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MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Import Administration

FROM: Edward C. Yang
Senior Director
China/Non-Market Economy Unit

RE: Decision Memorandum for Preliminary Results of Countervailing
Duty (CVD) Administrative Review: Circular Welded Carbon
Steel Pipes and Tubes from Turkey

SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order (CVD) order on circular welded carbon steel pipe and tube from Turkey. The review covers the following three producers/exporters of the subject merchandise: Borusan Group, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB), and Borusan Istikbal Ticaret T.A.S. (Istikbal), (collectively, Borusan); Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) and Erbosan Erciyas Pipe Industry and Trade Co. Kayseri Free Zone Branch (Erbosan FZB), (collectively, Erbosan); and Tosyali dis Ticaret A.S. (Tosyali) and Toscelik Profil ve Sac Endustrisi A.S. (Toscelik Profil), (collectively, Toscelik). The period of review (POR) is January 1, 2011, through December 31, 2011. We preliminarily determined that Borusan, Erbosan, and Toscelik received countervailable subsidies during the POR.

Background

On March 7, 1986, the Department published in the Federal Register the CVD order on certain welded carbon steel pipe and tube products from Turkey.¹ On March 1, 2012, the Department published a notice of opportunity to request an administrative review of this CVD order.² On March 30, 2012, we received a letter from Erbosan requesting that the company be reviewed by the Department. On March 30, 2012, we received a request from Wheatland Tube Company

¹ See Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products from Turkey, 51 FR 7984 (March 7, 1986) (the Order).

² See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review, 77 FR 12559 (March 1, 2012).

(Wheatland), the petitioner, to review the following companies: Borusan, Erbosan, and Toscelik). At the request of interested parties, the Department initiated an administrative review of the Order for the period January 1, 2011, through December 31, 2011, covering Borusan, Erbosan, and Toscelik.³

On May 14, 2012, the Department issued the initial questionnaire to Borusan, Erbosan, Toscelik, and the Government of the Republic of Turkey (GOT). On July 19, 2012, we received a response to the initial questionnaire from Borusan. On July 30, 2012, we received the initial questionnaire responses of Erbosan, Toscelik, and the GOT. We issued supplemental questionnaires to the GOT on August 13, 2012, October 12, October 16, November 6, and December 14, 2012, and the GOT submitted its responses on September 10, November 9, November 23, 2012, and January 3, 2013, respectively. To Erbosan, we issued supplemental questionnaires on August 27, October 16, and December 14, 2012, and the company submitted its responses on September 24, October 23, and December 21, 2012, respectively. To Toscelik, we issued supplemental questionnaires on September 28, October 12, and December 14, 2012, and the company submitted its responses on November 9, December 14, 2012, and January 4, 2013, respectively. To Borusan, we issued supplemental questionnaires on August 8, and December 14, 2012, to which it responded on August 22 and December 20, 2012, respectively. On August 8, 2012, Wheatland, a domestic interested party, submitted a letter requesting that the Department conduct verification of the questionnaire responses submitted by the GOT, Borusan, Erbosan, and Toscelik. On November 19, 2012, petitioners submitted their deficiency comments.⁴

On August 20, 2012, Wheatland filed new subsidy allegations and new factual information. Wheatland alleges that Toscelik benefitted from countervailable subsidies provided by the GOT, specifically the provision of land and buildings for less than adequate remuneration (LTAR) in organized industrial zones. On October 9, 2012, the Department initiated an investigation of this allegation.⁵

On September 11, 2012, the Department postponed the deadline for the preliminary results of this administrative review until March 30, 2013.⁶ As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the preliminary results of this review is now April 2, 2013.⁷

³ See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 77 FR 25401 (April 30, 2012).

⁴ See Petitioner's Deficiency Comments (November 19, 2012).

⁵ See Memorandum to Melissa G. Skinner, Director, Office 3, Operations, from Eric B. Greynolds, Program Manager, Office 3, "New Subsidy Allegation Memorandum."

⁶ See Memorandum from Gayle Longest, International Trade Compliance Analyst, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, dated September 11, 2012 "Circular Welded Pipes and Tubes from Turkey: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," (September 11, 2012).

⁷ See Memorandum from Paul Piquado, Assistant Secretary for Import Administration regarding "Tolling of Administrative Deadline as Result of the Government Closure during Hurricane Sandy," (October 31, 2012).

On January 23, 2013, petitioners submitted their comments concerning verification.⁸ From January 28, through February 11, 2013, the Department conducted verification of the questionnaire responses submitted by Erbosan, Toscelik, and the GOT. We verified the information upon which we relied in making our preliminary findings.⁹ On February 20, 2013, the Department received minor corrections submitted at the CVD verification of Toscelik in Istanbul.

Scope of the Order

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Subsidies Valuation Information

Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 15 years. No interested party has claimed that the AUL of 15 years is unreasonable. Further, for non-recurring subsidies, we applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

⁸ See Petitioner's Comments on Verification (January 23, 2013).

⁹ See Memorandum to Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 8, from John Conniff, Senior International Trade Analyst and Jolanta Lawska, Senior International Trade Analyst regarding "Verification of Information submitted by the GOT" (GOT's Verification Report) (February 28, 2013), Memorandum to Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 8, from John Conniff, Senior International Trade Analyst and Jolanta Lawska, Senior International Trade Analyst regarding "Verification of the Questionnaire Responses Submitted by Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan's Verification Report) (March 7, 2013), and Memorandum to Eric B. Greynolds, Program Manager, AD/CVD Operations, Office 8, from John Conniff, Senior International Trade Analyst and Jolanta Lawska, Senior International Trade Analyst regarding "Verification of the Questionnaire Responses Submitted by Toscelik Profil ve Sac Endustrisi A.S. (Toscelik's Verification Report) (March 13, 2013).

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.¹⁰ In the July 14, 2012, questionnaire response (QR) at Exhibit 25, Borusan submitted comparable company-specific short term interest rates. Thus, we calculated benchmark interest rates for short term U.S. dollar and Turkish Lira 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 principal amount of each loan.

Where no company-specific benchmark interest rates are available, the Department's regulations direct us to use a national average interest rate as the benchmark.¹¹ However, according to the GOT, there is no official national average short-term interest rate available in Turkey.¹² Therefore, consistent with our past practice in Turkey CVD proceedings,¹³ where necessary we calculated benchmark interest rates 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.

Borusan paid commissions with regard to countervailable loans (e.g., Short-Term Pre-Shipment Rediscount Program). It is the Department's practice to normally compare effective interest rates rather than nominal rates in making the loan comparison.¹⁴ The benchmark short-term Turkish Lira interest rates sourced from The Economist and the Wall Street Journal, however, do not include commissions or fees paid to commercial banks, i.e., they are nominal rates. Further, we preliminarily determine that we lack definitive evidence to conclude that the company-specific short-term rates reported by Borusan include commissions. Therefore, for these preliminary results, we compared the benchmark interest rate to the interest rate that Borusan was charged on the countervailable loans, exclusive of commissions, to make the comparison on a nominal interest rate basis.

¹⁰ See 19 CFR 351.505(a)(2)(ii).

¹¹ See 19 CFR 351.505(a)(3)(ii).

¹² See GOT's Initial Questionnaire Response at 17 (June 28, 2011).

¹³ 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).

¹⁴ See Countervailing Duties: Final Rule, 63 FR 65348, 65362 (November 25, 1998) (Preamble). "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.

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.¹⁵ Where such benchmark rates are unavailable, consistent with 19 CFR 351.505(a)(3)(ii), we used lending rate data from International Financial Statistics as our national average benchmark.

Analysis of Programs

I. Programs Preliminarily Determined To Be Countervailable

A. Deduction from Taxable Income for Export Revenue

Addendum 4108 of Article 40 of the Income Tax Law Number 193, effective June 2, 1995, allows taxpayers engaged in export activities to claim a lump sum deduction from gross income resulting from exports, construction, maintenance, assembly, and transportation activities abroad in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings from such activities.¹⁶ This deduction is to cover the expenditures without documentation incurred from exports, construction, maintenance, assembly, and transportation activities abroad.¹⁷ 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.¹⁸ Under this program, marketing, selling, and distribution expenses are deductible expenditures for tax purposes. The Ministry of Finance is responsible for administering the program.

Consistent with prior determinations, we preliminarily find that this tax deduction is a countervailable subsidy.¹⁹ 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 the POR, Erbosan, BMB, Istikbal, and Tosyali reported receiving the deduction for export earnings program with respect to the 2010 tax return filed during the POR.

In our initial questionnaire, we instructed respondents to report benefits received under this

¹⁵ See 19 CFR 351.505(a)(2)(ii).

¹⁶ See GOT's initial questionnaire response dated July 30, 2012, at II-4.

¹⁷ Id.

¹⁸ Id.

¹⁹ See, e.g., See Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review, 77 FR 46713 (August 6, 2012) (Turkey Pipe 2010 Final Results), and accompanying Issues and Decision Memorandum (Turkey Pipe 2010 Final Decision Memorandum) at "Deduction from Taxable Income for Export Revenue."

program as it applies to the tax return filed during the POR.²⁰ In response to our questionnaire, Erbosan reported that the company benefitted from this program only for expenses which were not supported by invoices (undocumented expenses) such as lodging, food and gas expenses incurred during overseas business trips.²¹ However, Erbosan did not provide a list of these undocumented expenses in its questionnaire responses. At verification, the verifiers requested that Erbosan provide a list of undocumented expenses incurred during tax year 2010 which, in turn, would have been incorporated into the tax deduction claimed in the 2010 tax return filed during the POR. Erbosan provided a list of undocumented expenses for the year 2009 but not for 2010.²² Thus, at verification, the verifiers learned that Erbosan had provided benefit information that did not correspond to the benefit received during the POR. The verifiers attempted to obtain the correct benefit information from Erbosan but the company was not able to provide the requested information.²³

Because Erbosan did not provide the requested information regarding a list of undocumented expenses, as it applies to the tax deductions reflected on the tax return filed during the POR (as instructed in the Department's initial questionnaire),²⁴ the Department does not have the necessary information to determine the net subsidy received by Erbosan under this program. Therefore, the Department must base the determination on the facts otherwise available in accordance with section 776(a)(2)(B) of the Act with respect to this program. Section 776(b) of the Act provides that that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Because Erbosan did not provide the requested information on the program as it applies to the tax return filed during the POR, we find that Erbosan did not act to the best of its ability and, therefore, pursuant to section 776(b) of the Act, we are employing adverse inferences in selecting from among the facts otherwise available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available (AFA) information derived from the petition, the original determination, the previous administrative review, or other information placed on the record. Specifically, we are assuming as AFA that Erbosan received the maximum amount of deduction possible under the program.²⁵ Under this approach, we are assuming that Erbosan used the program in a manner that resulted in a deduction in taxable income equal to 0.5 percent of its foreign-exchange earnings for 2010.

The Department typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c) (1). The amount of the benefit is equal to the amount of tax that would have been paid absent the program. For BMB and Istikbal, we divided their combined tax savings by Borusan's total export sales for the POR. For Tosyali, we divided the tax savings realized by Toscelik's total export sales for the POR. For Erbosan we divided the tax savings realized by Erbosan's total export sales for the POR.

²⁰ See the Department's May 14, 2012, initial questionnaire at III-6 and III-19.

²¹ See Erbosan's July 30, 2012, QR at III-16 and III-17.

²² See Erbosan Verification Report at 7.

²³ *Id.*

²⁴ See the Department's May 14, 2012, initial questionnaire at III-6 and III-19.

²⁵ See the GOT's July 30, 2012, QR at II-4.

On this basis, we preliminarily determine the net countervailable subsidy for this program to be 0.05 percent ad valorem for Erbosan, 0.05 percent ad valorem for Borusan, and 0.03 percent ad valorem for Toscelik.

B. Short-Term Pre-Shipment Rediscount Program

The “Short Term Pre-Shipment Discount Program” (SPRP) was established in 1995 and is administered by Turkey’s Export Bank.²⁶ The SPRP program is designed to provide financial support to Turkish exporters, manufacturer-exporters and manufacturers supplying exporters.²⁷ This program is contingent upon an export commitment. Under SPRP, there is a limit of up to USD 20 million per company.²⁸ 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. During the POR, BMB, Istikbal, Erbosan, and Toscelik paid interest against pre-shipment rediscount export credit loans.²⁹

We preliminarily 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, Istikbal, Erbosan, and Toscelik 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. The Department’s finding in this regard is consistent with its practice.³⁰

Pursuant to 19 CFR 351.505(a)(1), we calculated the benefit as the difference between the payments of interest that BMB, Istikbal, Erbosan, and Toscelik made on its short-term pre-shipment rediscount loans during the POR and the payments the companies would have made on comparable commercial loans.

After computing the benefit amount, we subtracted from the benefit amount the fees which BMB, Istikbal, Erbosan, and Toscelik 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 the companies’ respective total export sales for the POR. On this basis, we preliminarily determine that the net countervailable subsidy for this program is 0.19 percent ad valorem for Borusan, 0.03 percent ad valorem for Toscelik and 0.04 percent ad valorem for Erbosan.

C. 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 pursuant to Article 2 and Article 3 of Law 5084. The purpose of this program

²⁶ See GOT’s Initial Questionnaire at II-54 and Exhibit 29.

²⁷ *Id.* at 55.

²⁸ *Id.* at II-57.

²⁹ *Id.* at Exhibit 11.

³⁰ See Turkey Pipe 2010 Final Decision Memorandum at “Short-Term Pre-Shipment Rediscount 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.³¹ 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.³²

The GOT states that this program includes two levels of withholding based on where the enterprise is established in the 49 eligible provinces.³³ According to the GOT, firms whose premises are established in Organized Industrial Zones (OIZ) 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.³⁴ 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.³⁵ 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.³⁶

In addition, Article 7 of Law 5084 states that this program shall be applicable, for a period of five years, for any new investments completed by December 31, 2007, for four years for investments completed by December 31, 2008, and for three years for investments completed by December 31, 2009.³⁷ Hence, the last date which the investment can benefit from this tax incentive program is December 31, 2012.³⁸

During the POR, Toscelik reported that it received a benefit under this program with respect to its facility in the Osmaniye OIZ.³⁹

In these Preliminary Results, 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 because it relieves Toscelik of the obligation to pay income taxes on wages and salaries that it would have had to pay absent this program. 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 49 eligible provinces. Further, we find that Toscelik benefitted from the withholding of income tax under this OIZ program pursuant to section 771(5)(E) of the Act in the amount of the income taxes on wages and salaries that it did not pay. The Department's findings in this regard are consistent with its

³¹ See GOT's July 14, 2012, QR at II-47 and Exhibit 24.

³² *Id.* at II-50 and Exhibit 24.

³³ See GOT's June QR at II-48.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ See GOT's July 14, 2012, QR at II-48.

³⁸ *Id.*

³⁹ See Toscelik's July 30, 2012, QR at 21.

practice.⁴⁰

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. To calculate the net subsidy rate, we divided the benefit by Toscelik's total sales during the POR. On this basis, we preliminarily determine Toscelik's net subsidy rate under this program to be 0.02 percent ad valorem.

D. 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 5084.⁴¹ 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. 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.⁴²

The GOT states that this program includes two levels of activity based on where the enterprise is established in the 49 eligible provinces.⁴³ 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.⁴⁴ 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.⁴⁵ 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.⁴⁶

In addition, Article 7 of Law 5084 states that this program shall be applicable, for a period of five years, for any new investments completed by December 31, 2007, for four years for investments completed by December 31, 2008, and for three years for investments completed by December 31, 2009.⁴⁷ Hence, the last date which the investment can benefit from this tax

⁴⁰ See Turkey Pipe 2010 Final Decision Memorandum at "Law 5084: Withholding of income Tax on Wages and Salaries."

⁴¹ See GOT's July 30, 2012, QR at II-64 and Exhibit 24.

⁴² *Id.* at 64-65 and Exhibit 24.

⁴³ *Id.* at 64.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See GOT's September QR at I-9

incentive program is December 31, 2012.⁴⁸

Toscelik reported that it received benefits under this program during the POR because its Osmaniye plant is located in an OIZ zone in the Osmaniye province, which is one of the 49 eligible provinces.⁴⁹ Because Toscelik produces hot-rolled coils at the Osmaniye plant that can be used as an input into the subject merchandise, we preliminarily determine that there is nothing on the record that demonstrates that this program is precluded from benefitting the subject merchandise.

In these preliminary results, we find that the tax benefits Toscelik received under this program during the POR 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 income taxes on wages and salaries that it would have had to pay absent this program. We further preliminarily determine that Toscelik benefitted from the withholding of income tax under this OIZ program pursuant to section 771(5)(E) 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 section 771(5A)(D)(iv) of the Act because it is limited to companies located in the 49 eligible provinces. The Department's findings in this regard are consistent with its practice.⁵⁰

To calculate the benefit Toscelik received under the program, we summed the total amount of insurance premium savings reported by Toscelik during the POR.⁵¹ To calculate the net subsidy rate, we divided the benefit by Toscelik's total sales during the POR. On this basis, we preliminarily determine Toscelik's net subsidy rate under this program to be 0.12 percent ad valorem.

E. Law 5084: Allocation of Free Land and Purchase of Land for LTAR

The Ministry of Science, Industry and Technology General Directorate of Industrial Zones administers the free land allocation support program.⁵² 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 5084.⁵³ 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.⁵⁴

With respect to companies in the OIZs, the GOT states that pursuant to Provisional Article 1,

⁴⁸ Id. at 65.

⁴⁹ See Toscelik's July 30, 2012, QR at 28-29.

⁵⁰ See Turkey Pipe 2010 Final Decision Memorandum at "Law 5084: Incentive for Employers' Share in Insurance Premiums."

⁵¹ See 19 CFR 351.509(a)(1).

⁵² See GOT's July 30, 2012, QR at II-70.

⁵³ Id. at II-70 and Exhibit 24.

⁵⁴ Id. at II-70.

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.⁵⁵ According to the GOT, in OIZs under this program, free parcels were allocated to companies that employ at least ten employees.⁵⁶ The GOT states that OIZs are established anywhere in Turkey regardless of the geographic location with the aim of gathering the industrial facilities in a well-coordinated manner with necessary infrastructures.⁵⁷

According to the GOT, to apply for this program the investor fills out the application form and submits it to the OIZ administration.⁵⁸ The GOT states that the OIZ administration decides whether or not to allocate the land to the investor within 30 days.⁵⁹ 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.⁶⁰ According to the GOT, the investors who have benefited from free land allocation support are obligated to start production within two years at the latest while employing at least 10 people.⁶¹ The GOT states that it cancels land allocations for those investors who have failed to start production within two years of the allocation.⁶² In addition, the land allocations of investors who have ceased investment are cancelled.⁶³

Toscelik reported that it received free land in the Osmaniye OIZ under Law 5084 Provisional Article 1 from the authority that operates the OIZ. Toscelik reports that the land transfer was made on December 29, 2008, in a single installment.⁶⁴ The Department found this program to be countervailable in the prior review.⁶⁵ Specifically, the Department found that this program constitutes a financial contribution in the form of land provided for LTAR within the meaning of section 771(5)(D)(iii) of the Act.⁶⁶ Furthermore, concerning whether the authority that operates the OIZ is a GOT authority, information on the record of the instant review indicates that the OIZs themselves were established pursuant to Turkish law.⁶⁷ In addition, the text of Law 5084 states that its purpose is to:

Increase the investment and employment opportunities through implementing incentives for tax and insurance premiums in various provinces to provide . . . lands and plots free of charge for investments.⁶⁸

Additionally, Article 7e of Law 5084 states that transactions that do not result in “additional capacity or employment increase” but are undertaken merely for “purposes of benefiting from

⁵⁵ *Id.* at II-70.

⁵⁶ *Id.* at 71.

⁵⁷ *Id.*

⁵⁸ *Id.* 72.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ See Toscelik’s July 30, 2012, QR at 30.

⁶⁵ See Turkey Pipe 2010 Final Decision Memorandum “Law 5084: Allocation of Free Land” at 12-14.

⁶⁶ See Turkey Pipe 2010 Final Decision Memorandum at “Law 5084: Allocation of Free Land” at 12-14.

⁶⁷ See Law 5084 at Article 7b, which is included in the GOT’s July 30, 2012, QR at Exhibit 24.

⁶⁸ *Id.* at Article 1.

incentives . . . “shall not be entitled to incentives granted by this law.”⁶⁹ Further, Article 7i of Law 5084 states that the Ministries of Finance, Labor, Social Security, Industry and Commerce, and Undersecretariat of the Treasury are jointly authorized “to define the procedures and principles related with starting and completing any investment” subject to Law 5084.⁷⁰ Toscelik and/or the GOT have stated in their submissions that the OIZ is a private entity. However, based on this record evidence we continue to find that the OIZ is a GOT authority, because it was created by the GOT and implements GOT guidelines and goals. Thus, we continue to find that the allocation of free land to Toscelik by the OIZ authority constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

The Department further found that the program was regionally-specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in the 49 eligible provinces. In addition, the Department determined that 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.⁷¹ In these preliminary results we continue to find that the allocation of free land to Toscelik is specific under section 771(5A)(D)(iv) of the Act and confers a benefit under section 771(5)(E)(iv) of the Act.

Furthermore, in these preliminary results we continue to rely upon the land benchmark used in the prior review. Specifically, we have used as our benchmark publicly available information concerning industrial land prices in Turkey for purposes of calculating a comparable commercial benchmark price for land available in Turkey.⁷² We find this land price may serve as a comparable commercial benchmark under 19 CFR.351.511(a)(2)(ii).

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 2008.⁷³ Because the resulting ratio exceeded 0.5 percent of Toscelik’s total sales, we allocated a portion of the benefit to the POR using the Department’s standard grant allocation formula.⁷⁴ 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.

For purposes of the preliminary 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

⁶⁹ Id.

⁷⁰ Id.

⁷¹ See Turkey Pipe 2010 Final Decision Memorandum at “Law 5084: Allocation of Free Land.”

⁷² 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 that has been placed on the record of the instant review and is available via IA Access.

⁷³ See 19 CFR 351.524(b)(2).

⁷⁴ See 19 CFR 351.524(d).

remuneration (LTAR) programs involving the outright sale of land.⁷⁵

In the instant review, the Department is also examining a plot of land that Toscelik obtained in 2010 from the entity that operates the OIZ, the same entity that allocated free land to Toscelik in 2008. Because we have found and continue to find for purposes of these preliminary results that the entity that operates the OIZ is a GOT-authority, the land that it sold to Toscelik in 2010 constitutes a financial contribution within the meaning of section 771(5)(E)(iv) of the Act. We also preliminarily determine that the purchase of land is specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in the 49 eligible provinces. We further preliminarily determine that the program confers a benefit to the extent that it was sold to Toscelik for LTAR as described under section 771(5)(E)(iv) of the Act.

To determine whether Toscelik's acquisition of land from the OIZ authority constituted the provision of land for LTAR, we compared the price that Toscelik paid for the land in 2010 with a land benchmark that was derived using the same land benchmark information and methodology as described above. Next, we divided the benefit amount received in 2010 by Toscelik's total sales for 2010. The resulting ratio was less than 0.5 percent. Therefore, in accordance with 19 CFR 351.524(b)(2), we preliminarily determine that the benefit Toscelik received in connection with its purchase of land for LTAR from the GOT was fully expensed prior to the POR of the instant review.

To calculate the net subsidy rate, we divided the benefit by Toscelik's total sales during the POR. On this basis, we preliminarily determine Toscelik's net subsidy rate under this program to be 0.07 percent *ad valorem*.

F. Law 5084: Energy Support

The Ministry of Economy, General Directorate of Incentives and Implementation and Foreign Investments administers the energy support program pursuant to Articles 2 and 6 of Law 5084.⁷⁶ According to the GOT, the main objective of this program is to reduce inter-regional disparities and to increase employment.⁷⁷ According to the GOT, all enterprises or industries established in the 49 provinces which have a GDP per capita equal to or less than 1,500 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.⁷⁸ The GOT states that enterprises operating or investing in the designated provinces are eligible for the 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.⁷⁹ Specifically, eligible businesses should operate in animal

⁷⁵ 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.

⁷⁶ See GOT's July 30, 2012, QR at II-75 and Exhibit 24.

⁷⁷ *Id.* at 75.

⁷⁸ *Id.* and Exhibit 24.

⁷⁹ *Id.*

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. According to the GOT, the energy support rate is applied as 20 percent of energy cost of the undertaking. The energy support rate increases 0.5 points for 1) each additional employee above 10 employees hired by newly established undertakings which started business as of April 1, 2005, or 2) for each additional employee above 10 employees who were hired after the date set by the Law for operating undertakings which started business before April 1, 2005.⁸⁰ 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.⁸¹

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.⁸² The program is implemented by a provincial Energy Support Commission (Commission) which is chaired by the provincial governor or lieutenant governor.⁸³ The Commission is comprised of 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.⁸⁴ 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.⁸⁵ If a firm is found eligible, the Commission also determines the rate of energy support to be applied for that firm.⁸⁶ Toscelik reported that it received energy subsidies during the POR.⁸⁷

We preliminarily determine 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. We further preliminarily determine that the energy subsidies provided under the program confer a benefit with the meaning of section 771(5)(E)(ii) of the Act in that Toscelik was able to obtain goods (i.e., electricity) for less than it would otherwise pay in the absence of this subsidy. We also preliminarily determine that this program is regionally-specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in the 49 eligible provinces. The Department's findings in this regard are consistent with its practice.⁸⁸

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),

⁸⁰ *Id.* at II-76.

⁸¹ *Id.*

⁸² *Id.* at 77.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See Toscelik's July 30, 2012, QR at 30.

⁸⁸ See Turkey Pipe 2010 Final Decision Memorandum at "Law 5084: Energy Support."

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 sales during the POR. Because the resulting ratio was less than 0.5 percent of Toscelik's total f.o.b. sales, we allocated the benefit to the POR. On this basis, we preliminarily determine Toscelik's net subsidy rate under this program to be 0.02 percent ad valorem.

G. Organized Industrial Zone (OIZ): Exemption from Property Tax

The program is administered by Ministry of Finance pursuant to article 4 of Law No. 3365, which come into force on January 1, 1987.⁸⁹ The program's objective is to increase the investment opportunities in OIZ's.⁹⁰ The GOT provides the exemption of property tax for the first 5 years following the completion date of the construction of buildings.⁹¹ According to the GOT, there are 252 OIZ's in Turkey.⁹²

Toscelik reported that it received an exemption from property tax during the POR with respect to its Osmaniye facilities because of their location in the OIZ.⁹³

In these preliminary results, 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. We also preliminarily determine that tax benefits under the program conferred a benefit under section 771(5)(E) of the Act. Further, we preliminarily determine 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. Our findings in this regard are consistent with the Department's practice.⁹⁴ No new information has been presented in this review that leads us to reconsider our prior findings in these preliminary results.

To calculate the benefit from the tax relief that Toscelik received under the property tax exemption program, we summed the total amount of property tax savings reported by Toscelik during the POR and divided the amount of the benefit by Toscelik's total sales during the POR. On this basis, we preliminarily determine Toscelik's net subsidy rate under this program to be less than 0.005 percent ad valorem.

H. Corporate Income Tax Exemption under the Free Zones Law

Free Zones Law No. 3128 came into force on June 6, 1985, as part of the GOT's economic liberalization program. The program is implemented in free zones that are located countrywide. Companies located in free zones represent various sectors such as agriculture, mining, and industry. The Free Zones Law is administered by the Ministry of Economy and the programs under Article 3 of Free Zone Law are administered by the Ministry of Finance. According to the GOT, there were 19 free zones in Turkey during the POR.⁹⁵

⁸⁹ See GOT's July 30, 2012, QR at II-80 and at Exhibit 37.

⁹⁰ Id.

⁹¹ Id. at 81.

⁹² Id. II-82.

⁹³ See Toscelik's July 30, 2012, QR at 32.

⁹⁴ See Turkey Pipe 2010 Final Decision Memorandum at "OIZ: Exemption from Property Tax."

⁹⁵ See the GOT's July 30, 2012, QR at II-102 and at Exhibit 44.

According to Article 3 of the Free Zones Law number 3218, income generated in the free zone is exempted from income and corporate taxes until the end of the fiscal year when Turkey officially joins the European Union.⁹⁶ The Corporate Income Tax Exemption under the Free Zones Law program represents an exemption of income tax or corporate tax with regard to earnings generated in free zones in Turkey.⁹⁷ All companies holding an operating license are eligible to benefit from this exemption. Such companies are eligible for this exemption until the end of the period specified in their operating license.⁹⁸ The corporate income tax rate applicable to tax year 2010 was 20 percent.⁹⁹ Under this program, the total amount of exemption from income or corporate tax is calculated by deducting expenditures on free zone activities from proceeds generated from above mentioned free zone activities.¹⁰⁰ During the POR, Erbosan's wholly-owned branch, Erbosan FZB, received income tax exemptions under this program.

We preliminarily determine that the income tax exemptions provided under this program constitute a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act. We further find that the income tax exemptions conferred a benefit under section 771(5)(E) of the Act in an amount equal to the tax otherwise due. Lastly, we preliminarily determine that this program is specific under section 771(5A)(D)(iv) of the act because it is limited to firms with branches located in free zones.

To calculate benefit, we derived the amount of taxes that Erbosan would have paid absent the program. We then divided the benefit amount by Erbosan's total sales during the POR. On this basis, we preliminarily determine Erbosan's net subsidy rate to be 0.21 percent ad valorem.

II. Programs Preliminary Determined To Not Confer Countervailable Benefits During the POR

A. Inward Processing Certificate Exemption

Under the Inward Processing Certificate (IPC)¹⁰¹ program, companies are exempt from paying customs duties and value added tax (VAT) on raw materials and intermediate unfinished goods that are imported and 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.¹⁰²

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

⁹⁶ *Id.* at II-103.

⁹⁷ *Id.* at II-107.

⁹⁸ *Id.* at II-105 and II-107.

⁹⁹ See Exhibit 1 of the GOT's July 30, 2012, QR.

¹⁰⁰ *Id.* at II-107.

¹⁰¹ During the POR, the IPC was implemented under Resolution No. 2005/8391. A copy of this resolution was submitted by the GOT in its July 30, 2012, QR at Exhibit 21.

¹⁰² See GOT's July 30, 2012, QR at II-41 and II-42.

exported.¹⁰³ The Ministry of Economy is the authority responsible for administering the program.¹⁰⁴ 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.¹⁰⁵ 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.¹⁰⁶ 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.¹⁰⁷ During the POR, BMB, Erbosan, 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.¹⁰⁸

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.

In prior reviews, the Department has found that, in accordance with 19 CFR 351.519(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.¹⁰⁹ 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.¹¹⁰ 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, Erbosan, BMB, and Toscelik received duty and VAT exemptions on certain imported inputs used in the production of steel pipes and tubes exported to the United States. Consistent with the Department’s findings in Turkey Pipe 2010 Final Results and based on our review of the information supplied by the respondents regarding this program, we preliminarily 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

¹⁰³ See GOT’s July 30, 2012, QR at II-43.

¹⁰⁴ Id. at II-40.

¹⁰⁵ Id. at II-43.

¹⁰⁶ Id.

¹⁰⁷ Id. at 41-43.

¹⁰⁸ See Toscelik’s October 12, 2012, QR at 3; see Borusan’s July 14, 2012, QR at 30 and at Exhibit 31; see Erbosan’s July 30, 2012, QR at III-23.

¹⁰⁹ See Turkey Pipe 2010 Final Decision Memorandum at Inward Processing Certificate Exemption.

¹¹⁰ Id., Wire Rod Memorandum at Comment 8.

imported inputs for any other product besides those exported.

Therefore, consistent with past cases,¹¹¹ we preliminarily determine that the tax and duty exemptions, which Erbosan, BMB, 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 preliminarily find that the VAT exemption did not confer countervailable benefits on Erbosan, 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 Erbosan, Borusan, and Toscelik did not import any goods under a D-3 certificate during the POR, we preliminarily determine that this aspect of the 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.¹¹² However, based on allegations from petitioners in the Turkey Pipe 2010 Final Results the Department has examined certain changes to the program as it pertains to licenses issued after January 1, 2009. Toscelik and Borusan reported using this program during the POR.¹¹³ Concerning Toscelik, it used two investment certificates during the POR. The first was Certificate 88512 of July 4, 2008, and was previously investigated by the Department and found to be non-countervailable.¹¹⁴ The other, Certificate 100814 B of June 3, 2011, had not been previously reviewed.¹¹⁵

The Department preliminarily determines that Toscelik's use of this program, including the certificate examined for the first time in this review, 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.¹¹⁶

Concerning Borusan, it reported holding an IEP license during the POR 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.¹¹⁷ Upon review of the IEP license in question, we preliminarily determine that the benefit Borusan received on this license was tied to the

¹¹¹ See, e.g., Turkey Pipe 2010 Final Decision Memorandum at Inward Processing Certificate Exemption.

¹¹² See Turkey Pipe 2010 Final Decision Memorandum at "Investment Encouragement Program (IEP): Customs Duty Exemptions."

¹¹³ See Toscelik's July 30, 2012, QR at 35; see also Borusan's July 14, 2012, QR at 35-36.

¹¹⁴ See Toscelik's July 30, 2012, QR at 35 and Exhibit 19 at 1-7; see also Turkey Pipe 2010 Final Decision Memorandum at "Investment Encouragement Program (IEP): Customs Duty Exemptions."

¹¹⁵ See Toscelik's July 30, 2012, QR at 35 and Exhibit 19 at 8-22.

¹¹⁶ See Certain Welded Carbon Steel Standard Pipe from Turkey: Preliminary Results of Countervailing Duty Administrative Review, 75 FR 16439, 16443 (April 1, 2010) (Turkey Pipe 2008 Preliminary Results), unchanged in the final results; see Certain Welded Carbon Steel Standard Pipe from Turkey: Final Results of Countervailing Duty Administrative Review, 75 FR 44766 (July 29, 2010) (Turkey Pipe 2008 Final Results).

¹¹⁷ See Borusan's July 19, 2012, QR at 35.

production of spiral welded pipe at the time of bestowal. Thus, we preliminarily determine that the benefits Borusan received under this program are tied to non-subject merchandise. Our finding in this regard is consistent with our treatment of Borusan's use of this program in the prior review.¹¹⁸

C. Provision of Buildings and Land Use Rights for Less than Adequate Remuneration under the Free Zones Law

This program is administered under Article 5 of the Free Zones Law 3218.¹¹⁹ Under this law companies may operate in the Free Zone provided the Under Secretary of Foreign Trade grants them an operating license. According to the GOT, the law does not regulate sales contracts (e.g., land transactions) between companies.¹²⁰

Erbosan purchased land in the Kayseri Free Zone in November 2006 from Kayseri Serbest Bolgesi Kurucu ve Isletici A.S. (Kayser A.S.), the operator of the Kayseri Free Zone. Based on information on the record of this review, we preliminarily determine that Kayser A.S. is a privately owned company and, thus, its sale of land to Erbosan does not give rise to a financial contribution under section 771(5)(D)(iii) of the Act. For example, ownership information examined at verification indicates that Kayser A.S. is owned by individuals and not GOT authorities.¹²¹ Nor is there other record information that would indicate that Kayser A.S. is a GOT authority.

III. Programs Preliminarily Found Not Countervailable

A. Deductions on Social Security Payments Program under Law 5510

According to the Article 81, Clause (1) of Law 5510, employers may deduct 5 percent of their share of social security payments provided that the certain conditions are met. The three criteria are: (a) employer's timely submission of required documents for premiums and service to the Social Security Administration; (b) the employer's payment of premiums corresponding to the insured employee's share which are not covered by the Treasury (Employer's share after deduction of 5 percent Treasury contribution) for all insured employees are made within legal time limits; and (c) the absence of any debt to the Government for premium, administrative fine or related late fees or penalties for delay to the Social Security Administration.¹²² The Turkish Treasury transfers funds to the Social Security Institution on a monthly basis.¹²³

In these preliminary results the Department finds this program to be not countervailable on the grounds that the eligibility criteria under the program do not give rise to a specific subsidy under section 771(5A) of the Act. In this regard, the program is similar to the GOT's Article 30, Law 4857 in which the Turkish Government encourages companies to employ handicapped workers

¹¹⁸ See Turkey Pipe 2010 Final Decision Memorandum at "Investment Encouragement Program (IEP): Customs Duty Exemptions."

¹¹⁹ See GOT's July 30, 2012, QR at II-1 and at Exhibit 42.

¹²⁰ Id. II-101.

¹²¹ See Exhibit S-14a of Erbosan's September 24, 2012, QR; see also Erbosan Verification Report at 11.

¹²² See Erbosan's July 30, 2012, QR III-59 and the GOT's November 23, 2012, QR at 1.

¹²³ Id. at 3.

by exempting the employer's share of insurance premium paid to the Treasury for the handicapped workers. In the Turkey Pipe 2008 Final Results, the Department found Article 30, Law 4857 not specific because it does not limit access to the benefit, but indicates that an exemption of insurance premium is available to all employers who employ handicapped workers in jobs appropriate for their professions and physical and psychological status.¹²⁴ We find that the deductions under Law 5510 not specific based on the same rationale.

B. Deductions on Social Security Payments Program under Law 5921

Law 5921 allows employers to deduct social security payments in cases in which they hire new workers. In order to benefit from this program a company is required to offer employment to new workers until June 2010, who were unemployed for at least 3 months. In return, a company is exempted from making social security payments for those workers. Companies must also meet the same three criteria specified above under the Deductions on Social Security Payments Program under Law 5510 program. Erbosan reported that it benefited from this program for its Zinc Processing Facility, only.

For these preliminary results the Department finds this program not countervailable on the grounds that the program does not give rise to a specific subsidy under section 771(5A)(D) of the Act for the same reasons as discussed for Law 5510.

C. Customs Duties and VAT Exemptions under the Free Zones Law

According to Article 6 of the Free Zones Law 3218, goods that enter a free zone are considered outside of the customs territory of Turkey for purposes of import duties, provided that the goods are not released for free circulation or placed under another customs procedure or used or consumed under conditions other than those provided for in customs regulations.¹²⁵ The exemption from customs duties and VAT is in effect as long as the goods are not imported to Turkey or not used in the production of goods which will be exported to Turkey. If goods are transferred from the free zone into Turkey, all customs duties are to be paid by the importer company.¹²⁶

At verification the GOT explained that its regular duty drawback and VAT procedures are in place with regard to products that are imported into the free zone and subsequently exported from the free zone into Turkey.¹²⁷ Thus, in such instances, the goods exported from the free zone into Turkey are subject to the regular duties and VAT otherwise due. In this regard, we note that the Department has previously examined Turkey's duty drawback system and determined that the GOT has in place and applies a drawback system that ensures that duty exemptions are provided only to products that are consumed in the production of the exported product.¹²⁸

¹²⁴ See Turkey Pipe 2008 Preliminary Results, 75 FR at 16439, 16442-16443, unchanged in Turkey Pipe 2008 Final Results.

¹²⁵ See GOT's November 9, 2012, QR at Exhibit 2.

¹²⁶ See GOT's July 30, 2012, QR at II-116.

¹²⁷ See GOT Verification Report at 3-4.

¹²⁸ See, e.g., discussion above regarding Inward Processing Certificate Exemption program; see also Turkey Pipe 2008 Preliminary Results, 75 FR at 16443-16444, unchanged in Turkey Pipe 2008 Final Results.

Furthermore, the Department has previously addressed the issue of customs duties and VAT provided in free zones in the CVD investigation of CWP from Vietnam, in which the Department found that such exemptions provided inside a free zone are not countervailable:

Under the laws of Vietnam, Hongyuan has been designated as an export processing enterprise and, thus, a non-tariff zone outside of the customs territory of the country. Consequently, imports of raw materials, spare parts and accessories, and fixed assets by Hongyuan are not subject to duties in Vietnam and, therefore, the GOV has not foregone revenue by not collecting duties on the company's imports.¹²⁹

Thus for the reasons discussed above, we preliminarily determine that this program is not countervailable.

IV. Programs Preliminarily Determined To Not Be Used

Under the Free Zones Law number 3218, Article 3, paragraph 2, clause C, any company operating in any of the free zones in Turkey is exempted from stamp duties and fees.¹³⁰ The Turkish Ministry of Finance is responsible for administering this program. According to the GOT, the program aims to increase investment and employment opportunities.¹³¹ Under this program, the transactions related to the activities carried out in the free zones are exempted from stamp duties and fees until the end of the taxation year, including the date Turkey becomes a full member of the European Union.¹³²

For these preliminary results the Department finds that Erbosan did not benefit from the program during the POR. Erbosan was entitled to stamp duties and fees exemption under the Free Zones Law during the POR. However, the company paid stamp duties for all its customs declaration documents during the POR.¹³³ Further, at verification we confirmed that Erbosan did not use this program during the POR.¹³⁴

B. Other Programs Not Used

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

- Post-Shipment Export Loans
- Export Credit Bank of Turkey Buyer Credits
- Subsidized Turkish Lira Credit Facilities
- Subsidized Credit for Proportion of Fixed Expenditures

¹²⁹ See Circular Welded Carbon-Quality Steel Pipe From the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination, 77 FR 64471 (October 22, 2012) (CWP from Vietnam), and accompanying Issues and Decision Memorandum (CWP from Vietnam Decision Memorandum) at Comment 3.

¹³⁰ See GOT's July 30, 2012, QR at II-109.

¹³¹ *Id.* at II-110.

¹³² *Id.* at II-109; see also GOT's July 30, 2012, QR at Exhibit 42.

¹³³ See Erbosan's July 30, 2012, QR at Exhibit 29.

¹³⁴ See Erbosan's Verification report at 13.

- Subsidized Credit in Foreign Currency
- Regional Subsidies
- VAT Support Program (Incentive Premium on Domestically Obtained Goods)
- IEP: VAT Exemptions
- IEP: Reductions in Corporate Taxes
- IEP: Interest Support
- IEP: Social Security Premium Support
- IEP: Land Allocation
- National Restructuring Program
- Regional Incentive Scheme: Reduced Corporate Tax Rates
- Regional Incentive Scheme: Social Security Premium Contribution for Employees
- Regional Incentive Scheme: Allocation of State Land
- Regional Incentive Scheme: Interest Support
- OIZ: Waste Water Charges
- OIZ: Exemptions from Customs Duties, VAT, and Payments for Public Housing Fund, for Investments for which an Income Certificate is Received
- 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"
- Foreign Trade Companies Short Term Export Credits
- Pre-Export Credits
- Pre-shipment Export Credits
- OIZ: Exemption from Building and Construction Charges
- OIZ: Exemption from Amalgamation and Allotment Transaction Charges

V. Recommendation

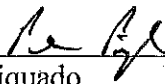
Recommendation

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

✓

Agree

Disagree



Paul Piquado
Assistant Secretary
for Import Administration

2 APRIL 2013

Date