that it can achieve U.S. $10,000 of exports within two years upon the completion of the physical investment. Based on this export requirement, which no

other program beneath the GIEP umbrella contains, we disagree with the respondents' contention that these taxes, dues, and fees exemptions are integrally linked to any of the other umbrella programs under the GIEP.

We agree with the respondents that the stamp tax is an indirect tax because 19 CFR 351.102(b) expressly defines it as such. According to 19 CFR 351.517(a), "in the case of the exemption or remission upon export of indirect taxes, a benefit exists to the extent that the Secretary determines that the amount remitted or exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption."

In reaching this determination, we analyzed three factors implicit in 19 CFR 351.517(a): (1) is the stamp tax an indirect tax within the meaning of the regulation; (2) are the taxes exempted upon export; and (3) does the exemption exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

As discussed in Comment 6 below, we have determined that the stamp tax is an indirect tax as defined in 19 CFR 351.102(b). We note that this definition is distinct from that of a "direct tax" or a "cumulative indirect tax," both of which are also defined in 19 CFR 351.102(b). First, we note that stamp taxes are explicitly defined as indirect taxes. Based on this definition, we must examine whether the stamp tax fits the definition of either a "prior-stage indirect tax" or a "cumulative indirect tax" as defined in 19 CFR 351.102(b).

Under the CVD regulations, a prior-stage indirect tax is an indirect tax "levied on goods or services used directly or indirectly in making the product." The stamp tax in Turkey is levied on financial transactions. In this proceeding, Habas and Colakoglu, as companies that hold investment incentive certificates with export commitments, are exempt from paying the stamp tax on financial documents such as letters of guarantee. The stamp tax exemption under this program does not relate to goods or services used in making the product. A cumulative indirect tax is a "multi-staged tax levied where there is no mechanism for subsequent crediting of the tax if goods or services subject to tax at one stage of production are used in a succeeding crediting of the tax if goods or services subject to tax at one stage of production are used in a succeeding stage of production." In examination of the stamp tax, we find no indication that these are multi-staged taxes. Instead we find that this tax is levied at one point, upon receipt of a letter of guarantee, and without regard to stage of production. Therefore, because the stamp tax is neither a prior-stage indirect tax nor a cumulative indirect tax, we find the petitioners' argument unpersuasive that we treat the stamp tax as "prior-stage cumulative indirect taxes" under 19 CFR 351.518.

As we find the stamp tax exemption to be an indirect tax within the meaning of 19 CFR 351.517 and 351.102(b), we turn to the second factor, whether the tax is exempt upon export. When applying for the taxes, dues, and fees exemptions, an investor must issue a Letter of Commitment along with a Decision of its Board of Directors. Upon completion of the investment, an investment completion visa is prepared. Within two years of completion, the investor must

present to the Undersecretariat of Treasury documents showing that the export commitment was satisfied. Then this fact will be noted on the investment incentive certificate in order to duly close out the certificate. Failure to fulfill the export commitment results in the revocation of the exemptions granted and payment of the exempted stamp required. After examining the investment incentive certificates, and the nexus between receipt of the exemption and the export requirement, we find that these exemptions are only granted upon export, thus meeting this requirement of 19 CFR 351.517(a).

Finally, we examined the third factor contained in 19 CFR 351.517(a), *i.e.*, whether the exemption of the stamp tax exceeds the amount levied on like productions when sold for domestic consumption. We confirmed at verification that the amount of the stamp tax exempted upon export does not exceed the amount of the stamp tax levied on like products when sold for domestic consumption.

Therefore, we find that: (1) the stamp tax are indirect taxes within the meaning of 19 CFR 351.517(a) and 19 CFR 351.102(b); (2) the taxes are exempted upon export; and (3) the exemption does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Thus, the exemption upon export of the stamp tax levied on financial transaction is not countervailable under section 771(5) of the Act.

Comment 6: Foreign Exchange Loan Assistance

Petitioners' Argument: The petitioners argue that the Department should affirm its preliminary findings and continue to countervail the KKDF and the BIST exemptions.

The petitioners also argue that the Department should countervail the full amount of the FCET exemption that they argue benefitted both Colakoglu and Habas. The petitioners contend that the Department verified that the FCET is a countervailable subsidy and should modify the preliminary determination to account for exemptions received by Habas. Moreover, the Department should "calculate the FCET amount based on the total Turkish Lira amount repaid by Colakoglu and Habas to their banks." Regarding Habas, the petitioners argue that record evidence confirms that Habas did not pay the FCET on loans received under this program. Because Habas participated in this program, the petitioners argue that the Department should countervail the FCET exemptions that benefitted Habas on loans received under this program. Furthermore, the petitioners argue that the Department understated the benefit conferred on respondent companies by calculating the benefit from the FCET exemption based on principal only. However, the petitioners argue that the FCET would be calculated as 0.01 percent of the total principal, interest, and Kur Farki *(i.e.*, the exchange rate differential) of a loan, and thus, the benefit from the exemption should be calculated on the same basis.

Moreover, the petitioners argue that the Department should make certain company-specific changes in order to countervail the full benefits received by respondent companies. Regarding Habas, the petitioners argue that because of Habas' erroneous questionnaire responses, the

Department did not countervail the stamp tax, KKDF and BIST exemptions on certain loans. For its final determination, the petitioners argue that the Department should countervail the stamp tax, KKDF, BIST, and FCET exemptions on these loans. Additionally, the petitioners argue that the Department should countervail the deferral of KKDF on a certain letter of guarantee as a short-term, interest free loan in accordance with 19 CFR 351.518(a)(3). Regarding Colakoglu, the petitioners argue that the Department should countervail the tax and fees exemptions on a certain long-term export loan that the Department discovered at verification. The petitioners argue that the Department verified that four payments on this loan were due during the POI and that Colakoglu did not pay stamp taxes, KKDF or BIST on this loan.

Additionally, the petitioners argue that the Department should countervail the stamp tax exemptions provided under the Foreign Exchange Loan Assistance Program for the same reasons articulated in their arguments concerning the "Taxes, Dues, and Fees Program," *supra*.

In response to the respondents' arguments, the petitioners argue that the record of the instant investigation supports the Department's prior findings that taxes assessed on financial transactions, including the stamp tax, KKDF and BIST, are prior-stage cumulative indirect taxes. (See, e.g., 1999 Pasta Final, 66 FR 64398; Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey, 64 FR 44496 (August 16, 1999); and 1986 Pipe Final , 51 FR 1268).

The petitioners argue that the Department countervailed the exemption of BIST in 1986 Pipe Final because it was a prior-stage cumulative indirect tax that was not levied on physically incorporated inputs. The petitioners argue that the record of the instant investigation confirms that these taxes are charged on financial transactions rather than on goods. Therefore, the petitioners argue that these taxes are not levied with respect to the production and distribution of subject merchandise as required by 19 CFR 351.517(a). Rather, the petitioners maintain these taxes are prior-stage cumulative taxes, the exemption of which constitutes a countervailable subsidy pursuant to 19 CFR 351.518(a)(1). Moreover, the petitioners argue that the exemptions under this program do not relate exclusively to financing the distribution of the final export product only. Instead, the petitioners argue that the underlying loans which receive these exemptions may be used for purposes such as purchasing machinery or equipment. The petitioners argue that the failure to countervail a tax exemption on financing used to purchase machinery and equipment is contrary to 19 CFR 351.518.

Respondents' Argument: The respondents argue that contributions to the KKDF and BIST are indirect taxes which are forgiven in relation to export transactions and as such, are not countervailable. The respondents cite to the Issues and Decisions Memorandum incorporated in the 1999 Pasta Final in which the Department determined that the stamp tax exemption on pre-shipment and other export-related loans is not countervailable according to 19 CFR 351.517. The respondents maintain that KKDF and BIST are indistinguishable from stamp taxes because they are assessed on a transactional basis and are not direct taxes as defined by the SCM Agreement Annex I, footnote 58. The respondents further argue that the verification of the

instant proceeding confirmed that both KKDF and BIST are indirect, transactional taxes.

The respondents argue that KKDF and BIST are indirect taxes as defined by 19 CFR 351.517 and that nothing on the record of the instant proceeding indicates that the exemptions thereof are excessive. The respondents maintain that the Department's regulations distinguish the treatment of prior-stage cumulative indirect taxes (see 19 CFR 351.102(b) and 351.518) from indirect taxes (see 19 CFR 351.102(b) and 351.517). Moreover, the respondents argue that the Department should examine the process or transaction for which the exemption is provided in analyzing these taxes under 351.517 or 351.518. The respondents argue that in order to determine the benefit of prior-stage cumulative indirect taxes under 19 CFR 351.518, the Department must analyze "inputs that are not consumed in the production of the exported products." Whereas, to determine the benefit of indirect tax exemptions on export under 19 CFR 351.517, the Department must analyze whether the exemption "exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption." Furthermore, the respondents argue that the SCM Agreement incorporates the same distinction between taxes applicable to production and taxes applicable to distribution. (See SCM Agreement, Annex I(g) and (h); and 1986 Pipe Final). Therefore, the respondents argue that loan financing for the export sale transaction is an integral part of the distribution of subject merchandise rather than the production of subject merchandise. Because the sale and delivery of a product constitutes distribution, financing of the sale and delivery of a product is tied directly to distribution.

The respondents maintain that the petitioners make arguments to countervail exemptions of the FCET as indirect taxes at "stages of production prior to export." However, the respondents argue that although such indirect tax exemptions might be countervailable, if standing alone, under 19 CFR 351.510(a), that the exemptions addressed by the petitioners are integrally linked to the GIEP and therefore, are not countervailable because the GIEP is not countervailable. To support their argument that these exemptions are integrally linked to the GIEP, the respondents cite to 19 CFR 351.502 which includes four criteria for determining integral linkage. These criteria are that the subsidy programs: (1) have the same purpose; (2) bestow the same type of benefit; (3) confer similar levels of benefits on similarly situated firms and (4) were linked at inception.

Department's Position: We agree with the respondents' argument that KKDF contributions and BIST are indirect taxes which are exempted in relation to export transactions and as such, are not countervailable. According to 19 CFR 351.517(a), "{i}n the case of the exemption or remission upon export of indirect taxes, a benefit exists to the extent that the Secretary determines that the amount remitted or exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption."

In reaching the instant determination, we have analyzed three factors implicit in 19 CFR 351.517(a): (1) are KKDF contributions, BIST, and stamp tax, indirect taxes within the meaning of the regulation; (2) are the taxes exempted upon export: and (3) does the exemption exceed the amount levied with respect to the production and distribution of like products when sold for

domestic consumption.

According to 19 CFR 351.102(b), "'{i}ndirect tax' means a sales, excise, turnover, value added, franchise, stamp, transfer, inventory, or equipment tax, a border tax, or any other tax other than a direct tax or an import charge." We note that this definition is distinct from that of a "direct tax" or a "cumulative indirect tax," both of which are also defined in 19 CFR 351.102(b). First, we note that stamp taxes are explicitly defined as indirect taxes. Second, because neither the KKDF contribution or BIST fits the explicit definition of a direct tax or import charge, they are by definition indirect taxes because they are taxes "other than a direct tax or import charge." Third, once defined as indirect taxes, we examine whether KKDF, BIST, and stamp tax fit the definition of either a "prior-stage indirect tax" or a "cumulative indirect tax" as defined in 19 CFR 351.102(b).

A prior-stage indirect tax is an indirect tax "levied on goods or services used directly or indirectly in making the product." KKDF, BIST and stamp tax are levied on financial transactions related to the exportation of the product, not on goods or services used in making the product. A cumulative indirect tax is a "multi-staged tax levied where there is no mechanism for subsequent crediting of the tax if goods or services subject to tax at one stage of production are used in a succeeding stage of production." In examining KKDF, BIST, and the stamp tax, we find no indication that these are multi-stage taxes. Instead, these taxes are levied at one point, either upon receipt of the principal or collection of the interest, and without regard to stage of production. Therefore, because KKDF, BIST, and stamp tax are neither prior-stage indirect taxes nor cumulative indirect taxes, we find the petitioners' argument unpersuasive that we treat KKDF, BIST and stamp tax as "prior-stage cumulative indirect taxes" under 19 CFR 351.518.

We note that 19 CFR 351.518 applies only to "prior-stage cumulative indirect taxes <u>on inputs</u>." {Emphasis added}. We are not sufficiently persuaded that loans, as such, are inputs in the production of an exported product. Moreover, rather than address financial transactions, 19 CFR 351.518 is designed to allow the non-excessive exemption or remission of taxes on inputs which are physically incorporated into the final-stage product. Loans, *per se*, are never physically incorporated into the final product and therefore are not properly examined through the framework of 19 CFR 351.518. Instead, because 19 CFR 351.503(a) directs that "{i}n the case of a government program for which a specific rule for the measurement of a benefit is contained in this subpart E, the Secretary will measure the extent to which a financial contribution...confers a benefit as provided in that rule," we must examine the benefit from KKDF, BIST, and stamp tax according to the specific rule for exemptions of indirect taxes upon export, *i.e.*, 19 CFR 351.517.

Having first established that KKDF, BIST, and stamp tax are indirect taxes within the meaning of 19 CFR 351.517, we turn to our second factor, whether the taxes are exempted upon export. As addressed under "Analysis of Programs," *supra*, in order to receive Eximbank loans, (*i.e.*, Pre-Shipment Export Loans, Foreign Trade Corporate Companies Credit Facility, and Past

Performance Related Export Credits), a company must meet stringent eligibility criteria which confirms its status as an exporter and confirms upon closing of the loan that the disbursed funds were in fact used to finance export transactions. Moreover, if either an intermediary bank, which issues exempted Eximbank loans, or a commercial bank, also issuing exempted export loans, were unable to confirm that a company's exempted loans were used for export transactions, then the bank (for KKDF and BIST) or the company (for stamp tax) would be legally required to pay the exempted taxes to the GRT. The bank would then seek reimbursement from the company who had misused the loans. 19 CFR 351.517(a) requires that an exemption of an indirect tax be granted "upon export." The GRT requires that banks who exempt KKDF, BIST, and stamp tax on export-related financial transactions do so only "upon export" and a bank would be required to pay any exempted taxes to the GRT if it could not confirm that the financial transactions were in fact related to export.[4] After examining each type of loan, both preferential and commercial, and the nexus between receipt of the exemptions and the export requirement, we find that these exemptions are only granted upon export, thus meeting the requirement of 19 CFR 351.517(a).

Finally, we turn to the third factor contained in 19 CFR 517(a), whether the exemption of KKDF, BIST and stamp taxes exceeds the amount levied on like products when sold for domestic consumption. At verification, we confirmed that the amount of KKDF, BIST and stamp tax exempted upon export does not exceed the amount of KKDF, BIST, and stamp tax levied on like products when sold for domestic consumption.

Therefore, we find that: (1) KKDF contributions, BIST, and stamp tax, are indirect taxes within the meaning of 19 CFR 351.517(a); (2) the taxes are exempted upon export; and (3) the exemption does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Thus, the exemptions upon export of KKDF, BIST, and stamp tax levied on financial transactions are not countervailable under section 771(5) of the Act.

Because we find the exemptions of KKDF, BIST, and stamp tax levied on financial transaction are not countervailable, we find it unnecessary to address petitioners' arguments that the exemptions connected to certain loans and letters of guarantees received by respondent companies are countervailable. Similarly, because we find that FCET is a portion of the BIST (see FCET under "Analysis of Programs," *supra*) our analysis of BIST makes it unnecessary to address either the petitioners' or respondents' arguments related to FCET. Finally, in order to clarify the operation of FCET, which the Department has not previously treated and for which little information was available at the Preliminary Determination, we note that a company only incurs the FCET if it purchases foreign currency from a bank. Therefore, if a company holds its own foreign currency reserves with which it pays loans due, it will not incur FCET charges. Because Habas did not purchase foreign currency in order to repay its loans subject to this investigation, it did not incur FCET charges on which it then received exemptions.

[4] See Footnote 3.

Comment 7: Financing Guarantees

Petitioners' Argument: The petitioners argue that because respondent companies are required to obtain guarantees for financing under the Foreign Loan Assistance, the Turkish Eximbank Loan Programs, and the Taxes, Dues, and Fees Programs, the Department should countervail the exemptions of stamp taxes, KKDF and BIST received on these guarantees.

Respondents' Argument: The respondents maintain that the petitioners make arguments to countervail exemptions of indirect taxes at "stages of production prior to export" related to letters of guarantees required by the Turkish Eximbank. However, the respondents argue that although such indirect tax exemptions might be countervailable, if standing alone, under 19 CFR 351.510(a), the exemptions addressed by the petitioners are integrally linked to the GIEP and therefore, are not countervailable because the GIEP is not countervailable. To support their argument that these exemptions are integrally linked to the GIEP, the respondents cite to 19 CFR 351.502 which includes four criteria for determining integral linkage. These criteria are that the subsidy programs: (1) have the same purpose; (2) bestow the same type of benefit; (3) confer similar levels of benefits on similarly situated firms and (4) were linked at inception.

Department's Position: We disagree with the petitioners' argument that the exemptions of KKDF, BIST, and stamp tax on financing guarantees, obtained in conjunction with the Foreign Exchange Loan Assistance Program, the Eximbank Loan Programs, and the Taxes, Dues and Fees Exemption Program, are countervailable. We find that for the purpose of the instant proceeding, financing guarantees and loans are indistinguishable financial transactions. Therefore, our analysis of KKDF, BIST, and stamp tax exemptions articulated under Comment 6, *supra*, is equally applicable to loans and financing guarantees. Therefore, we find that: (1) KKDF contributions, BIST, and stamp tax, are indirect taxes within the meaning of 19 CFR 351.517(a); (2) the taxes are exempted upon export; and (3) the exemption does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Thus, the exemptions upon export of KKDF, BIST, and stamp tax levied on financial transactions are not countervailable under section 771(5) of the Act. (For further discussion, see Comment 6, *supra*).

We also disagree with the respondents' arguments that these exemptions are integrally linked to the GIEP or that they may be treated under 19 CFR 351.510. First, the exemption of KKDF and BIST are clearly distinguishable from the GIEP. The GIEP's implementing legislation does not address KKDF or BIST exemptions and therefore there is no evidence that these exemptions were linked at conception. Second, although the Taxes, Dues, and Fees Program may be integrally linked to the GIEP, this program also contains an export requirement which distinguishes if from the GIEP umbrella. Third, 19 CFR 351.510 applies to indirect taxes <u>other than export programs</u>. {Emphasis added}. Our analysis clearly shows that the KKDF, BIST, and stamp tax exemptions are granted upon export, thus removing them from the regulation of 19 CFR 351.510. Finally, because we have analyzed the exemption of KKDF, BIST, and stamp tax under 19 CFR 351.517, we find it unnecessary to further address the respondents' argument that

these exemptions are integrally linked to the GIEP. (For further discussion, see Comment 6, *supra*).

Comment 8: Inward Processing Regime Customs Duty Exemption

Petitioners' Argument: The petitioners argue that the benefit to the respondents from the exemption of customs duties on import of a certain input is countervailable because this good is not consumed in the production of the export product. The petitioners claim that this good should not be considered as raw material used in the production of the exported product because it is not "physically incorporated into the production of the exported product." The petitioners also state that the good in question cannot be considered to be a catalyst which is consumed in the course of its use to obtain the exported production. The petitioners claim the Department should countervail the benefits received by Habas under this program since it received customs duty exemptions on its import of an input that is not consumed in the production process of the exported product.

The petitioners also argue the Department verified that inward processing certificate holders are exempt from paying the KKDF on raw materials if imported under certain methods of payment. The petitioners point out that the Department did not examine the amount of KKDF exemptions for either company even though both companies supplied to the Department a list of raw materials purchased under inward processing certificates.

The petitioners argue the Department should countervail Habas and Colakoglu for the benefit they received from the exemptions from paying KKDF on raw materials. The petitioners claim the exemption of KKDF represents revenue foregone by the GRT. As such, the exemptions serve as a financial contribution to the respondents. Similarly, the petitioners argue exemption from KKDF payments provides a benefit to respondents in the form of tax savings and is specific because it applies to imports of raw materials consumed for export.

Therefore, the petitioners argue, the Department should countervail the full amount of the KKDF exemption by multiplying the CIF value of the raw material inputs by the 3 percent KKDF that would have otherwise been due.

Respondents' Argument: The respondents disagree with the petitioners' contention that a certain input imported duty free by Habas from countries outside the European Customs Union should be countervailed because it is not consumed in the production process as "inputs" as defined in the regulations at 19 CFR 351.102.

The respondents disagree with the petitioners' conclusion as to the purpose of the input in the production process of the subject merchandise. According to the respondents, the input's function is to precipitate a process by which molten steel develops certain properties required in the end product. In this process, the respondents stated that the input is "quickly spent and replacement is necessary on a relatively frequent basis, much more so than other parts of the

furnace." (See Respondents' July 26, 2002 submission, at page 25). As such, the respondents argue the input serves as an element that forces change to the medium in which it is placed and, therefore, is a catalyst.

Correspondingly, the respondents believe the Department should determine these inputs to be "consumed in the course of their use to obtain the product." The respondents argue because the input loses capacity to serve as a catalyst upon completion of its use, the input becomes scrap or waste. Therefore, the Department should consider the input "consumed" and any benefit related to this input as not countervailable.

Furthermore, in response to the petitioners' assertion that the KKDF charges on imported raw materials that are consumed should be countervailed, the respondents argue that the KKDF qualifies as an indirect tax. As an indirect tax, it should be treated like the VAT exemption granted under this program, pursuant to 19 CFR 351.518(a)(1), the exemption of the KKDF on imports of raw materials that are inputs for the production of the exported product are not countervailable.

Finally, the respondents noted several clarifications to the GRT Verification Report. The respondents noted that the Resolution Concerning Inward Processing Regime No. 99/13189 (effective February 5, 2000) did not establish this program, but rather is the most recent regulation implementing an already established program. Regarding footnote 13 of the GRT Verification Report, the respondents clarified that during the importation stage of this program, the collateral amount is calculated from the value of the realized import and not the amount of the export commitment as described by the Department. Also, the respondents' stated that the General Directorate for Exports reports all relevant transactions to Customs and not the other way around as explained in the GRT Verification Report.

Department's Position: We agree with the petitioners' argument that the duty-free import of the input in question confers a benefit upon Habas because the input is not consumed in the production of the exported product. In determining whether a benefit exists in the case of an exemption of import charges upon export, 19 CFR 351.519(a)(1)(ii) states that "a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product..." Inputs "consumed in the production process" are defined by 19 CFR 351.102(b) as "...inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the product." In this case, we find the petitioners' argument that the input in question is a part of the machinery used in the production process more compelling than the respondents' contention that the input in question is, in essence, a catalyst consumed in the course of its use to obtain the subject merchandise. Therefore, for the final determination, we are countervailing the amount of Habas' exemption from payment of Customs Duties upon importation of this certain good as a countervailable benefit to the respondents.

We disagree with the petitioners' position that inputs imported under this program using certain

methods of payment (*i.e.*, acceptance credit, due-dated letter of credit, and/or cash against goods, which are exempt from the KKDF under Article 6 of Communique No. 6) are countervailable. We determine that there is no benefit received by the respondents pursuant to 19 CFR 351.517(a). In order to make this determination, we analyzed three factors implicit in 19 CFR 351.517(a): (1) are KKDF contributions indirect taxes within the meaning of the regulation; (2) are the taxes exempted upon export; and (3) does the exemption exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

As noted above under Comment 6, pursuant to 19 CFR 351.102(b), we determine that the KKDF contribution to be an indirect tax pursuant to 19 CFR 351.517(a). We do not consider it to be an indirect tax within the meaning of 19 CFR 351.518 because the exemption is not "levied on goods or services used directly or indirectly in making the product." Under this program, the KKDF exemption is levied on certain financial transactions related to the exportation of the product and not on goods or services used in making the product. Moreover, we find no indication that the KKDF is a cumulative indirect tax as defined by 19 CFR 351.102(b) because it is not a "multi-staged tax levied where there is no mechanism for subsequent crediting of the tax if goods or services subject to tax at one stage of production are used in a succeeding stage of production" as defined under 19 CFR 102(b). In this instance, the tax is levied at one point, upon the reception of either of the three specified methods of payment, *i.e.*, acceptance credit, due-dated letter of credit, and/or cash against goods.

Additionally, we note that 19 CFR 351.518 only applies to "prior-stage cumulative indirect taxes on inputs." The methods of payment subject to the KKDF exemption, as such, are not inputs in the production of an export product. We note that 19 CFR 351.518 is designed to allow the non-excessive exemption or remission of taxes on inputs which are physically incorporated into the final-stage product. 19 CFR 351.518 does not address financial transactions. Although this program is designed to facilitate the purchase of raw materials that are incorporated into the good to be exported, the object of the tax exemption is the method of payment, not the good itself. As the method of payment is never physically incorporated into the final product, it is not properly examined through the framework of 19 CFR 351.518. Instead, because 19 CFR 351.503(a) directs that "{i}n the case of a government program for which a specific rule for the measurement of a benefit is contained in this subpart E, the Secretary will measure the extent to which a financial contribution...confers a benefit as provided in that rule," we must examine the benefit from KKDF according to the specific rule for exemptions of indirect taxes upon export, *i.e.*, 19 CFR 351.517.

As noted under "Analysis of Programs," in order to obtain an inward processing certificate a company must meet stringent eligibility criteria. In short, a company must confirm its status as an exporter, demonstrate its production capabilities and document its production capacity. Moreover, the GRT closely monitors, through cooperation with the Turkish Customs office, the transactions conducted by the participating company in order to confirm that the appropriate

amount and kind of goods were imported and exported. In instances where the GRT finds that a company did not meet its export commitment, all of the exemptions granted under this program come due. Because the exemption of the KKDF under this program is only valid "upon export" by the holder of the inward processing certificate, we determine that, pursuant to 19 CFR 351.517(a), this aspect of this program is an exemption of an indirect tax granted "upon export."

Finally, we examined the third factor contained within 19 CFR 351.517(a), whether the exemption of KKDF tax exceeds the amount levied on like products when sold for domestic consumption. We confirmed at verification that the KKDF tax exempted upon export does not exceed the amount of KKDF tax levied on like products when sold for domestic consumption.

Therefore, we find that (1) the KKDF contributions to be indirect taxes with the meaning of 19 CFR 351.517(a); (2) the taxes are exempted upon export; and (3) the exemption does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Thus, the exemption upon export of the KKDF contribution levied on financial transactions are not countervailable under section 771(5) of the Act.

Finally, we agree with the clarifications to the GRT Verification Report as noted by the respondents.

Comment 9: Turkish Eximbank Programs

Petitioners' Argument: The petitioners claim the Department should countervail the full amount of benefits received by Colakoglu and Habas from the Turkish Eximbank. The petitioners noted that the Department verified that both Colakoglu and Habas were exempt from paying stamp taxes, the KKDF, and the BIST on their Turkish Eximbank borrowings. As a result, for the reasons set forth in "Taxes, Dues, and Fees Program," *supra*, the petitioners contend that the Department should countervail the exemption of stamp taxes charged on Turkish Eximbank Loans in the final determination. (See Comment 5, *supra*).

The petitioners also argue that, if the Department adds the commissions paid to commercial banks to the payments made on Turkish Eximbank loans, the Department should add a like payment to the benchmark loan. The petitioners claim these commissions are "customary fees" that would be incurred on the benchmark loan as well. Similarly, the petitioners state the practice of commercial banks requiring corporate clients to obtain security bonds or guarantees for export-related activities is common in Turkey.

Respondents' Argument: The respondents did not comment on these issues.

Department's Position: For our position on exemptions of KKDF, BIST, and stamp taxes, see Comment 6, *supra*.

Regarding petitioners' arguments related to benchmarks used in calculating the benefit conferred by Exim Bank loans, pursuant to 771(5)(E)(ii) of the Act, the Department normally uses a "comparable commercial loan that the recipient could actually obtain on the market" as the benchmark in determining whether a government-provided loan confers a benefit. In the preamble of the Department's regulations, it states that it is the Department's practice to normally compare effective interest rates rather than nominal interest rates. For the Preliminary Determination, due to the lack of any other information, we calculated benchmark interest rates for TL-denominated loans based on the short-term interest rates in Turkey for 2000 as reported weekly by The Economist. (See Preliminary Determination, 67 FR 5978).

At the time of the Preliminary Determination, Colakoglu had placed on the record both effective and nominal rates and Habas had only provided effective interest rates. Regarding the pre-shipment loans Habas received from the Turkish Eximbank, due to time restraints, for our Preliminary Determination we compared the reported effective rates to our nominal benchmark rates with the intention of examining this issue further for the final determination and making any required adjustments at that time. (See Preliminary Determination). At verification, we learned that Habas mislabeled the interest rate column of the pre-shipment loans reported as effective rates when the rates were really nominal. (See Habas Verification Report at 1). Therefore, for the final determination, we do not find it necessary to adjust the interest rates and are comparing nominal rates as reported by the respondent companies to our nominal benchmark rates. This methodology is consistent with 1998 Pipe Final, 65 FR 49230, 49231 and 1999 Pasta Final, 66 FR 64398, 64399.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions and adjusting all related margin calculations accordingly. If these recommendations are accepted, we will publish the final determination in the Federal Register.

AGREE ____ DISAGREE ____

_____
Faryar Shirzad
Assistant Secretary for
Import Administration

_____
(Date)