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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

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

SUBJECT: Issues and Decision Memorandum: Final Results of Administrative Review of the Countervailing Duty Order on Circular Welded Carbon Steel Pipes and Tubes from Turkey

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SUMMARY

On April 2, 2012, the Department of Commerce (Department) published its preliminary results in this countervailing duty administrative review. See Certain Welded Carbon Steel Standard Pipe from Turkey: Preliminary Results of Countervailing Duty Administrative Review, 77 FR 19623 (April 2, 2012) (Preliminary Results). On May 18, 2012, Borusan Group, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB), and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, Borusan), Tosyali dis Ticaret A.S. (Tosyali) and Toscelik Profil ve Sac Endustrisi A.S. (Toscelik Profil) (collectively, Toscelik), and Wheatland Tube Company (Wheatland) submitted case briefs. On May 23, 2012, we received rebuttal briefs from United States Steel Corporation (U.S. Steel) and Wheatland.

After analyzing the comments, we have certain modifications to the Preliminary Results. The "Subsidies Valuation Information" and "Analysis of Programs" sections below describe the methodology followed in this review with respect to Borusan and Toscelik, both the producers/exporters of subject merchandise covered by this review. Also below is the "Analysis of Comments" section, which contains the Department's response to the issues raised in the case and rebuttal briefs.

We received comments on the following issues:

Borusan

Comment 1: Whether the Department Should Grant an Offset to the Gross Subsidy Found on Turkish Eximbank Loans for the Bank Guarantee Fees

Toscelik

Comment 2: Whether the Denominator for Benefits at the Osmaniye Plant Should Include Sale of Billets

Comment 3: Whether the GOT's Energy Subsidies Under Law 5084 Were Properly Attributed to the Subject Merchandise

Comment 4: Whether the Benchmark Price Used to Calculate Toscelik's Benefit from the Provision of Land for Less Than Adequate Remuneration in the Organized Industrial Zone (OIZ) Should be Revised

Comment 5: Whether the Department Correctly Attributed Subsidies Received by Toscelik in the OIZ to Subject Merchandise and Should Continue to Do so in the Final Results

METHODOLOGY AND BACKGROUND INFORMATION

SUBSIDIES VALUATION INFORMATION

A. Attribution of Subsidies

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy.

Borusan

In the Preliminary Results we found that BMB and its affiliated foreign trading company, Istikbal, are both part of the Borusan Group. See Preliminary Results, 77 FR at 19623 - 12324. BMB produces subject merchandise for both the home and export markets. Id. During the period of review (POR), all subject merchandise exported to the United States was exported from Turkey by BMB. Id. Consistent with 19 CFR 351.525(c), in the final results we continued to attribute any subsidies received by Istikbal to the sales of BMB. In accordance with 19 CFR 351.525(b)(6)(i), we attributed subsidies received by BMB to the sales of BMB.

Toscelik Profil

Toscelik Profil and its affiliated foreign trading company, Tosyali, are owned by Tosyali

Holding, a Turkish holding company. Toscelik Profil, which produces subject merchandise for both the domestic and export markets, was established in 1992. Tosyali, founded in 1996, is the exporter of record with respect to Toscelik Profil's export sales and sells subject merchandise to unaffiliated customers in the United States. Consistent with 19 CFR 351.525(c), we are attributing any subsidies received by Tosyali to Toscelik Profil. In accordance with 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Toscelik Profil to the sales of Toscelik Profil.

B. Benchmark Interest Rates

Short-Term Benchmark

To determine whether government-provided loans under review conferred a benefit, the Department uses, where possible, company-specific interest rates for comparable commercial loans. See 19 CFR 351.505(a). In the July 14, 2011, questionnaire response at Exhibit 25, Borusan submitted comparable company–specific short term interest rates for 2010. Thus, we calculated the 2010 benchmark interest rate for short term Turkish Lira, Euro and U.S. dollar denominated loans based on the data reported by Borusan as provided under 19 CFR 351.505(a)(2)(ii). To calculate the short term benchmark rates for Borusan, we derived an annual average of the interest rates on commercial loans that Borusan took out during the years in which the government loans were issued, weighted by the principle amount of each loan.

Where no company-specific benchmark interest rates are available, as is the case for Borusan for 2009, the Department's regulations direct us to use a national average interest rate as the benchmark. See 19 CFR 351.505(a)(3)(ii). However, according to the Government of Turkey (GOT) there is no official national average short-term interest rate available in Turkey.[1] Therefore, consistent with our past practice in Turkey CVD proceedings,[2] we calculated the 2009 benchmark interest rate for short-term Turkish Lira denominated loans based on short-term interest rate data as reported by The Economist. For U.S. dollar-denominated interest rates, we used lending rate data from International Financial Statistics, a publication of the International Monetary Fund (IMF). For Euro-denominated interest rates, we used prime lending rate data from Moneyrate, an online statistical database operated by the Wall Street Journal.

Long-Term Benchmark

As discussed above, to determine whether government-provided loans under review conferred a benefit, the Department uses, where possible, company-specific interest rates for comparable commercial loans. See 19 CFR 351.505(a). However, Toscelik, the firm for which a long-term interest rate is required, did not report any company-specific long-term benchmark rates. Where no company-specific benchmark interest rates are available, as is the case in this review, the

[1] See GOT's June 28, 2011, initial questionnaire response (GOT's Initial Questionnaire Response) at 17.

[2] See Carbon and Certain Alloy Steel Wire Rod from Turkey; Final Negative Countervailing Duty Determination, 67 FR 55815 (August 30, 2002), and accompanying Issues and Decision Memorandum (Wire Rod Memorandum) at "Benchmark Interest Rates;" see also Preliminary Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 72 FR 62837, 62838 (November 7, 2007) (Turkey Pipe 2006 Preliminary Results), unchanged in Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 73 FR 12080 (March 6, 2008) (Turkey Pipe 2006 Final Results).

Department's regulations direct us to use a national average interest rate as the benchmark. See 19 CFR 351.505(a)(3)(ii). We also lack information from the GOT concerning long-term interest rates in Turkey. Therefore, in accordance with 19 CFR 351.505(a)(3)(ii), we used the national average discount rate in Turkey for the relevant years, as reported in International Financial Statistics, as the long-term discount rate utilized in the grant allocation formula.

ANALYSIS OF PROGRAMS

I. Analysis of Programs Determined To Be Countervailable

A. Deduction from Taxable Income for Export Revenue

Addendum 4108 of Article 40 of the Income Tax Law, effective June 2, 1995, allows taxpayers engaged in export activities to claim a lump sum deduction from gross income, in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings. See GOT's initial questionnaire response (GOT's initial questionnaire) at II-4 and II-5. The deduction for export earnings may either be taken as a lump sum on a company's annual income tax return or be shown within the company's marketing, selling and distribution expense account of the income statement to record the subtraction of eligible undocumented expenses from gross income. Id. Undocumented expenses are expenses that are not supported by invoices for lodging, food, and transportation costs incurred during overseas business trips. Id. Under this program, those expenses are deductible expenditures for tax purposes. Id.

Consistent with prior determinations, for the final results; we find that this tax deduction is a countervailable subsidy. See, e.g., Certain Welded Carbon Steel Standard Pipe from Turkey: Preliminary Results of Countervailing Duty Administrative Review, 75 FR 16439, 16440-41 (April 1, 2010) (Turkey Pipe 2008 Preliminary Results), unchanged in Certain Welded Carbon Steel Standard Pipe from Turkey: Preliminary Results of Countervailing Duty Administrative Review, 75 FR 44766 (July 29, 2010) (Turkey Pipe 2008 Final Results). The income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Tariff Act of 1930, as amended (the Act), because it represents revenue forgone by the GOT. The deduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. It is also specific under section 771(5A)(B) of the Act because its receipt is contingent upon export earnings. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of the Department's prior finding of countervailability for this program.

During 2010, BMB, Istikbal, and Tosyali used the deduction for export earnings program with respect to their 2009 income taxes. The Department typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate for this program, we calculated the tax savings realized by BMB, Istikbal, and Tosyali in 2010, as a result of the deduction for export earnings. For BMB and Istikbal, we divided their combined tax savings by Borusan's total export sales for 2010. For Tosyali, we divided the tax savings realized by Toscelik's total export sales for 2010. On this basis, in the final results we continue to determine the net countervailable subsidy for this program to be 0.08 percent ad valorem for Borusan, and 0.04 percent ad valorem for Toscelik.

B. Foreign Trade Companies Short-Term Export Credits

The Foreign Trade Company (FTC) loan program was established by the Turkish Export Bank to meet the working capital needs of exporters, manufacturer-exporters, and manufacturers supplying exporters. See GOT's Initial Questionnaire at II-31. This program is specifically designed to benefit Foreign Trade Corporate Companies (FTCC) and Sectoral Foreign Trade Companies (SFTC).[3] Id. An FTCC is a company whose export performance was at least US$100 million in the previous year and has paid-in-capital of Turkish Lira 2 million or more. The GOT's Undersecretariat for Foreign Trade grants FTCC and SFTC status to eligible companies. Id.

To eligible companies, the Export Bank provides short-term export loans in Turkish Lira or foreign currency, based on their prior export performance and financial criteria, up to 100 percent of the free on board (FOB) export commitment. Id. at II-34. The loan interest rates are set by the Export Bank and the maximum term for the loans is 360 days. Id. To qualify for an FTC loan, along with the necessary application documents, a company must provide a bank letter of guarantee, equivalent to the loan's principal and interest amount, because the financing is a direct credit from the Export Bank. Id. at II-33. Istikbal was the only Borusan company to pay interest against FTC credits during the POR. Id. at II-35. See Borusan's July 14, 2012, questionnaire response at p. 26.

Consistent with previous determinations, we find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act.[4] The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, 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 the difference between the payments of interest that Istikbal made on its loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance. Further, the FTC loans are not tied to a particular export destination. Therefore, we treated this program as an untied export loan program, which renders it countervailable regardless of whether the loans were used for exports to the United States. Id.

Pursuant to 19 CFR 351.505(a)(1), we calculated the benefit as the difference between the payments of interest that Istikbal made on its FTC loans during the POR and the payments the

[3] To promote exports and diversify export products and markets, the GOT encouraged small and medium scale enterprises to form SFTC, which comprise a group of companies that operate together in a similar sector.

[4] See Certain Welded Carbon Steel Standard Pipe from Turkey: Preliminary Results of Countervailing Duty Administrative Review, 75 FR 16439, 16440-41 (April 1, 2010) (Turkey Pipe 2010 Preliminary Results), unchanged in Certain Welded Carbon Steel Standard Pipe from Turkey: Final Results of Countervailing Duty Administrative Review, 75 FR 44766 (July 29, 2010) (Turkey Pipe 2010 Final Results); see also Preliminary Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 72 FR 62837, 62389 (November 7, 2007) (Turkey Pipe 2006 Preliminary Results), unchanged in Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 73 FR 12080 (March 6, 2008) (Turkey Pipe 2006 Final Results).

company would have made on comparable commercial loans.[5] In accordance with section 771(6)(A) of the Act, we subtracted from the benefit amount the fees that Istikbal paid to commercial banks for the required letters of guarantee. We then divided the resulting benefit by Borusan's total export sales for 2010. On this basis, we find that the net countervailable subsidy for this program is 0.00 percent ad valorem for Borusan.

Toscelik reported that it did not use this program during the POR.

C. Pre-Export Credits

The Pre-Export Credit program meets the working capital needs of exporters, manufacturers, and manufacturers supplying exporters, except for FTC and SFTC classified exporters, which are ineligible to receive credits under this program. See GOT's Initial Questionnaire at II-21. Eligible applicants are companies that exported more than $200,000 of goods in the previous 12 months. Id. Like FTC loans, the Export Bank directly extends pre-export loans to eligible companies for the FOB value of the export commitment. Id. at II-22. The loans, which have interest rates set by the Export Bank, are denominated in either Turkish Lira or foreign currency and have a maximum maturity of 540 days. Id. at II-25. To qualify for a pre-export loan, along with the necessary application documents, a company must provide a bank letter of guarantee, equivalent to the loan's principal and interest amount. Id. at II-22 to II-23. In March, 2008, interest rates applied to companies started to be determined according to their outstanding risks in Short Term Export Credits. Id. at II-18. During the POR, Borusan (specifically, BMB) was the only respondent that paid interest against pre-export loans. Id. at II-26. See Borusan's July 14, 2011, questionnaire response at p. 27.

Consistent with previous determinations, we find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. See, e.g., Turkey Pipe 2010 Preliminary Results, unchanged in the Turkey Pipe 2010 Final Results. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, 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 the difference between the payments of interest that BMB made on the loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

Further, like the FTC loans, these loans are not tied to a particular export destination. Therefore, we treated this program as an untied export loan program rendering it countervailable regardless of whether the loans were used for exports to the United States. Id. Pursuant to 19 CFR 351.505(a)(1), we calculated the benefit as the difference between the payments of interest that BMB made on its pre-export loans during the POR and the payments the company would have made on comparable commercial loans. In accordance with section 771(6)(A) of the Act, we subtracted from the benefit amount the fees which BMB paid to commercial banks for the required letters of guarantee. We then divided the resulting benefit by Borusan's total export value for 2010. On this basis, we find that the net countervailable subsidy for this program is

[5] See "Benchmark Interest Rates," supra (discussing the benchmark rates used in these preliminary results).

0.01 percent ad valorem for Borusan.

Toscelik reported that it did not use this program during the POR.

D. Pre-Shipment Export Credits

The Turkish Export Bank provides short-term pre-shipment export loans through intermediary commercial banks to exporters, manufacturer-exporters, and manufacturers supplying exporters and SFTCs to assist them in meeting their export commitments. See GOT's Initial Questionnaire Response at II-10. The commercial banks, which assume the default risks of the borrowers, are allocated credit lines by the Export Bank to make the loans. Id. These loans cover up to 100 percent of the FOB export value, are denominated in either Turkish Lira or foreign currency, and have a maximum term of 540 days. Id. The interest rates charged on these pre-shipment loans are set by the Export Bank. Id. However, because these loans are provided through intermediary commercial banks, those banks can add a maximum of one percent to the Turkish Lira loan interest rate and 0.5 percent to the foreign currency loan interest rate as their commissions.[6] Since March 2008 interest rates applied to companies are determined according to their outstanding risks in Short Term Export Credits. Id. at II-11.

In previous determinations, the Department found this program to be countervailable because receipt of the loans is contingent upon export performance and a benefit was conferred to the extent that the interest rates paid on the government loan were less than the amount the recipient would pay on comparable commercial loans. See, e.g., Turkey Pipe 2010 Preliminary Results, 75 FR 16442, unchanged in the Turkey Pipe 2010 Final Results.

The Department also found that this program is an untied export loan program because the loans are not specifically tied to a particular destination at the time of approval and the borrower only has to demonstrate that the export commitment was satisfied (i.e., exports amounting to the FOB value of the credit) to close the loan. See Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 71 FR 43111 (July 31, 2006) (Turkey Pipe 2004 Final Results), and accompanying Issues and Decision Memorandum at "Pre-Shipment Export Credits."

In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of the Department's prior findings for this program. During the POR, Borusan (specifically, BMB) was the only respondent that paid interest against pre-shipment export credit loans.

Consistent with the prior findings, we find that these loans confer 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 from the GOT, 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 the difference between the payments of interest that BMB made on the loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export

[6] See GOT's Initial Questionnaire Response at 13.

performance.

Pursuant to 19 CFR 351.505(a)(1), we calculated the benefit as the difference between the payments of interest that BMB made on its pre-shipment export loans during the POR and the payments the company would have made on comparable commercial loans. It is the Department's practice to normally compare effective interest rates rather than nominal rates in making the loan comparison. See Countervailing Duties; Final Rule, 63 FR 65347, 65362 (November 25, 1998) (Preamble); see, also, Turkey Pipe 2010 Preliminary Results, 75 FR at 16441; unchanged in Turkey Pipe 2010 Final Results, 75 FR at 44767. "Effective" interest rates are intended to take account of the actual cost of the loan, including the amount of any fees, commissions, compensating balances, government charges, or penalties paid in addition to the "nominal" interest rate.

The benchmark short-term Turkish Lira interest rates sourced from The Economist, however, do not include commissions or fees paid to commercial banks, i.e., they are nominal rates. See "Benchmark Interest Rate," section supra. Therefore, for these preliminary results, we compared the benchmark Turkish Lira interest rate to the interest rate that BMB was charged on the pre-shipment export credit loans, exclusive of the intermediary bank commissions, to make the comparison on a nominal interest rate basis.

After computing the benefit amount, we subtracted from the benefit amount the fees which BMB paid to commercial banks for the required letters of guarantee, as provided under section 771(6)(A) of the Act. We then divided that amount by Borusan's total export value for 2010. On this basis, we preliminarily find that the net countervailable subsidy for this program is less than 0.005 percent ad valorem for Borusan. Consistent with the Department's practice, a subsidy rate of less than 0.005 percent ad valorem does not confer a countervailable benefit and, therefore, we have not included it in the calculation of the net countervailable rate.[7] Toscelik reported that it did not use this program during the POR.

Short-Term Pre-Shipment Rediscount Program

"Short Term Pre-Shipment Rediscount Program" (SPRP) was established in 1995. It is administered by Turkey's Export Bank. See GOT's Initial Questionnaire at II-53. The SPRP program is designed to provide financial support to Turkish exporters, manufacturer-exporters and manufacturers supplying exporters. Id. This program is contingent upon an export commitment. Id. Under SPRP, there is a limit of USD 200,000, up to USD 20 million per company. Loan payments shall be made within the credit period or at maturity to the Export Bank. Companies can repay either in the foreign currency in which the loan was obtained or in a Turkish Lira equivalent of principal and interest set using the exchange rate determined by the Export Bank. Id. at II-55 to II-56. In March 2008 interest rates applied to companies started to

[7] See Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 74 FR 46100, 46103, 46106 (September 8, 2009) at "Research and Development Grants Under the Industrial Development Act" and "R&D Grants Under the Act on the Promotion of the Development of Alternative Energy," unchanged in Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 55192 (October 27, 2009).

be determined according to their outstanding risks in Short Term Export Credits. Id. at 54. During the POR, Borusan (specifically, BMB and Istikbal) paid interest against pre-shipment rediscount export credit loans. See Id. at Exhibit 9.

We find that these loans confer 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 from the GOT, 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 the difference between the payments of interest that BMB and Istikbal made on the loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

Pursuant to 19 CFR 351.505(a)(1), we calculated the benefit as the difference between the payments of interest that BMB and Istikbal made on their short-term pre-shipment rediscount loans during the POR and the payments the companies would have made on comparable commercial loans. It is the Department's practice to normally compare effective interest rates rather than nominal rates in making the loan comparison. See Preamble, 63 FR at 65362. "Effective" interest rates are intended to take account of the actual cost of the loan, including the amount of any fees, commissions, compensating balances, government charges, or penalties paid in addition to the "nominal" interest rate.

The benchmark short-term Turkish Lira interest rates sourced from The Economist, however, do not include commissions or fees paid to commercial banks, i.e., they are nominal rates. See "Benchmark Interest Rate," section supra. Therefore, consistent with the preliminary results, we compared the benchmark Turkish Lira interest rate to the interest rate that BMB and Istikbal were charged on the pre-shipment export rediscount credits, exclusive of the intermediary bank commissions, to make the comparison on a nominal interest rate basis.

After computing the benefit amount, we subtracted from the benefit amount the fees which BMB and Istikbal paid to commercial banks for the required letters of guarantee, as provided under section 771(6)(A) of the Act. We then divided that amount by Borusan's total export value for 2010. On this basis, we find that the net countervailable subsidy for this program is 0.13 percent ad valorem for Borusan.

E. Law 5084: Withholding of Income Tax on Wages and Salaries

The Ministry of Finance of the GOT administers the withholding of income tax on wages and salaries program (withholding of income tax program) pursuant to Article 2 and Article 3 of Law 5084. The purpose of this program under Law 5084, as set forth in Article 3, is to increase investments and employment opportunities in certain provinces of Turkey by canceling the income tax calculated on the wages and salaries of the workers. See GOT's June 23, 2011, questionnaire response (GOT's June QR) at II-47 and Exhibit 23. According to the GOT, all enterprises or industries established in the 49 provinces which have a GDP per capita equal to or less than 1,550 US dollars (as determined by the State Institute of Statistics as of 2001) or which have a negative socio-economic development index value (as determined by the State Planning Organization as of 2003) can benefit from this program. Id. at II-49 and Exhibit 24.

The GOT states that this program includes two levels of withholding based on where the enterprise is established in the 49 eligible provinces. See the GOT's June 23, 2011, questionnaire response (GOT's June QR) at II-47. According to the GOT, firms whose premises are established in OIZs or Industrial Zones located in the 49 provinces can benefit from 100 percent cancellation of income tax calculated on the wages of all workers who have been hired by income or corporate tax payers hiring at least ten workers. Id. Companies whose premises are located at other areas of the 49 eligible provinces can benefit from 80 percent cancellation of income tax calculated on the wages of all workers who have been hired by income or corporate tax payers hiring at least ten workers. Id. The GOT further states that the total amount to be cancelled cannot exceed the sum determined on the basis of the above mentioned rates calculated on the value to be obtained by multiplying the number of employees and the income tax payable for the minimum wage. Id.

In addition, Article 7 of Law 5084 states that this program shall be applicable for any new investments for five years for the ones completed by December 31, 2007, for four years for the ones completed by December 31, 2008 and for three years for the ones completed by December 31, 2009. See GOT's June QR at II-47. Hence, the last date which the investment can benefit from this tax incentive program is December 31, 2012. Id.

During the POR, Toscelik reported that it received a benefit under this program with respect to its facility in the Osmaniye OIZ. See Toscelik's July 5, 2011, questionnaire response (July QR) at 20. Although Toscelik acknowledges receiving this benefit, Toscelik states that the relief of payment of withholding does not benefit subject merchandise since its Osmaniye plant produces only billet, hot-rolled coil, and spiral-weld pipe, none of which are subject merchandise and the relief only applies to the workers at the Osmaniye plant. Id. and Toscelik's August 29, 2011, questionnaire response (August QR). In a subsequent submission, Toscelik explains that the hot-rolled coils produced at the Osmaniye plant with a thickness greater than or equal to two millimeters are an input into subject merchandise. See Toscelik's August QR. Toscelik further explains that the equipment at the Osmaniye plant could not be used to produce subject merchandise because this facility does not have pipe-making equipment in Osmaniye for subject merchandise. Id.

With respect to the product tying arguments presented by Toscelik, we refer to 19 CFR 351.525(b)(5), which addresses the attribution of subsidies to a particular product. Section 351.525(b)(5)(i), states that if a subsidy is tied to the production or sale of particular products, the Secretary will attribute the subsidy only to those products. However, the respondent must demonstrate that the subsidy is, in fact, tied to out-of-scope merchandise and could not benefit production of in-scope merchandise. We preliminarily determined that record evidence does not demonstrate that the receipt of this subsidy was tied to non-subject merchandise and, further, that it could not benefit subject merchandise. See Preliminary Results, 77 FR at 19628. As explained in the analysis below, we affirm this determination for these final results. In these Final Results, we find that during the period of review, Toscelik benefitted from the withholding of income tax under this OIZ program pursuant to section 771(5)(E)(i) of the Act in the amount of the income taxes on wages and salaries that it did not pay. We also find that this program is regionally-specific under 771(5A)(D)(iv) because it is limited to companies located in the 49

eligible provinces.

Moreover, we find that this program constitutes a financial contribution in the form of revenue forgone within the meaning of 19 CFR 351.503(iii) to the extent that it relieves Toscelik of the obligation to pay income taxes on wages and salaries that it would have had to pay absent this program. To calculate the benefit from the income tax relief that Toscelik received under the income tax withholding program, we summed the total amount of income tax savings reported by Toscelik during the POR. See 19 CFR 351.509(a)(1). Pursuant to 19 CFR 351.525(b)(3), to calculate the net subsidy rate, we divided the benefit by Toscelik's total f.o.b. sales during the POR. On this basis, in these final results we determined Toscelik's net subsidy rate under this program to be 0.02 percent ad valorem.

F. Law 5084: Incentive for Employers' Share in Insurance Premiums

The Social Security Institution of the GOT administers the incentive for the Employer's Share in Insurance Premiums Program (Insurance Premiums Program) pursuant to Article 2 and Article 4 of Law 5084. See GOT's September 12, 2011, questionnaire response (GOT's September QR) at I-7 and GOT's June QR at Exhibit 23. The purpose of this program, as set forth in Article 4 of Law 5084, is to increase investments and employment opportunities in certain provinces of Turkey by providing support for the employer's share of insurance premiums through the GOT's limited or full undertaking of that share under certain conditions. See GOT's September QR at I-8. According to the GOT, all enterprises or industries established in the 49 provinces which have a GDP per capita equal to or less than 1,550 US dollars (as determined by the State Institute of Statistics as of 2001) or which have a negative socio-economic development index value (as determined by the State Planning Organization as of 2003) can benefit from this program. See GOT's September QR at I-8 and GOT's June QR at Exhibit 24.

The GOT states that this program includes two levels of activity based on where the enterprise is established in the 49 eligible provinces. See GOT's September QR at I-8. According to the GOT, firms whose premises are established in OIZs or Industrial Zones located in the 49 provinces can benefit from a 100 percent undertaking for income tax or corporate taxpayers (employers) hiring at least ten workers. Id. Companies whose premises are located at other areas of the 49 eligible provinces can benefit from 80 percent undertaking for income tax or corporate taxpayers (employers) hiring at least ten workers. Id. The GOT further states that the support will be provided if employers submit monthly premium and service documents to the Social Security Institution within the statutory periods in conformity with the Social Security Law No. 506 and if they pay the amounts corresponding to the employees' share in the insurance premiums of all the insured and the employers' share which is unmet by the Treasury. Id.

In addition, Article 7 of Law 5084 states that this program shall be applicable for any few investments for five years for the ones completed by December 31, 2007, for four years for the ones completed by December 31, 2008 and for three years for the ones completed by December 31, 2009. See GOT's September QR at I-9. Hence, the last date which the investment can benefit from this tax incentive program is December 31, 2012. Id.

Toscelik reported that it received benefits under this program during the POR, because its

Osmaniye plant is located in the OIZ zone in the Osmaniye province which is one of the 49 eligible provinces. See Toscelik's August QR at 6. As explained above, we continue to determine that record evidence does not demonstrate that the receipt of this subsidy was tied to non-subject merchandise and, further, that it could not benefit subject merchandise. See "Law 5084: Withholding of Income Tax on Wages and Salaries" section above.

In these final results, we also find that during the POR, Toscelik benefitted from the forgiveness on payments for the employer's share of social security payments under this OIZ program pursuant to section 771(5)(E)(iii) of the Act in the amount of the social security insurance premiums that it did not pay. We also find that this program is regionally-specific under 771(5A)(D)(iv) because it is limited to companies located in the 49 eligible provinces. Moreover, we find that this program constitutes a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act to the extent that it relieves Toscelik of the obligation to pay social security insurance premiums that it would have had to pay absent this program.

To calculate the benefit from the social security insurance premium relief that Toscelik received under the insurance premiums program, we summed the total amount of insurance premium savings reported by Toscelik during the POR. See 19 CFR 351.509(a)(1). To calculate the net subsidy rate, we divided the benefit by Toscelik's total f.o.b. sales during the POR. On this basis, we continue to determine Toscelik's net subsidy rate under this program to be 0.15 percent ad valorem.

G. Law 5084: Allocation of Free Land

The Ministry of Science, Industry and Technology General Directorate of Industrial Zones administers the free land allocation support program. See GOT's September QR at I-21. According to the GOT, all enterprises or industries established in the 49 provinces which have a GDP per capita equal to or less than 1,550 US dollars (as determined by the State Institute of Statistics as of 2001) or which have a negative socio-economic development index value (as determined by the State Planning Organization as of 2003) that are also located in OIZs can benefit from free land allocation support pursuant to Provisional Article 1 of Law 5084. See September QR at I-22 and GOT's June QR at Exhibit 24. The GOT further states that although the main provisions regarding the land allocation support for OIZs are regulated under Provisional Article 1, both Article 5 of Law 5084 and Provisional Article 1 govern the land allocation support. Id. The GOT further states that pursuant to Article 2, paragraph 1, clause (b) of Law 5084, the Allocation of Investment Sites Free of Charge is provided not only for the aforementioned 49 provinces, but also for other provinces covered under the priority regions for development. Id. at I-23 and Exhibit 9. According to the GOT, the objective of this program is to reduce inter-regional disparities and to increase employment in provinces where the development is relatively low. Id.

With respect to companies in the OIZs, the GOT states that pursuant to Provisional Article 1, non-allocated parcels in the OIZ, located in the provinces subject to clause (b) of Article 2 of Law 5084 can be allocated to real or legal entities free of charge provided that the competent bodies of the OIZ decide accordingly. See GOT's September QR at I-24. According to the

GOT, in OIZs under this program, free parcels were allocated to companies that employ at least ten employees. Id. The GOT states that OIZs are established anywhere in Turkey regardless of the geographic location with the aim of gathering the industrial facilities in well-coordinated manner with necessary infrastructures. Id. The GOT states that the implementation of the program initiated on February 6, 2004, and remained in force until February 6, 2010, the end of the validity period mentioned in paragraph 4, Provisional Article 1. Id.

According to the GOT, to apply for this program the investor fills out the application form and submits it to the OIZ administration. See September QR at I-25. The GOT states that the OIZ administration decides whether or not to allocate the land to the investor within 30 days. Id. If the application is approved, then a Free Land Allocation Agreement is signed by the investor and the OIZ Administration and sent to the Ministry of Science, Industry and Technology. Id. According to the GOT, the investors who have benefited from free land allocation support are obligated to start production in two years at the latest while employing at least 10 people. Id. The GOT states that at the end of this period the land allocation of investors who have not started production are cancelled. Id. In addition, the land allocations of investors who have ceased investment are cancelled. Id.

Toscelik reported that it received free land in the Osmaniye OIZ under Law 5084 Provisional Article 1. See Toscelik's August 29, 2011, QR at 8. Toscelik reports that the land transfer was made on December 29, 2008 in a single installment. Id. at 10. Toscelik further reported that the land is the site of the entire Osmaniye facility, including the steel mill and the rolling mill that produces the coils that feed the spiral pipe mill in Osmaniye. See Toscelik's January 30, 2012, questionnaire response (January 30 QR) at 2. In addition, the site includes the welded pipe mill in Iskenderun, as well as the billets that feed the bar mill at Tosyali Demir in Iskenderun. Id.

In these final results, we find that during the POR, Toscelik benefitted from the provision of free land under this OIZ program pursuant to section 771(5)(E)(iv) of the Act in that it was able to obtain goods (i.e., land) for less than it would otherwise pay in the absence of this subsidy. We also find that this program is regionally-specific under 771(5A)(D)(iv) of the Act because it is limited to companies located in the 49 eligible provinces. Moreover, we find that this program constitutes a financial contribution in the form of land provided for less than adequate remuneration (LTAR) within the meaning of section 771(5)(D)(iii) of the Act.

We determine to rely on publicly available information concerning industrial land prices in Turkey for purposes of calculating a comparable commercial benchmark price for land available in Turkey. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, "Placement of Land Price Information on Record of Review," (March 26, 2012) (Land Price Memorandum), a public document available via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available in the Central Records Unit, main Commerce Building, Room 7046. We find this land price may serve as a comparable commercial benchmark under 19 CFR 351.51(a)(2)(i)

We considered other potential benchmarks submitted on the record but have determined not to use them. Toscelik submitted transaction information with regard to an adjacent plot of land that

it purchased from the GOT. See Toscelik's August QR at 9 and Exhibit 11 and Toscelik's February 8, 2012, QR at 1. However, consistent with the preliminary results we continue to determine that we cannot use this price as a commercial benchmark under 19 CFR 351.511(a)(2)(i) because it pertains to prices charged by the very provider of the good at issue, the GOT, and we would not normally use these prices for comparison purposes under tier one or tier two where other more appropriate benchmark data are available. Our approach in this regard is consistent with the Department's practice. See Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 20923 (May 6, 2009), and accompanying Issues and Decision Memorandum at Comment 11. In addition, the GOT submitted a land valuation that it uses to calculate property taxes in the Osmaniye region. See GOT's February 8, 2012, QR at 7. However, information from the GOT indicates that this land value represents a "minimum" land price. Id. Because the land value from the GOT is a "minimum" price, we determine that it cannot serve as a viable commercial benchmark under 19 CFR 51.511(a)(1).

To calculate the benefit, we multiplied the area of land Toscelik obtained free of charge from the GOT by the unit benchmark land price discussed above. Next, we performed the 0.5 percent test by dividing the benefit by Toscelik's total sales in 2008. See 19 CFR 351.524(b)(2). The resulting ratio exceeded 0.5 percent of Toscelik's total sales, therefore, we allocated a portion of the benefit to the POR using the Department's standard grant allocation formula. See 19 CFR 351.524(d). We lack company-specific information concerning interest rates charged to Toscelik on long-term debt. We also lack information from the GOT concerning long-term interest rates in Turkey. Therefore, in accordance with 19 CFR 351.505(a)(3)(ii), we used the national average discount rate in Turkey for 2008 as the long-term discount rate utilized in the grant allocation formula.

In its questionnaire response, Toscelik argues that the Department should use a 55-year AUL that corresponds to a depreciation schedule utilized in its financial statement for purposes of performing the grant allocation calculation described under 19 CFR 351.524(d). See Toscelik's August 29, 2011, questionnaire response at 16. However, for purposes of the final results, we used the standard 15-year AUL described above in the "Allocation Period" section when conducting the grant allocation calculation. Our approach in this regard is consistent with the Department's approach in other land for less than adequate remuneration (LTAR) programs involving the outright sale of land. See, e.g., Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea, 67 FR 62102 (September 23, 2002), and accompanying Issues and Decision Memorandum at Provision of Land at Asan Bay, in which the Department used the standard AUL for the steel industry, as indicated by the IRS tables, to allocate benefits received under a land for LTAR program to the period of investigation. To calculate the net subsidy rate, we divided the benefit by Toscelk's total f.o.b. sales during the POR. On this basis, we determined Toscelik's net subsidy rate under this program to be 0.11 percent ad valorem.

H. Law 5084: Energy Support

The Ministry of Economy, General Directorate of Incentives and Implementation and Foreign Investments administers the energy support program pursuant to Article 2 and Article 6 of Law

5084. See GOT's September QR at I-13 and July QR at Exhibit 23. According to the GOT the main objective of this program is to reduce inter-regional disparities and to increase employment. See GOT's September QR at I-14. According to the GOT, all enterprises or industries established in the 49 provinces which have a GDP per capita equal to or less than 1,550 US dollars (as determined by the State Institute of Statistics as of 2001) or which have a negative socio-economic development index value (as determined by the State Planning Organization as of 2003) can benefit from this program. See GOT's September QR at I-14 and GOT's June QR at Exhibit 24.

The GOT states that enterprises operating or investing in the designated provinces are eligible for support at rates ranging from 20 percent to 50 percent of the cost of electricity energy consumption, depending on their existing employment levels and the number of new hires. See GOT's September QR at I-14. Specifically, eligible businesses should operate in animal husbandry (including aquaculture and poultry), organic and biotechnological agriculture, mushroom cultivation and composting, greenhouse production, certificated seed production, cooling warehouse, manufacturing industry, mining, tourism accommodation, education or health services. In addition, these businesses should have at least 10 employees. See GOT's September QR at I-14 and GOT's July QR at Exhibit 23. According to the GOT, the energy support rate is applied as 20 percent of the energy cost of the undertaking. The energy support rate increases 0.5 point for: 1) each additional employee above 10 employees hired by newly established undertakings which started business as of April 1, 2005 or 2) each additional employee above 10 employees who were hired after the date set by the Law for operating undertakings which stared business before April 1, 2005. Id. According to the GOT, energy support shall not exceed 50 percent of the electricity costs of the undertakings operating in OIZs or Industry Zones and 40 percent of these costs for the undertakings operating in other areas. Id.

According to the GOT, in order to benefit from energy support, eligible firms must apply to the Provincial Offices of the Ministry of Science, Industry and Technology. See GOT's September QR at I-16. The program is implemented by a provincial Energy Support Commission (Commission) which is chaired by the provincial governor or lieutenant governor. Id. The Commission is constituted from delegates from Provincial Offices of the Ministry of Science, Industry and Technology, Ministry of Finance (Tax Office), Ministry of Labor and Social Security (Provincial Offices of Social Security Institution), Turkish Electricity Distribution Company and OIZ if any. Id. The Commission evaluates the applications according to the information provided in the application form and other documents submitted with regard to their conformity to the conditions set by the related legislation. Id. If a firm is found eligible, the Commission also determines the rate of energy support to be applied for that firm. Id. Toscelik reported that it received energy subsidies during the POR. See Toscelik's August 29, 2011, questionnaire response (August 29 QR) at 13. According to Toscelik all energy subsidies received by the Osmaniye facility relate solely to the portion of the Osmaniye facility that produces spiral-welded pipe. See Toscelik's January 30, 2012, questionnaire response (January 30 QR) at 3. Toscelik points to its August 29 QR and asserts that documentation in Exhibit 12 demonstrates that the benefits from this program are attributable solely to "spiral energy support deduction," i.e., the support for energy expenses relating to the spiral-pipe production facility. See Toscelik's January 30 QR at 3. Toscelik further maintains that the investment certificate which is related to the Osmaniye facility is explicitly only related to the spiral pipe production

line. Id. Moreover, Toscelik asserts that there is no other investment certificate for the other aspects of Toscelik's Osmaniye operation. Id.

When a respondent claims that that a subsidy is tied to non-subject merchandise, the respondent must provide evidence to substantiate their claim. Based on the record evidence, we preliminarily determined that the document to which Toscelik cites in Exhibit 12 of its response does not establish a tie between the subsidy and the non-subject merchandise. See Preliminary Results, 77 FR at 19631. Furthermore, with respect to the investment certificate cited, we preliminarily determined that the language on the certificate does not indicate that the subsidy in question is linked specifically to spiral pipe. Id. No arguments or information have been submitted that warrant alteration of our finding in this regard. Therefore, as explained above, we continue to determine that record evidence does not demonstrate that the receipt of this subsidy was tied to non-subject merchandise and, further, that it could not benefit subject merchandise. See "Law 5084: Withholding of Income Tax on Wages and Salaries" section above.

In these final results, we continue finding that during the POR, Toscelik benefitted from the energy subsidies under this OIZ program pursuant to section 771(5)(E)(ii) of the Act in that it was able to obtain goods (i.e., electricity) for less than it would otherwise pay in the absence of this subsidy. We also find that this program is regionally-specific under 771(5A)(D)(iv) because it is limited to companies located in the 49 eligible provinces. Moreover, we find that this program constitutes a financial contribution in the form of electricity provided at LTAR within the meaning of section 771(5)(D)(iii) of the Act.

To calculate the benefit from the energy subsidies that Toscelik received under the energy support program, we summed the total amount of energy subsidies reported by Toscelik during the POR and treated it as a non-recurring grant. Next, in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from the grant over Toscelik's AUL by dividing the approved amount by Toscelik's total f.o.b. sales during the POR. The resulting ratio was less than 0.5 percent of Toscelik's total f.o.b. sales, therefore we allocated the benefit to the POR. On this basis, in these final results we determine Toscelik's net subsidy rate under this program to be 0.02 percent ad valorem.

OIZ: Exemption from Property Tax

Toscelik reported that it received an exemption from property tax with respect to its Osmanye facilities because of their location in the OIZ, during the POR. See Toscelik's August 29 QR at 14. In these Final Results, we find that during the POR, Toscelik benefitted from the exemption from property tax under this OIZ program pursuant to section 771(5)(E)(i) of the Act in the amount of the property taxes that it did not pay. We also find that this program is regionally-specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in the OIZ. Moreover, we find that this program constitutes a financial contribution in the form of revenue forgone within the meaning of 19 CFR 351.503(iii) to the extent that it relieves Toscelik of the obligation to pay property taxes that it would have had to pay absent this program. To calculate the benefit from the tax relief that Toscelik received under the property tax exemption program, we took the total amount of property tax savings reported by Toscelik during the POR and divided the amount of the benefit by Toscelik's total f.o.b. sales during the POR. On this

basis, we determine Toscelik's net subsidy rate under this program to be 0.01 percent ad valorem.

II. Programs Determined To Not Confer Countervailable Benefits

A. Inward Processing Certificate Exemption

Under the Inward Processing Certificate (IPC)[8] program, companies are exempt from paying customs duties and VAT on raw materials and intermediate unfinished goods imported to be used in the production of exported goods. Companies may choose whether to be exempt from the applicable duties and taxes upon importation (i.e., the Suspension System) or have the duties and taxes reimbursed after exportation of the finished goods (i.e., the Drawback System). Under the Suspension System, companies provide a letter of guarantee that is returned to them upon fulfillment of the export commitment. See GOT's initial QR at II-41 and II-42.

To participate in this program, a company must hold an IPC, which lists the amount of raw materials/intermediate unfinished goods to be imported and the amount of product to be exported. See GOT's initial QR at II-43. The GOT's Undersecretariat for Foreign Trade/General Directorate of Exports is the authority responsible for administrating the program. Id. at II-40. To obtain an IPC, an exporter must submit an application, which states the amount of imported raw material required to produce the finished products and a "letter of export commitment," which specifies that the importer of materials will use the materials to produce exported goods. Id. at II-43. Once an IPC is issued, the producer must show the certificate to Turkish customs each time it imports raw materials on a duty exempt basis. Id. There are two types of IPCs: (1) D-1 certificate for imported raw materials or intermediate unfinished goods used in the production of exported goods, and (2) D-3 certificate for imported raw materials or intermediate unfinished goods used in the production of goods sold in the domestic market and defined as "domestic sales and deliveries considered as exports."[9] During the POR, Borusan and Toscelik used D-1 certificates for the importation of raw materials used in the production of exported pipe and tube. No respondent used a D-3 certificate during the POR.[10]

Concerning D-1 certificates, 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. With regard to the VAT exemption granted under this program, pursuant to 19 CFR 351.517(a), in the case of the exemption upon export of indirect taxes, a benefit exists to the extent that the Department determines that the amount exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

[8] During the POR, the IPC was implemented under Resolution No. 2005/8391. A copy of this resolution was submitted by the GOT in its June 28, 2011, initial questionnaire response at Exhibit 20.

[9] See GOT's Initial Questionnaire Response at 41; see also pages 42-43 and Exhibit 20 for additional information on D-3 certificates.

[10] See Toscelik's Initial Questionnaire Response at Exhibit 15; see also Borusan's Initial Questionnaire Response at Exhibit 31.

In prior reviews, the Department has found that, in accordance with 19 CFR 519(a)(4)(i), the GOT has a system in place to confirm which inputs, and in what amounts are consumed in the production of the exported product, and that the system is reasonable for the purposes intended. See, e.g., Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 71 FR 43111 (July 31, 2006) (Turkey Pipe 2004 Prelimin ary Results), and accompanying Issues and Decision Memorandum (Turkey Pipe 2004 Decision Memorandum) at "Inward Processing Certificate Exemption" under "Programs Determined to Not Confer Countervailable Benefits."

The Department has also found that the exemption granted on certain methods of payments used in purchasing imported raw materials under this program does not constitute a subsidy pursuant to 19 CFR 351.517(a), because the tax exempted upon export does not exceed the amount of tax levied on like products when sold for domestic consumption. See Carbon and Certain Alloy Steel Wire Rod from Turkey; Final Negative Countervailing Duty Determination, 67 FR 55815 (August 30, 2002) (Wire Rod), and accompanying Issues and Decision Memorandum (Wire Rod Memorandum) at "Inward Processing Certificate Exemptions" and Comment 8. No new information is on the record of this review to warrant a reconsideration of the Department's earlier findings.

During the POR, under D-1 certificates, Borusan and Toscelik received duty and VAT exemptions on certain imported inputs used in the production of steel pipes and tubes. See Toscelik's Initial Questionnaire Response at Exhibit 16; see also Borusan's July 14, 2011, Questionnaire Response at 14. Consistent with the Department's findings in Turkey Pipe 2004 Final Results and based on our review of the information supplied by the respondents regarding this program, we determine there is no evidence on the record of this review that indicates the amount of exempted inputs imported under the program were excessive or that the firms used the imported inputs for any other product besides those exported.

Therefore, consistent with past cases,[11] we determine that the tax and duty exemptions, which Borusan and Toscelik received on imported inputs under D-1 certificates of the IPC program, did not confer countervailable benefits as each company consumed the imported inputs in the production of the exported product, making normal allowance for waste. We further find that the VAT exemption did not confer countervailable benefits on Borusan or Toscelik because the exemption does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Further, because Borusan and Toscelik did not import any goods under a D-3 certificate during the POR, we determine that this aspect of the

[11] See Notice of Preliminary Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 71 FR 17455 (April 6, 2006) (Turkey Pipe 2004 Preliminary Results), unchanged in the Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 71 FR 43111 (July 31, 2006) (Turkey Pipe 2004 Final Results); Preliminary Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe From Turkey, 71 FR 68550, 68551 (November 27, 2006) (Turkey Pipe 2005 Preliminary Results), unchanged in the Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 72 FR 13479 (March 22, 2007) (Turkey Pipe 2005 Final Results); Turkey Pipe 2006 Preliminary Results; Preliminary Results of Countervailing Duty New Shipper Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 72 FR 8348 (February 26, 2007) (NSR Preliminary Results) unchanged in the Final Results of Countervailing Duty New Shipper Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 72 FR 24278 (May 2, 2007) (NSR Final Results).

IPC program was not used.

B. Investment Encouragement Program (IEP): Customs Duty Exemptions

The GOT provides IEPs that qualified recipients can use to import items duty free. In past CVD proceedings, the Department has repeatedly found this program to be not countervailable because benefits are not specific. See Turkey Pipe 2008 Preliminary Results, 75 FR 16439, 16443, unchanged in Certain Welded Carbon Steel Standard Pipe from Turkey: Final Results of Countervailing Duty Administrative Review, 75 FR 44766 (July 29, 2010). However, based on allegations from petitioners of changes to the program starting in January 1, 2009, the Department initiated an investigation of this program as it pertains to licenses issued after January 1, 2009. Toscelik and Borusan reported using this program. See Toscelik's December 12 QR at 1-2 and January 30 QR at 7 and Exhibit 5; see also Borusan's December 12, 2011, QR at 5. Concerning Toscelik, its use of the program was limited to IEP licenses that it received prior to January 1, 2009. Thus, in these final results we determine that Toscelik's use of this program did not confer any countervailable benefits during the POR because the duty exemptions that Toscelik received relate to IEP licenses that the Department has previously determined were distributed in a manner that were not specific. See Turkey Pipe 2008 Preliminary Results, 75 FR at16439, 16443.

Concerning Borusan, it reported receiving an IEP license after January 1, 2009, that allowed it to import a piece of equipment at a reduced duty rate. Borusan argues that the receipt of duty exemptions on this license was contingent upon the firm using the equipment to produce spiral welded pipe, which is non-subject merchandise. Upon review of the IEP license in question, we determine that the benefit Borusan received on this license was tied to the production of spiral welded pipe at the time of bestowal. See Borusan's December 12, 2011, new subsidies allegations questionnaire response at p. 5-7 and Exhibits S3-2 and S3-3; see also Preliminary Results, 77 FR at 19633. Thus, we determine that the benefits Borusan received under this program are tied to non-subject merchandise.

III. Programs Preliminarily Determined To Not Be Used

We examined the following programs and determine that Borusan and Toscelik did not apply for or receive benefits under these programs during the POR:

A. Post-Shipment Export Loans
B. Export Credit Bank of Turkey Buyer Credits
C. Subsidized Turkish Lira Credit Facilities
D. Subsidized Credit for Proportion of Fixed Expenditures
E. Subsidized Credit in Foreign Currency
F. Regional Subsidies
G. VAT Support Program (Incentive Premium on Domestically Obtained Goods)
H. IEP: VAT Exemptions
I. IEP: Reductions in Corporate Taxes
J. IEP: Interest Support
K. IEP: Social Security Premium Support

L. IEP: Land Allocation
M. National Restructuring Program
N. Regional Incentive Scheme: Reduced Corporate Tax Rates
O. Regional Incentive Scheme: Social Security Premium Contribution for Employees
P. Regional Incentive Scheme: Allocation of State Land
Q. Regional Incentive Scheme: Interest Support
R. OIZ: Waste Water Charges
S. OIZ: Exemptions from Customs Duties, VAT, and Payments for Public Housing Fund, for Investments for which an Income Certificate is Received
T. OIZ: Credits for Research and Development Investments, Environmental Investments, Certain Technology Investments, Certain "Regional Development" Investments, and Investments Moved from Developed regions to "Regions of Special Purpose"
U. Provision of Buildings and Land Use Rights for Less than Adequate Remuneration under the Free Zones Law
V. Corporate Income Tax Exemption under the Free Zones Law
W. Stamp Duties and Fees Exemptions under the Free Zones Law
X. Customs Duties Exemptions under the Free Zones Law
Y. Value- Added Tax Exemptions under the Free Zones Law
Z. OIZ: Exemption from Building and Construction Charges
AA. OIZ: Exemption from Amalgamation and Allotment Transaction Charges

TOTAL AD VALOREM RATE

For the period January 1, 2010, through December 31, 2010, the total net subsidy rate for Borusan is 0.22 percent ad valorem, and for Toscelik is 0.35 percent ad valorem, which are de minimis, pursuant to 19 CFR 351.106.

ANALYSIS OF COMMENTS

Borusan

Comment 1: Whether the Department Should Grant an Offset to the Benefit Found on Turkish Eximbank Loans for the Bank Guarantee Fees

Borusan alleged that the Department made a ministerial error with respect to the bank guarantee fees paid by BMB and its affiliates. Borusan disagrees with the Department's preliminary decision not to reduce the benefit it calculated with respect to certain preferential Turkish Eximbank loan programs by the cost of the bank guarantees incurred by BMB and its affiliates. Borusan finds the Department's reasoning in the Preliminary Results regarding the offset in question contradictory. In particular, Borusan argues that in the Preliminary Results section on the Short term Benchmark, the Department states that "We preliminarily determine that we lack definitive evidence to conclude that the company-specific short term rates reported by Borusan include commission," and yet in the Preliminary Results section on Foreign Trade Companies Short Term Export Credits and Pre-export Credit section the Department also states that the Department subtracted from the benefit the amount of fees which BMB and Istikbal paid to commercial banks for the required letters of guarantee.

Borusan claims that the offset for guarantee fees on Turkish Eximbank loans is "authorized" by section 771(6)(A) of the Act. Borusan further argues that in prior cases the Department has included this offset in question and should do so in this case. According to Borusan, the Department's long standing practice is to grant such an offset even if the benchmark rate that the Department used for loans denominated in Turkish lira was a nominal, rather than effective rate. Therefore, Borusan urges the Department to grant the offset for bank guarantee fees on Turkish Eximbank loans in the final results of this review.

Petitioners did not comment on the issue.

Department's Position: We have determined, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), that we made a ministerial error in our calculations for the Preliminary Results with respect the Department's calculation of the benefits with respect to certain preferential Turkish Eximbank loan programs used by Borusan.

The Department finds that in the Preliminary Results, we correctly stated that, in accordance with section 771(6)(A) of the Act, we subtracted from the benefit the amount of fees which Istikbal and BMB paid to commercial banks for the required letters of guarantees. However, we did not implement this adjustment in the calculation of Borusan's benefit program. See Preliminary Results at pages 12 and 14. Therefore, the Department finds that it inadvertently did not offset this expense based on the amount of fees reported by Borusan.

Accordingly, the Department's failure to make this adjustment was a clerical error. For these final results, the Department made these changes to Borusan's margin calculations as correctly explained in the Preliminary Results. However, the margin calculated for Borusan has not changed as a result of this correction.

Toscelik

Comment 2: Whether the Denominator for Benefits at the Osmaniye Plant Should Include Sale of Billets

Toscelik points to its initial questionnaire response and states that it has two plants: one in Iskenderun (ISK) where it produces pipe and tube products and one in Osmaniye (OSM). See Toscelik's May 18, 2012 brief (Toscelik's brief) at 1 citing to its July 7, 2011, questionnaire response (July QR) at 2-3. The OSM plant has three production activities: 1) a melt shop where Toscelik converts steel scrap and other ingredients into steel in its arc furnace; 2) a rolling mill where Toscelik produces billets and coils, and 3) a spiral pipe plant where Toscelik produces spiral-welded pipe components. Id. at 1-2 citing to July QR at 11. Toscelik asserts that with respect to the billets and coils that it produces, the products' principal use are as intermediate products. Id. According to Toscelik, most coils are consumed in Toscelik's pipe-making operations, while most billets are sold to its affiliate Tosyali Demir as inputs for long products which are angles and profiles. See Toscelik's brief at 2.

Toscelik argues that in its initial response in Exhibit 12, the company provided data on

Toscelik's sales to unaffiliated companies as required by the Department. See Toscelik's brief at 2 citing to July QR at Exhibit 12. Toscelik asserts that this initial sales data did not reflect Toscelik's sales of billets to Tosyali Demir, which are 20 percent of its total sales. Id. citing to its July QR at 10-11. According to Toscelik, in its August 29, 2012 questionnaire response, it addressed this issue, explaining that benefits related to the OSM plant should be attributed to total sales as calculated using the following formula: the total sales equals Toscelik's total net sales (inclusive of sales to Tosyali Demir) less total sales by Toscelik to Tosyali Dis Ticaret with the addition of total sales by Tosyali (aka Tosyali Dis Ticaret). Id. citing to Toscelik's August 29, 2012 questionnaire response (August QR) at 14-15 and Exhibit 14.

Toscelik maintains that 19 CFR 351.525(b)(5) governs the attribution of subsidies to products which states:

> (5) Subsidies tied to a particular product. (i) In general, If a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product.
> (ii) Exception. If a subsidy is tied to production of an input product, then the Secretary will attribute the subsidy to both the input and downstream products produced by a corporation. See Toscelik's brief at 2.

According to Toscelik, the OSM subsidies related to steel-making and/or the rolling mill should be attributed to both the input and the downstream product. See Toscelik's brief at 2. Toscelik asserts that the preliminary calculations used Toscelik's sales to unaffiliated customers as the denominator for OSM subsidies. Id. Toscelik argues that the preliminary calculations failed to include Toscelik's sales of OSM billets to Tosyali Demir in total sales value. Id.

Toscelik argues that in the final results, any subsidies attributable to the OSM steel-making plant and/or the OSM rolling mill should be attributed to total sales as calculated by the formula outlined above. See Toscelik's brief at 3. Toscelik asserts that the OSM billets, like OSM coils, benefitted from rolling mill subsidies as well as steel-making plant subsidies, thus sales of OSM billets must be included in the sales denominator. Id.

Toscelik further maintains that in deriving Toscelik's total sales denominator the Department should include the sales made by Tosyali of products produced by other firms affiliated with Toscelik. See August QR at Exhibit 14.

Wheatland disagrees with Toscelik's comments regarding the attribution of subsidies received in connection with the OSM plant. See Wheatland's May 23, 2012, rebuttal brief (Wheatland's Rebuttal) at 1. Wheatland points to Toscelik's July QR and asserts that the Department's questionnaire required Toscelik to separately report the value of intra-company sales and sales between affiliates, not to eliminate it from its reporting. Id. at 2. Moreover, Wheatland argues that the Department should reject Toscelik's proposal to use the total sales value calculation in Exhibit 14 of its August QR in the final results. Id. Citing to business proprietary information, Wheatland argues that Toscelik has not provided the necessary information that would permit the Department to include Toscelik's sales of billets to its affiliate Tosyali Demir in Toscelik's total sales denominator. Id. In conclusion, Wheatland asserts that the Department should continue to

use the same sales denominator it did in the Preliminary Results. Id.

U.S. Steel also urges the Department to reject Toscelik's proposed denominator. See U.S. Steel's May 23, 2012, Rebuttal Brief (U.S. Steel's Rebuttal) at 1. According to U.S. Steel, under 19 CFR 351.525(b)(5), in order for a subsidy to be tied the record evidence must show that the subsidy was intended to benefit only a particular product or class of products at the time of bestowal. Id., citing to 19 CFR 351.525(b)(5) and Preamble, 63 FR 65402-65403 (final rule). U.S. Steel points to the Preliminary Results and argues that the Department found that all of the countervailable subsidies granted to Toscelik and its cross-owned affiliates during the period of review (POR) were either export subsidies or subsidies made available to companies which establish operations in certain zones within 49 designated provinces in Turkey. Id. at 2. According to U.S. Steel, there is no evidence on the record that these subsidies were tied to the production of a particular product or products at the time of bestowal and Toscelik has not cited any in its case brief. Id. Therefore, U.S. Steel concludes that there is no basis to apply the product tying provisions of 19 CFR 351.525(b)(5) to include Toscelik's sales of steel billets to Tosyali Demir in the denominator of the ad valorem subsidy rate calculation. Id. U.S. Steel asserts that in the Preliminary Results, the Department correctly attributed the subsidies in question to the combined sales of Toscelik and its responding cross-owned affiliates, net of intercompany sales, in accordance with its practice and the attributions rules set forth in 19 CFR 351.525. Id.

Department's Position: In accordance with 19 CFR 351.525(b)(6)(iv) and the Department's practice, when calculating the total sales for companies with affiliated cross-owned companies, the Department bases its calculation on the total sales of the company net of intra-company sales. See, e.g., Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, 74 FR 46100- 46101, (September 9, 2009) unchanged in Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review, 74 FR 55192, (October 27, 2009) in which we attributed any subsidies received by POCOS, the affiliated company to POSCO, the holding company and its subsidiaries, net of intra-company sales; see also Pre–Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010) (PC Strand from the PRC), and accompanying Issues and Decision Memorandum (PC Strand from the PRC Decision Memorandum) at "Attribution of Subsidies" and Comment 19, in which the Department removed intra-company sales between the producer of subject merchandise and its cross-owned input supplier. In order for the Department to include Toscelik's sales of steel billets to Tosyali Demir and sales made by Tosyali of products produced by other firms affiliated with Toscelik, the Department must be able to account for intra-company sales. Toscelik has provided its affiliated sales to Tosyali Demir, (see Toscelik's August QR at 15 and Exhibit 14) but it has not provided Tosyali Demir's corresponding sales to unaffiliated parties.[12] Id. at Exhibit 14. Further, Toscelik has provided Tosyali's unaffiliated sales of products produced by firms affiliated with Toscelik, (id.) but it has not provided the corresponding affiliated sales values for transactions between Tosyali and its affiliates. Thus, in both cases, Toscelik has not provided the Department with the information it needs to calculate sales values that are net of intra-company sales. As a result, the Department lacks the necessary information to calculate the

[12] See Initial Questionnaire to Toscelik dated April 27, 2011, at III-3 at D. and III-4

denominator in the manner requested by Toscelik. In the absence of this information, the Department has continued to utilize the sales denominators Toscelik reported in its initial questionnaire response.

With respect to U.S. Steel's argument that there is no evidence on the record that the subsidies in question were tied to a specific product or products at the time of bestowal, we agree. As explained in the Preliminary Results, the subsidies provided to Toscelik under the deduction from taxable income for export revenue program are tied to eligible undocumented expenses related to export activities such as lodging, food and transportation costs incurred during overseas business trips. See Preliminary Results, 77 FR at 19625. Moreover, the other subsidy programs Toscelik used during the POR were provided under Law 5084 which is available to all enterprises or industries established in the 49 provinces that meet a certain GDP per capita or have a negative socio-economic development index value. Id. at 19628-19631. Therefore, the information on the record regarding the subsidy programs Toscelik used during the POR provides no evidence that these programs were tied to a specific product or products at the time of bestowal.

Comment 3: Whether the GOT's Energy Subsidies Under Law 5084 Were Properly Attributed to the Subject Merchandise

Toscelik points to its January 30 QR and asserts that the energy subsidies under Law 5084 were provided solely to the OSM spiral pipe plant, and not to the steel-making plant or the rolling mill. See Toscelik's brief at 3 citing to January 30 QR at 3. Toscelik's January 30 QR at 3 cites to its August QR at Exhibit 12 and also asserts that the January QR at Exhibit 5 provides an investment certificate that substantiates its claim that the energy subsidies were given solely to the OSM spiral pipe plant. See Toscelik's January 30 QR at 3 and 7. Therefore, Toscelik argues that under 19 CFR 351.525(5)(i), such subsidies should be attributed only to spiral pipe. Id. Toscelik further argues that because spiral pipe is not subject to this countervailing duty order, any subsidies relating to spiral pipe should be excluded from the calculations in this administrative review. Id.

In rebuttal Wheatland points to the Preliminary Results in which the Department addressed and rejected Toscelik's argument stated above. See Wheatland's Rebuttal at 4 citing to the Preliminary Results at 19631. According to Wheatland, the information cited in Toscelik's case brief is identical to the information the Department reviewed in the Preliminary Results. Id. Therefore, Wheatland argues that since the Department found this information did not support Toscelik's argument in the Preliminary Results, there is no new information that indicates the Department should reverse its finding with respect to this program. Id. at 5.

According to U.S. Steel, in order to apply the product tying provisions of 19 CFR 351.525(b)(5), the Department requires evidence that, at the time of bestowal, the government providing the subsidy intended to tie it to a particular product or products. Id. U.S. Steel cites to the Preliminary Results and asserts that the Department found that the GOT provided Law 5084 subsidies to "all enterprises or industries" established in 49 designated provinces in Turkey. Id. citing to Preliminary Results at 19630-19631. U.S. Steel argues that there is no evidence on the record that Law 5084 subsidies were tied to the production of a particular product. See U.S.

Steel's Rebuttal at 3. Therefore, U.S. Steel asserts that the product typing provisions of 19 CFR 351.525(b)(5) cited by Toscelik do not apply. Id. U.S. Steel argues that the Department properly attributed the Law 5084 subsidies to Toscelik's sales during the POR and should continue to do so in the final results. Id.

Department's Position: As explained in the Preliminary Results, in order to apply the attribution of subsidies to a particular product under 19 CFR 351.525(b)(5), the respondent must provide evidence to substantiate its claim. See Preliminary Results, 77 FR at 19631. We found in the Preliminary Results that the proprietary document concerning the energy benefit to which Toscelik cites in Exhibit 12 of its August QR does not establish a tie between the subsidy and the non-subject merchandise. Id. We continue to find that Toscelik has not presented any new arguments that warrant reconsideration of the approach taken by the Department in the Preliminary Results.

Exhibit 12 merely consists of a Turkish language table which lacks any explanation as to how it demonstrates that the subsidy is tied to non-subject merchandise. Further, Exhibit 12 contains no list of sources to substantiate the figures in the table. We do not find that this limited and vague information may serve as the basis for finding that subsidy at issue was tied to non-subject merchandise. Furthermore, as explained in the Preliminary Results, the investment certificate issued to Toscelik by the GOT does not, as claimed by Toscelik, indicate that the provision of the subsidy is solely contingent upon the production or sale of non-subject merchandise. See 77 FR at 19631. See also Toscelik's January 30, QR at Exhibit 5, which contains the investment certificate referenced by Toscelik.

Lastly, because Toscelik produces hot-rolled coils at the OSM plant that can be used as an input into the subject merchandise, we determine that there is nothing on the record that demonstrates that this program is precluded from benefitting the subject merchandise. Therefore, we continue to find that Toscelik benefitted from energy subsidies that are attributable to the total sales of Toscelik during the POR.

Comment 4: Whether the Benchmark Price Used to Calculate Toscelik's Benefit from the Provision of Land for Less Than Adequate Remuneration in the OIZ Should be Revised

Toscelik argues that the Department's basis for fair-market value of the land at Toscelik's OSM plant is speculative and therefore does not constitute evidence of the market value of that land. See Toscelik's brief at 3. Toscelik cites to its February 8, 2012 questionnaire response (February QR) and asserts that it was granted 330,000 square meters of contiguous industrial land in the OIZ in 2007. Id., citing to Toscelik's February QR at 2. According to Toscelik, in 2010, the company purchased an additional 350,000 square meters of contiguous industrial land in the OIZ at a fixed price that has been placed on the record. Id. at 1 and Toscelik's January QR at Exhibit 2. Toscelik argues that no party has argued that the 2010 purchase was at less than adequate remuneration (LTAR). Toscelik's brief at 3. According to Toscelik, the unit value of the 2010 land, indexed back to 2007 dollars is the best evidence of the market value of the land granted to Toscelik in 2007. Id. at 3. Moreover, Toscelik contends that the 2010 purchase is the ideal benchmark unit value for the following reasons: it is almost identical in size to the 2007 grant; it

is contiguous with the 2007 grant; and it is in the same organized industrial zone as the 2007 grant. Id.

Toscelik argues that the benchmark the Department has chosen to use real estate values which it found in internet research, is flawed for the following reasons. See Toscelik's brief at 4. First, Toscelik argues that the Department's "sample" contains three parcels in 2010 and one in 2011 that are 60,000 square meters or less, which is one-sixth of the size of Toscelik's grant plot. Id. Toscelik maintains that these properties are manifestly dissimilar to Toscelik's property. Id. Second, Toscelik argues that one of the plots selected for 2010 is only 160,000 square meters which is less than half the size of Toscelik's grant plot. Id. Toscelik asserts that this is also manifestly dissimilar. Id. Third, Toscelik argues that each of the locations discovered by the Department's staff is grossly different from Osmaniye, which is located near Adana and Mersin, on the south coast of Turkey. Id.

According to Toscelik, Tekirdag Corlu is located in northwestern Turkey on the north side of the Marmara Sea near Istanbul. See Toscelik's brief at 5. Toscelik argues that the Tekirdag-Corlu region, close to Istanbul on the north side of the Marmara Sea, is far away from Osmaniye and, therefore, is dissimilar cannot be used for a rational price surrogate for land in the Osmaniye OIZ. Id. Toscelik maintains that Gaziantep is located to the east of Osmaniye in an inland area. Id. According to Toscelik, this location is quite different from Osmaniye in that it is distant from the sea and, thus, from port facilities. Id. Finally, Toscelik argues that Izmir, the third location the Department has selected, is located on the Aegean coast of Turkey and is well known as a major commercial city and port of Turkey. Id. Toscelik asserts that Osmaniye, in contrast, is a small town near the southern coast. Id. Toscelik maintains that it is wrong to attribute the real estate prices in Izmir to Osmaniye because the two are simply not comparable. See Toscelik's brief at 5.

In conclusion, Toscelik argues that each of the plots in the Department's benchmark table is either too small, too far away, or not of comparable economic value to be a reasonable measure of the fair-market value of Toscelik's OSM grant property. See Toscelik's brief at 5. In addition, Toscelik maintains that there is no reason to believe that the prices of these "comparable" plots reflect the same rudimentary level of infrastructure that was present when Toscelik acquired its OSM properties. Id. According to Toscelik the Department has a viable benchmark next door to the grant territory and that should be used for benchmark purposes. Id.

With respect to Toscelik's claim that it has provided the ideal benchmark to value the free land provided to Toscelik by the GOT in the Osmaniye OIZ, Wheatland argues that both the GOT and the company failed to provide usable benchmarks. See Wheatland Tube Company's May 18, 2012, Case Brief (Wheatland's brief) at 1. According to Wheatland, the Department correctly declined to use either respondent's proffered land values because they did not meet the requirements of 19 CFR Section 351.511. Id. at 2. citing to Preliminary Results, 77 FR at 19630 (where the Department determined not to use the transaction information submitted by Toscelik with regard to an adjacent plot of land to the free land that it purchased from the GOT, because it could not use this price under 19 CFR 351.511(a)(2)(i), as it pertains to prices charged by the very provider of the good at issue, and the Department found that the land valuation information provided by the GOT, which is based on a land valuation that it uses to calculate property taxes,

could not be used as a viable benchmark under 19 CFR 351.511(a)(1), because it was the "minimum" land price for land value). Wheatland requests that in the final results, the Department should revise the benchmark using information supplied from the Land Bank of Turkey in order to 1) remove land data from provinces in Turkey that are not comparable to the Osmaniye province; and 2) remove one anomalous value within the geographically comparable region. Id. at 2.

According to Wheatland, the Department's Land Price Memo calculates a weight average price using offers of land for sale from three provinces in Turkey: Tekirdag, Izmir, and Gaziantep. See Wheatland's brief at 2. Wheatland asserts that the Gaziantep Province is at the same level of economic development and adjacent to the Ozmaniye Province where Toscelik's facility is located. Id. According to Wheatland, the Tekirdag and Izmir Provinces are located in the far western regions of Turkey, hundreds of miles from the Ozmaniye Province. Id. Moreover, Wheatland argues that the Tekirdag and Izmir Provinces are at a different level of economic development than Osmaniye. Id. According to Wheatland, the GOT's notification of subsidies to the World Trade Organization (WTO) classifies Tekirdag and Izmir in the Region I economic development category and classifies Osmaniye and Gaziantep within Region III economic development category. Id. at 2 citing to the GOT's Notification. Wheatland points to the GOT's notification and argues that the economic development classification is significant. Id. Specifically, Wheatland cites to the following where the GOT states:

> {W}ith the recent Decree a new regional demarcation is employed and encouragement measure to be provided are differentiated with respect to the development statue of the region where the investment is located. Accordingly, Turkey is classified into four regions.
>
> Regional and sectoral implementation aims to eliminate interregional imbalances by means of encouragement of sectors determined in the Decree within different regions. Amount of support for certain measures to be provided under this pillar reduces as the development level of the region concerned increases.[13]

Wheatland argues that the differences in economic development levels are apparent through increased subsidies provided to lesser developed regions. See Wheatland's brief at 3. According to Wheatland, entities located in Region III, the lesser developed region, pay less corporate income tax and receive more social security premium support than entities in Region I. Id., citing to GOT Notification at 6. Wheatland asserts that, based on the GOT categorization, Tekirdag and Izmir, in Region I, have a more advanced level of economic development than Osmaniye and Gaziantep, which are in the purportedly lesser developed Region II category. See Wheatland's brief at 3.

[13] See Wheatland's New Subsidy Allegations at Exhibit 11, New and full Notification Pursuant to article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measure: Turkey, G/SCM/N/186/TUR (March 2, 2010 at page 9, Annex I., (GOT Notification).

Wheatland notes that 19 CFR 351.511(a)(2) states that, "the Secretary will consider product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability. See Wheatland's brief at 3 citing to 19 CFR section 351.511(a)(2). According to Wheatland, in prior cases where the Department measured the benefit from LTAR, it has considered the level of economic development in determining an appropriate benchmark. See Wheatland's brief at 3-4. Specifically, Wheatland points to Aluminum Extrusion from the PRC, in which the Department stated, "we find that the land-use rights acquired by the Zhongya Companies and the land that comprises the Thai land benchmark are located in areas with infrastructure development. In contrast, according to the Zhongya companies, the proposed land prices from the Philippines are not located in an area with infrastructure development." See Aluminum Extrusions From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18521, 18524 (April 4, 2011) (Aluminum Extrusions from the PRC), and accompanying Issues and Decision Memorandum at Comment 24 (Aluminum Extrusions from the PRC Decision Memorandum). Wheatland argues that land in Tekirdag and Izmir is not comparable to land in Osmaniye based on the GOT's development classification and geographic distance. See Wheatland's brief at 4. Wheatland asserts that in the final results, the Department should revise its land benchmark by removing prices from the Tekirdag and Izmir regions from its weighted average price calculation. Id.

Wheatland further argues that land price data relied upon by the Department in the Preliminary Results contains an anomalous Gaziantep land price when compared to the other Gaziantep prices and should be removed from the benchmark. See Wheatland's brief at 4. Wheatland asserts that the Gaziantep price in question is significantly lower than the other Gaziantep prices. Id. According to Wheatland, the Gaziantep price is question is close to the land prices submitted by the GOT and which the Department rejected as "minimum" land values instead of a viable commercial benchmark. Id., citing to Preliminary Results, 77 FR at 19630. Therefore, Wheatland maintains that the Department should remove the Gaziantep price in question from its weight average price. See Wheatland's brief at 5.

With respect to Toscelik's assertion that the benchmark price used to measure LTAR should be based on Toscelik's purchase price to buy land from the same OIZ in 2010, U.S. Steel argues there is no basis to use a government price as the benchmark to measure the LTAR benefit provided by the GOT. See U.S. Steel's rebuttal at 4. U.S. Steel points to the countervailing duty statute's definition of when the provision of goods, including land and land use rights, by a government confers a countervailable subsidy. Id. Specifically, U.S. Steel cites to 19 U.S.C. section 1677(5)(E) which provides that:

> A benefit shall normally be treated as conferred where there is a benefit to the recipient, including ...(iv)in the case where goods or services are provided, if such goods or services are provided for less than adequate remuneration. . . .For purposes of clause (iv), the adequacy of remuneration shall be determined tin relation to the prevailing market conditions for the good or service being provided. . . in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale.

Id. citing to 19 U.S.C. section 1677(5)(E).

According to U.S. Steel, the Department has implemented 19 U.S.C. section 1677(5)(E) through 19 CFR 351.511. See U.S. Steel's rebuttal at 5. Specifically, 19 CFR 351.511(a)(2)(i) states that "[t]he Secretary will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions n the country in question. Such a price could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from competitively run government auctions...."Id. citing to 19 CFR 351.511(a)(2)(i).

U.S. Steel asserts that the "market-determined price" defined in 19 CFR 351.511(a)(2)(i) is based upon the Department's experience in applying the "adequate remuneration standard" set forth in 19 U.S.C. section 1677(5)(E). Id., citing to Preamble, 63 FR at 65377. According to U.S. Steel, the Department has concluded that the determination of adequate remuneration made through a comparison of the government price for a good or service is appropriately made with a price set in transactions between private parties. See U.S. Steel's Rebuttal at 5-6 citing to Preamble 63 FR at 65377. U.S. Steel argues that the Department has further emphasized that the only circumstances in which it would be appropriate to use a price charged by the government as a benchmark price is where the government "sells a significant portion of the goods or services through competitive bid procedures that are open to everyone, that protect confidentiality, and that are based solely on price." Id. U.S. Steel argues that under 19 CFR 351.511(a)(2)(i) the regulation specifies that government prices may constitute market-determined benchmarks only when they are set by competitively run government auctions. Id.

U.S. Steel contends that the Osmaniye OIZ land price that Toscelik advocates as a benchmark is not based on a price that was set in transactions between private parties. See U.S. Steel's Rebuttal at 6. Moreover, U.S. Steel argues that Toscelik has not shown that the price in question is the product of actual sales from competitively run government auctions. Id. Therefore, U.S. Steel asserts that the price selected by Toscelik cannot serve as an appropriate benchmark because it does not meet the requirements under the statute, and the Department's regulations and practice. Id.

With respect to measuring the benefit from land provided to Toscelik in the Osmanye OIZ, Wheatland also argues that the benchmark proposed by Toscelik violates the statute. See Wheatland's May 23, 2012, rebuttal at 5. Wheatland cites to section 771(5)(E) of the Act and argues that the statute requires the Department to measure adequacy of remuneration based on market conditions and that Toscelik's suggested benchmark cannot be considered a market price. Id. According to Wheatland, the Department correctly determined in the Preliminary Results that the land purchase in question could not be used as a benchmark "because it pertains to the prices charged by the very provider of the good at issue, and we would not normally use these prices for comparison purposes under the tier one or tier two where other more appropriate benchmark data are available." Id., at 5-6 citing to the Preliminary Results, 77 FR at 19630. Wheatland argues that even though Toscelik paid an amount for this land parcel, it is clear that the land was allocated under the same laws subject to the Department's investigation of OIZ subsidies and therefore, it should be countervailed in the final results. Id. at 6.

Department's Position: The Department continues to find that the benchmark land rates used in the Preliminary Results are the most appropriate benchmark for free land provided to Toscelik in the instant review. As a threshold matter, contrary to Toscelik's suggestion to use the land price for Toscelik's purchase in the OIZ as a benchmark, land purchased from Turkish government authorities cannot serve as an appropriate benchmark for land values under 19 CFR 351.511(a)(2)(i), because it pertains to prices charged by the very provider of the good at issue. As noted in the Preliminary Results, we would not normally use such prices for comparison purposes under "tier one" or "tier two" of 19 CFR 351.511(a)(2) where other more appropriate benchmark data are available. See Preliminary Results, 77 FR at 19630. This approach is consistent with the Department's practice. Id. citing to Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 74 FR 20923 (May 6, 2009), and accompanying Issues and Decision Memorandum at Comment 11 (Hot-Rolled from India Memorandum).

With respect to Toscelik's argument that the land prices used in the Department's benchmark are flawed because they are not comparable in size, location, or economic development, we disagree. As an initial matter, the Department has found that:

> there is no requirement that the benchmark used in the Department's LTAR analysis be identical to the good sold by the foreign government. See section 771(5)(E)(iv) and 19 CFR 351.511. In fact, the imposition of such a requirement would likely disqualify most, if not all, potential benchmarks under consideration in a LTAR analysis.

See Hot-Rolled from India Memorandum, at Comment 12. Further, though the benchmark from the Preliminary Results was not reflective of land areas adjacent to the land plot in question, the benchmark nonetheless reflects contemporaneous private market sales prices involving industrial land in Turkey. See Memorandum to the File from Eric B. Greynolds, Program Manager, Office 3, Operations, "Placement of Land Price Information on Record of Review," (March 26, 2012). Thus, while it is not an exact match, the benchmark from the Preliminary Results represents the most suitable benchmark the Department has at its disposal, particularly given that, as explained above, the alternative benchmark proposed by Toscelik is not suitable and there was no demonstration that the Department's benchmark was not comparable.

With respect to Wheatland's argument that the most appropriate benchmark to measure Toscelik's benefit of free land should be based on the regional classification as set forth in the GOT's WTO Notification, we do not agree. A general statement of regional classification by the GOT does not provide us with enough information about how the provinces in question were developed and whether and how these factors relate to land prices. Specifically, the WTO Notification cited by Wheatland, Exhibit 11 of Wheatland's New Subsidy Allegations (Wheatland's NSAs) does not provide the basis by which the Turkish provinces were classified into Regions I, II, III, and IV. Rather, the WTO Notification, at Exhibit 11, states that the basis of the regional classifications is described in a separate document, a Board of Ministers Decree No. 2002/4720, a document which is not on the record of this review. See Wheatland Tube Company's New Subsidy Allegations, August 11, 2011, (Wheatland's NSAs) at Exhibit 11, page 3. In other words, while the WTO Notification discusses subsidies provided to certain regions, the document enumerating the criteria used to develop the regional classifications is not on the record. Absent such information, we therefore do not find that the WTO Notification referenced

by petitioners is probative in terms of establishing lack of comparability between land prices in the Osmaniye OIZ and the land prices in the areas that comprise the land benchmark used in the Preliminary Results.

In addition, with respect to Wheatland's assertion that the provincial map included in Exhibit 9 of Wheatland's NSAs supports its statement that the "Tekirdag and Izmir Provinces, in the far western region of Turkey, are hundreds of miles from the Osmaniye Province, and at a different level of economic development than Osamaniye" we do not agree. Exhibit 9 cited by Wheatland is an article from Invest Turkey that provides maps on different special investment zones in Turkey and describes the characteristics of these zones and their advantages. While this document contains different maps that show the location of different investment zones throughout Turkey, it does not discuss or provide information concerning the level of economic development in Turkey between different provinces. See Wheatland's NSAs at Exhibit 9. Therefore, absent any specific information on regional development in the Turkish provinces and the criteria used to establish this, we do not find the map in Exhibit 9 cited by petitioners is probative in terms of establishing the levels of development of the provinces in question.

Furthermore, when considering factors that may speak to regional comparability, the Department looks at, for example, the comparability of population density in the regions in question.[14] In addition, when examining regional comparability between the regions in questions, the Department may also examine evidence that support differences in land pricing, such as industrial property reports, availability of data on prices, investment flows, availability of land, and industry density. Id. There is no record evidence of this type regarding the regional classifications contained in the WTO Notification.

With respect to Wheatland's argument that there is one aberrational price that should be eliminated from the benchmark, we do not agree. Although Wheatland argues that the price in question is close to the land prices submitted by the GOT which the Department rejected as minimum land values, Wheatland has failed to provide any specific land pricing information from the province in question that substantiates this claim that the one price is aberrational. Further, we disagree with Wheatland that the private land price in question should be removed from the land benchmark price because it is purportedly "near" the "minimum" land price that the GOT uses for assessing property taxes in the Osmaniye OIZ. As noted above, the land price reported by the GOT is not a market-based price, per say, but rather a floor price that the GOT uses for purposes setting property taxes. In contrast, the land price objected to by Wheatland reflects a price for industrial land that result involving a private party.

The Department, therefore, considers the price information for land in Turkey used in the Preliminary Results to be the best and most appropriate information on the record of the instant review.

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[14] See Laminated Woven Sacks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination; Preliminary Affirmative Determination of Critical Circumstances, In Part; and Alignment of Final Countervailing Duty Determination With Final Antidumping Duty Determination, 72 FR 67893, 67909 (December 3, 2007) unchanged in Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Determination and Final Affirmative Determination, in Part, of Critical Circumstances (C-570-917), 73 FR 35639 (June 24, 2008).

Comment 5: Whether the Department Correctly Attributed Subsidies Received by Toscelik in the Organized Industrial Zone to Subject Merchandise and Should Continue to Do so in the Final Results

Wheatland asserts that in the Preliminary Results, the Department correctly attributed subsidies that benefitted Toscelik's facility in the Osmaniye OIZ to the subject merchandise and should do so in the final results. See Wheatland's May 18, 2012 brief (Wheatland's brief) at 5. According to Wheatland, the Department's practice regarding subsidies that benefit inputs that could be used in the manufacture of subject merchandise is clear and well-established. Id. Specifically, Wheatland maintains that if a subsidized input can be used in the manufacture of subject merchandise (regardless of whether the input is actually used) then the Department attributes the benefit from those subsidies to subject merchandise and does not try to trace the subsidy through the manufacturing process to particular products. Id.

Wheatland points to the recent decision Kitchen Racks from the PRC, in which the Department reiterated its practice stating that it "has examined in many cases the question of whether subsidies associated with particular inputs are tied to merchandise made from those inputs" and determining that because an input (steel strip) could be used to manufacture subject merchandise (kitchen appliance shelving and racks) the subsidies were attributable to the sales of subject merchandise despite the respondent's argument that the input was not actually used in the production of subject merchandise. See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of Countervailing Duty Administrative Review, 77 FR 21744 (April 11, 2012) (Kitchen Racks from the PRC), and accompanying Issues and Decision Memorandum at Comment 6.

Wheatland points to a discussion of the attribution of subsidies in the Preliminary Results and asserts that, although Toscelik initially argued that OIZ benefits do not benefit subject merchandise, it "explain{ed} that the hot-rolled coils produced with a thickness of greater than or equal to two millimeters are an input into subject merchandise. Wheatland's brief at 6 citing to the Preliminary Results at 19628. Wheatland argues that, based on the Department's practice, all benefits received by Toscelik's Osmaniye plant are correctly attributable to subject merchandise because hot-rolled coil is an input to "in-scope" pipe as referred to in the Preliminary Results. Id. In conclusion, Wheatland asserts that because Toscelik's Osmaniye OIZ facility manufactures hot-rolled coil, an input to "in-scope" pipe, the Department should continue attributing all subsidies from this facility to subject merchandise in the final results. Id. at 7.

Department's Position: As explained above in Toscelik Comment 2 and in the Preliminary Results, we have determined that there is nothing on the record that demonstrates that the OIZ programs are precluded from benefitting subject merchandise. See Comment 3 and Preliminary Results at 19628-19631. As a result, we have continue to include subsidies provide to the Osmaniye plant in the subsidy calculations.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of the review in the Federal Register.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Import Administration

30 July 2012
Date