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**DATE:** October 23, 2013

**MEMORANDUM TO:** Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

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

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## SUMMARY

On April 9, 2013, the Department of Commerce (Department) published its preliminary results in this countervailing duty administrative review.<sup>1</sup> On May 9, 2013, the Department received case briefs from Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB) and Wheatland Tube Company (Wheatland).<sup>2</sup> On May 14, 2013, the Department received a rebuttal brief from Toscelik Profil ve Sac Endustrisi A.S. (Toscelik Profil).

After analyzing the comments, we have made 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 Group, BMB, and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, Borusan), Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan AS) 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 (collectively, Toscelik), 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.

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<sup>1</sup> See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 21107 (April 9, 2013) (*Preliminary Results*).

<sup>2</sup> Petitioners in this review are Wheatland Tube Company, Allied Tube and Conduit Corporation and TMK IPSCO, and United States Steel Corporation (collectively, Petitioners).

We received comments on the following issues with regard to the following respondents:

**Borusan**

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

**Comment 2:** Whether the Department Erred in Including Certain Eximbank Loans in the Department's Preliminary Benefit Calculation

**Erbosan**

**Comment 3:** Whether the Department Should Find Provision of Buildings and Land Use Rights for Less than Adequate Remuneration under the Free Zones Law Program Countervailable

**Toscelik**

**Comment 4:** Benchmark Used to Calculate the Benefit under the Osmaniye Organized Industrial Zone Program Used by Toscelik

**Comment 5:** Treatment of Investment Encouragement Program (IEP)

**SUBSIDIES VALUATION INFORMATION**

**A. Attribution of Subsidies**

19 CFR 351.525(b)(6)(i) states that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy.

**Borusan**

BMB and its affiliated foreign trading company, Istikbal, are both part of the Borusan Group.<sup>3</sup> BMB produces subject merchandise for both the home and export markets. During the period of review (POR), all subject merchandise exported to the United States was exported from Turkey by BMB. 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.

**Erbosan**

Erbosan AS was established in Kayseri, Turkey in 1974 as a joint stock company to produce welded steel black and galvanized water pipes. In 2000, the company established a branch at the Kayseri Free Zone, the trading company Erbosan FZB, which is owned 100 percent by Erbosan. Erbosan produces subject merchandise for both the home and export markets. During the POR, all subject merchandise exported to the United States was exported from Turkey by Erbosan.

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<sup>3</sup> 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 at 2.

Consistent with 19 CFR 351.525(c), in the final results we continued to attribute any subsidies received by Erbosan FZB to the sales of Erbosan. In accordance with 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Erbosan to the sales of Erbosan.

### 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. 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. The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.<sup>4</sup> No party in this proceeding has disputed this allocation period.

For non-recurring subsidies, we have 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 relevant sales (*e.g.*, total sales or total export sales) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, the benefits are allocated to the year of receipt rather than allocated over the AUL period.

### C. 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.<sup>5</sup> In its July 14, 2012, questionnaire response (QR) at Exhibit 25, Borusan submitted information about 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 consistent with 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.

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<sup>4</sup> See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

<sup>5</sup> See 19 CFR 351.505(a)(2)(ii).

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.<sup>6</sup> However, according to the Government of Turkey (GOT), there is no official national average short-term interest rate available in Turkey.<sup>7</sup> Therefore, consistent with our past practice in Turkey CVD proceedings,<sup>8</sup> 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.<sup>9</sup> "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.<sup>10</sup> The benchmark short-term Turkish Lira and Euro interest rates sourced from *The Economist* and the *Wall Street Journal*, respectively, however, do not include commissions or fees paid to commercial banks, i.e., they are nominal rates.

### 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.<sup>11</sup> 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 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

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<sup>6</sup> See 19 CFR 351.505(a)(3)(ii).

<sup>7</sup> See GOT's Initial Questionnaire Response at 17 (June 28, 2011).

<sup>8</sup> 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 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*).

<sup>9</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65362 (November 25, 1998) (*Preamble*).

<sup>10</sup> *Id.*

<sup>11</sup> See 19 CFR 351.505(a)(2)(ii).

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.<sup>12</sup> This deduction is to cover the expenditures without documentation incurred from exports, construction, maintenance, assembly, and transportation activities abroad.<sup>13</sup> 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.<sup>14</sup> 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, in these final results we continue to find that this tax deduction is a countervailable subsidy.<sup>15</sup> 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 program as it applies to the tax return filed during the POR.<sup>16</sup> 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.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>

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

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<sup>12</sup> See GOT's initial questionnaire response dated July 30, 2012, at II-4.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See, e.g., *Turkey Pipe 2010 Final Results*, and accompanying Issues and Decision Memorandum at "Deduction from Taxable Income for Export Revenue."

<sup>16</sup> See the Department's May 14, 2012, initial questionnaire at III-6 and III-19.

<sup>17</sup> See Erbosan's July 30, 2012, QR at III-16 and III-17.

<sup>18</sup> See Erbosan Verification Report at 7.

<sup>19</sup> *Id.*

instructed in the Department's initial questionnaire),<sup>20</sup> 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, as AFA we determine that Erbosan received the maximum amount of deduction possible under the program.<sup>21</sup> 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.

On this basis, in these final results we 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.<sup>22</sup> The SPRP program is designed to provide financial support to Turkish exporters, manufacturer-exporters and manufacturers supplying exporters.<sup>23</sup> This program is contingent upon an export commitment. Under SPRP, there is a limit of up to USD 20 million per company.<sup>24</sup> 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.<sup>25</sup>

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

<sup>21</sup> See the GOT's July 30, 2012, QR at II-4.

<sup>22</sup> See GOT's Initial Questionnaire at II-54 and Exhibit 29.

<sup>23</sup> *Id.* at 55.

<sup>24</sup> *Id.* at II-57.

<sup>25</sup> *Id.* at Exhibit 11.

For the final results, we continue to 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.<sup>26</sup>

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 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 determine that the net countervailable subsidy for this program is 0.14 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 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.<sup>27</sup> According to the GOT, all enterprises or industries established in the 49 provinces which have a gross domestic product (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.<sup>28</sup>

The GOT states that this program includes two levels of withholding based on where the enterprise is established in the 49 eligible provinces.<sup>29</sup> 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.<sup>30</sup> 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.<sup>31</sup> The GOT further

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<sup>26</sup> See *Turkey Pipe 2010 Final Results*, and accompanying Issues and Decision Memorandum at "Short-Term Pre-shipment Rediscount Program."

<sup>27</sup> See GOT's July 14, 2012, QR at II-47 and Exhibit 24.

<sup>28</sup> *Id.* at II-50 and Exhibit 24.

<sup>29</sup> See GOT's June QR at II-48.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

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.<sup>32</sup>

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.<sup>33</sup> Hence, the last date which the investment can benefit from this tax incentive program is December 31, 2012.<sup>34</sup>

During the POR, Toscelik reported that it received a benefit under this program with respect to its facility in the Osmaniye OIZ.<sup>35</sup> In these final 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 practice.<sup>36</sup>

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 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.<sup>37</sup> 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.<sup>38</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> See GOT's July 14, 2012, QR at II-48.

<sup>34</sup> *Id.*

<sup>35</sup> See Toscelik's July 30, 2012, QR at 21.

<sup>36</sup> See *Turkey Pipe 2010 Final Results*, and accompanying Issues and Decision Memorandum at "Law 5084: Withholding of income Tax on Wages and Salaries."

<sup>37</sup> See GOT's July 30, 2012, QR at II-64 and Exhibit 24.

<sup>38</sup> *Id.* at 64-65 and 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.<sup>39</sup> 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.<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup>

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.<sup>43</sup> Hence, the last date which the investment can benefit from this tax incentive program is December 31, 2012.<sup>44</sup>

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.<sup>45</sup> Because Toscelik produces hot-rolled coils at the Osmaniye 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.

In these final results, we find that the insurance premiums paid by the GOT on behalf of Toscelik under this program during the POR constitute 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 insurance premiums on wages and salaries that it would have had to pay absent this program. We further determine that Toscelik benefitted from the GOT's paying insurance premiums under this OIZ program pursuant to section 771(5)(E) of the Act in the amount of the insurance premiums 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.<sup>46</sup>

To calculate the benefit Toscelik received under the program, we summed the total amount of insurance premium savings reported by Toscelik during the POR.<sup>47</sup> To calculate the net subsidy

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<sup>39</sup> *Id.* at 64.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> See GOT's September QR at I-9

<sup>44</sup> *Id.* at 65.

<sup>45</sup> See Toscelik's July 30, 2012, QR at 28-29.

<sup>46</sup> See *Turkey Pipe 2010 Final Results*, and accompanying Issues and Decision Memorandum at "Law 5084: Incentive for Employers' Share in Insurance Premiums."

<sup>47</sup> See 19 CFR 351.509(a)(1).

rate, we divided the benefit by Toscelik's total sales during the POR. On this basis, we 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.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup>

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.<sup>51</sup> According to the GOT, in OIZs under this program, free parcels were allocated to companies that employ at least ten employees.<sup>52</sup> 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.<sup>53</sup>

According to the GOT, to apply for this program the investor fills out the application form and submits it to the OIZ administration.<sup>54</sup> The GOT states that the OIZ administration decides whether or not to allocate the land to the investor within 30 days.<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup> The GOT states that it cancels land allocations for those investors who have failed to start production within two years of the allocation.<sup>58</sup> In addition, the land allocations of investors who have ceased investment are cancelled.<sup>59</sup>

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<sup>48</sup> See GOT's July 30, 2012, QR at II-70.

<sup>49</sup> *Id.* at II-70 and Exhibit 24.

<sup>50</sup> *Id.* at II-70.

<sup>51</sup> *Id.* at II-70.

<sup>52</sup> *Id.* at 71.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 72.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

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.<sup>60</sup> The Department found this program to be countervailable in the prior review.<sup>61</sup> 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.<sup>62</sup> 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.<sup>63</sup> 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.<sup>64</sup>

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 incentives . . . shall not be entitled to incentives granted by this law.”<sup>65</sup> 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.<sup>66</sup> 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.<sup>67</sup> 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.<sup>68</sup> In these final 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 final results we continue to rely upon the land benchmark data used in the prior review. Specifically, we have used as our benchmark publicly available information

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<sup>60</sup> See Toscelik’s July 30, 2012, QR at 30.

<sup>61</sup> See *Turkey Pipe 2010 Final Results*, and accompanying Issues and Decision Memorandum at “Law 5084: Allocation of Free Land” at 12-14.

<sup>62</sup> *Id.*

<sup>63</sup> See Law 5084 at Article 7b, which is included in the GOT’s July 30, 2012, QR at Exhibit 24.

<sup>64</sup> *Id.* at Article 1.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> See *Preliminary Results* and accompanying Issues and Decision Memorandum at 12.

<sup>68</sup> See *Turkey Pipe 2010 Final Results*, and accompanying Issues and Decision Memorandum at “Law 5084: Allocation of Free Land.”

concerning industrial land prices in Turkey for purposes of calculating a comparable commercial benchmark price for land available in Turkey.<sup>69</sup> We find this land price may serve as a comparable commercial benchmark under 19 CFR 351.511(a)(2)(ii). However, for the reasons discussed in Comment 4 below, we have, based on comments from interested parties, revised the manner in which we calculated the land benchmark. Specifically, rather than weight the benchmark unit values by the area of the respective land plots, we have in these final results calculated the land benchmark using a simple average. Also, we have incorporated additional benchmark prices submitted earlier by Petitioners.<sup>70</sup> In addition, for the 2010 purchase, we limited the land benchmark to price stemming from 2010. We lack land prices corresponding to 2008. Therefore, we have used land prices from 2009 as a proxy.

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.<sup>71</sup> 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.<sup>72</sup> 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 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.<sup>73</sup>

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.<sup>74</sup> Because we have found and continue to find for purposes of these final 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 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 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.

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<sup>69</sup> 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.

<sup>70</sup> See Petitioners' March 26, 2012, "Memorandum to File regarding Placement of Land Price Information on the Record of Review", dated March 26, 2012 at Exhibit 4.

<sup>71</sup> See 19 CFR 351.524(b)(2).

<sup>72</sup> See 19 CFR 351.524(d).

<sup>73</sup> 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.

<sup>74</sup> See *Turkey Pipe 2010 Final Results*, and accompanying Issues and Decision Memorandum at Comment 5.

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. For the reasons discussed in Comment 4 below, in these final results we have calculated the land benchmark based on a simple average of the land unit values. Next, we divided the benefit amount received in 2010 by Toscelik's total sales for 2010. The resulting ratio was greater than 0.5 percent. Therefore, we allocated a portion of the benefit to the POR using the Department's standard grant allocation formula.<sup>75</sup> 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 2010 as the long-term discount rate utilized in the grant allocation formula.

To calculate the net subsidy rate, we divided the benefits Toscelik received in connection with the two land transactions by Toscelik's total sales during the POR. On this basis, we determine Toscelik's net subsidy rate under this program to be 0.57 percent *ad valorem*.

#### 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.<sup>76</sup> According to the GOT, the main objective of this program is to reduce inter-regional disparities and to increase employment.<sup>77</sup> 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.<sup>78</sup> 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.<sup>79</sup> 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. 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 was hired after the date set by the Law for operating undertakings which started business before April 1, 2005.<sup>80</sup> According to the GOT, energy support shall not exceed 50 percent of the electricity costs of the undertakings operating

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<sup>75</sup> See 19 CFR 351.524(d).

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

<sup>77</sup> *Id.* at 75.

<sup>78</sup> *Id.* and Exhibit 24.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at II-76.

in OIZs or Industry Zones and 40 percent of these costs for the undertakings operating in other areas.<sup>81</sup>

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

In these final results we determine that this program constitutes a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. We further determine that the energy subsidies provided under the program confer a benefit with the meaning of section 771(5)(E) of the Act in that Toscelik received grants from the GOT to offset its electricity costs. We also 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.<sup>88</sup>

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 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 determine Toscelik's net subsidy rate under this program to be 0.02 percent *ad valorem*.

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 77.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> See Toscelik's July 30, 2012, QR at 30.

<sup>88</sup> See *Turkey Pipe 2010 Final Result*, and accompanying Issues and Decision Memorandum at "Law 5084: Energy Support."

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

The program is administered by the Ministry of Finance pursuant to article 4 of Law No. 3365, which came into force on January 1, 1987.<sup>89</sup> The program's objective is to increase the investment opportunities in OIZ's.<sup>90</sup> The GOT provides an exemption of property tax for the first 5 years following the completion date of the construction of buildings.<sup>91</sup> According to the GOT, there are 252 OIZ's in Turkey.<sup>92</sup>

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.<sup>93</sup>

In these final 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 determine that tax benefits under the program conferred a benefit under section 771(5)(E) of the Act. Further, we 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.<sup>94</sup> No new information has been presented in this review that leads us to reconsider our prior findings in these final 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 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.<sup>95</sup>

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.<sup>96</sup> The Corporate Income Tax Exemption under the Free Zones Law program represents an exemption of income tax or corporate tax with regard to earnings

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

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 81.

<sup>92</sup> *Id.* II-82.

<sup>93</sup> See Toscelik's July 30, 2012, QR at 32.

<sup>94</sup> See *Turkey Pipe 2010 Final Results*, and accompanying Issues and Decision Memorandum at "OIZ: Exemption from Property Tax."

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

<sup>96</sup> *Id.* at II-103.

generated in free zones in Turkey.<sup>97</sup> 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.<sup>98</sup> The corporate income tax rate applicable to tax year 2010 was 20 percent.<sup>99</sup> 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.<sup>100</sup> During the POR, Erbosan's wholly-owned branch, Erbosan FZB, received income tax exemptions under this program.

We 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 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 determine Erbosan's net subsidy rate to be 0.21 percent *ad valorem*.

#### I. 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.<sup>101</sup> 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.<sup>102</sup> 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.<sup>103</sup> In these final results, we continue to find that Toscelik's receipt of Certificate 88512 did not give rise to a countervailable subsidy because the GOT issued the certificate during a time (prior to January 1, 2009) when the IEP operated in a manner that was not specific. The other certificate, Certificate 100814 B was issued during the POR and has not been previously reviewed by the Department.<sup>104</sup>

In the *Preliminary Results*, the Department treated Toscelik's IEP certificate 100814B as having been received prior to January 1, 2009, and, thus, found that any benefits received in connection

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<sup>97</sup> *Id.* at II-107.

<sup>98</sup> *Id.* at II-105 and II-107.

<sup>99</sup> See Exhibit 1 of the GOT's July 30, 2012, QR.

<sup>100</sup> *Id.* at II-107.

<sup>101</sup> See *Turkey Pipe 2010 Final Results*, and accompanying Issues and Decision Memorandum at "Investment Encouragement Program (IEP): Customs Duty Exemptions."

<sup>102</sup> See Toscelik's July 30, 2012, QR at 35; see also Borusan's July 14, 2012, QR at 35-36.

<sup>103</sup> See Toscelik's July 30, 2012, QR at 35 and Exhibit 19 at 1-7; see also *Turkey Pipe 2010 Final Results*, and accompanying Issues and Decision Memorandum at "Investment Encouragement Program (IEP): Customs Duty Exemptions."

<sup>104</sup> See Toscelik's July 30, 2012, QR at 35 and Exhibit 19 at 8-22.



with the license were not specific. However, based on Petitioners' case brief arguments and upon further review of the record, we find that the license was received after January 1, 2009. As a result, we find that Toscelik received benefits from this program pursuant to the post-2008 modified IEP regime, under which the benefits were limited by the express inclusion of certain enterprises or industrial sectors and the express exclusion of others, as well as restricted to certain investments in designated regions. For example, the decree governing the post-2008 iteration of the IEP program limits the duty and value-added tax (VAT) exemptions to firms that make investments in excess of TL 50 million, a threshold that Toscelik met.<sup>105</sup> Additionally, the decree limits such exemptions for iron and steel investments to certain regions.<sup>106</sup> Therefore, based on the information contained in the legislation that governs the IEP program, we find that duty and VAT exemptions Toscelik received in connection with Certificate 100814B constitute a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act and confer a benefit within the meaning of 771(5)(E) of the Act in the amount of the tax savings. Further, we find that this program is limited to firms making investments in excess of TL 50 million as well as to firms located in certain geographic regions and, thus, is specific under sections 771(5A)(D)(i) and (iv) of the Act, respectively.

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.<sup>107</sup> 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. Thus, we 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.<sup>108</sup>

To calculate benefit, we derived the amount of taxes that Toscelik would have paid absent the program. We then divided the benefit amount by Toscelik's total sales during the POR. On this basis, we determine Toscelik's net subsidy rate to be 0.04 percent *ad valorem*.

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

### **A. Inward Processing Certificate Exemption**

Under the Inward Processing Certificate (IPC)<sup>109</sup> 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

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<sup>105</sup> See Toscelik's QR at 35 and Toscelik's January 4, 2013, SQR at 1-2 and Exhibit 1.

<sup>106</sup> See GOT 5<sup>th</sup> Supplemental Questionnaire Response at Exhibit 1.

<sup>107</sup> See Borusan's July 19, 2012, QR at 35.

<sup>108</sup> See *Turkey Pipe 2010 Final Results*, and accompanying Issues and Decision Memorandum at "Investment Encouragement Program (IEP): Customs Duty Exemptions."

<sup>109</sup> 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.

Drawback System). Under the Suspension System, companies provide a letter of guarantee that is returned to them upon fulfillment of the export commitment.<sup>110</sup>

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.<sup>111</sup> The Ministry of Economy is the authority responsible for administering the program.<sup>112</sup> 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.<sup>113</sup> 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.<sup>114</sup> 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.<sup>115</sup> 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.<sup>116</sup>

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.<sup>117</sup> 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.<sup>118</sup> No new information is on the record of this review to warrant a reconsideration of the Department’s earlier findings.

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<sup>110</sup> See GOT’s July 30, 2012, QR at II-41 and II-42.

<sup>111</sup> *Id.* at II-43.

<sup>112</sup> *Id.* at II-40.

<sup>113</sup> *Id.* at II-43.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.* at 41-43.

<sup>116</sup> 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.

<sup>117</sup> See *Turkey Pipe 2010 Final Results*, and accompanying Issues and Decision Memorandum at “Inward Processing Certificate Exemption.”

<sup>118</sup> *Id.*; see also *Wire Rod* and accompanying Issues and Decision Memorandum at Comment 8.

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 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,<sup>119</sup> we 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 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 determine that this aspect of the IPC program was not used.

**B. 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.<sup>120</sup> 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.<sup>121</sup>

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 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.<sup>122</sup> Nor is there other record information that would indicate that Kayser A.S. is a GOT authority.

**III. Programs 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 five 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

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<sup>119</sup> See, e.g., *Turkey Pipe 2010 Final Results*, and accompanying Issues and Decision Memorandum at "Inward Processing Certificate Exemption."

<sup>120</sup> See GOT's July 30, 2012, QR at II-1 and at Exhibit 42.

<sup>121</sup> *Id.* II-101.

<sup>122</sup> See Exhibit S-14a of Erbosan's September 24, 2012, QR; see also Erbosan Verification Report at 11.

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 five 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.<sup>123</sup> The Turkish Treasury transfers funds to the Social Security Institution on a monthly basis.<sup>124</sup>

The Department continues to find this program is 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 by exempting the employer's share of insurance premium paid to the Treasury for the handicapped workers. In the *Turkey Pipe 2008 Final Results*<sup>125</sup>, 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.<sup>126</sup> We find that the deductions under Law 5510 are 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 final 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.

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<sup>123</sup> See Erbosan's July 30, 2012, QR III-59 and the GOT's November 23, 2012, QR at 1.

<sup>124</sup> *Id.* at 3.

<sup>125</sup> 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).

<sup>126</sup> See *Certain Welded Carbon Steel Standard Pipe From Turkey: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR at 16439, 16442-16443, dated April 1, 2010 (Turkey Pipe 2008 Preliminary Results) and unchanged in *Turkey Pipe 2008 Final Results*.

#### D. 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.<sup>127</sup> 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.<sup>128</sup>

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.<sup>129</sup> 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.<sup>130</sup>

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.<sup>131</sup>

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

#### IV. Programs 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.<sup>132</sup> The Turkish Ministry of Finance is responsible for administering this program. According to the

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<sup>127</sup> See GOT's November 9, 2012, QR at Exhibit 2.

<sup>128</sup> See GOT's July 30, 2012, QR at II-116.

<sup>129</sup> See GOT Verification Report at 3-4.

<sup>130</sup> See *Turkey Pipe 2010 Final Results*, and accompanying Issues and Decision Memorandum at "Inward Processing Certificate Exemption;" see also *Turkey Pipe 2008 Preliminary Results*, 75 FR at 16443-16444, unchanged in *Turkey Pipe 2008 Final Results*.

<sup>131</sup> 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 at Comment 3.

<sup>132</sup> See GOT's July 30, 2012, QR at II-109.

GOT, the program aims to increase investment and employment opportunities.<sup>133</sup> 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.<sup>134</sup>

For these final 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.<sup>135</sup> Further; at verification we confirmed that Erbosan did not use this program during the POR.<sup>136</sup>

#### B. Other Programs Not Used

We examined the following programs and 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
- 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

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<sup>133</sup> *Id.* at II-110.

<sup>134</sup> *Id.* at II-109; *see also* GOT’s July 30, 2012, QR at Exhibit 42.

<sup>135</sup> *See* Erbosan’s July 30, 2012, QR at Exhibit 29.

<sup>136</sup> *See* Erbosan’s Verification Report at 13.

- Pre-shipment Export Credits
- OIZ: Exemption from Building and Construction Charges
- OIZ: Exemption from Amalgamation and Allotment Transaction Charges

## **TOTAL AD VALOREM RATE**

For the period January 1, 2011, through December 31, 2011, the total net subsidy rate for Borusan is 0.19 percent *ad valorem* and for Erbosan is 0.30 percent *ad valorem*, which are *de minimis* pursuant to 19 CFR 351.106(c). The total net subsidy rate for Toscelik during the same period is 0.83 percent *ad valorem*.

## **ANALYSIS OF COMMENTS**

### **Borusan**

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

#### **Case Brief Arguments of Borusan**

- The Department made a ministerial error with respect to the bank guarantee fees paid by BMB and its affiliates. Namely, the Department failed 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 affiliate, Istikbal.
- The Department’s reasoning in the *Preliminary Results* regarding the offset in question is contradictory. In particular, in the Decision Memorandum accompanying the *Preliminary Results* at the 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 commissions.”<sup>137</sup> However, in the Decision Memorandum accompanying the *Preliminary Results* at the section on Short Term Pre-shipment Rediscount Program section the Department 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.<sup>138</sup>
- The offset for guarantee fees on Turkish Eximbank loans is “authorized” by section 771(6)(A) of the Act.
- Further, in the previous reviews the Department has included this offset in question and should do so in this review. Additionally, 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.<sup>139</sup>

#### **Rebuttal Brief Arguments of Petitioners**

Petitioners did not comment on the issue.

<sup>137</sup> See *Preliminary Results*, and accompanying Decision Memorandum at 4.

<sup>138</sup> Id. at 7.

<sup>139</sup> See Borusan’s Case Brief at pages 5-6.

**Department's Position:** We agree that we erred in our calculations with respect to certain preferential Turkish Eximbank loan programs used by Borusan. 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 benefits Borusan received in connection with certain Turkish Eximbank loans.<sup>140</sup> Therefore, the Department finds that it inadvertently did not offset this expense based on the amount of fees reported by Borusan. For these final results, the Department has revised the calculations as correctly explained in the *Preliminary Results*. For further discussion, see Borusan's Final Results Calculation Memorandum.<sup>141</sup>

**Comment 2:** Whether the Department Erred in Including Certain Eximbank Pre-shipment Rediscount Loans in the Department's Preliminary Benefit Calculation

*Case Brief Arguments of Borusan*

- It has been the Department's long term policy to calculate loan benefits based on the date that interest payment is due. Borusan reported loans according to the instructions in the Department's initial questionnaire. Specifically, Borusan reported all Eximbank pre-shipment loans on which interest was paid during the POR.
- However, in calculating the benefit under the Pre-shipment Rediscount Loans financing program, the Department inadvertently included certain loans on which no interest was paid during the POR.
- The Department should revise the calculations for the final results so that the benefit calculation is limited to interest payments made during the POR.

*Rebuttal Brief Arguments of Petitioners*

Petitioners did not comment on the issue.

**Department's Position:** The *Preamble* and 19 CFR 351.505(c) makes clear that the Department treats short-term loan benefits as recurring subsidies:

... the benefit of a short-term loan will be allocated (expensed) to the year(s) in which the firm is due to make interest payments on the loan. This approach, which essentially treats short-term loans as recurring subsidies, is consistent with longstanding Department practice.<sup>142</sup>

Thus, the Department calculates the benefit on short-term loans based on the amount of interest due during the POR. Thus, interest payments made prior to or after the period under examination are not included in the benefit calculation.

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<sup>140</sup> See *Preliminary Results*, and accompanying Decision Memorandum at 7.

<sup>141</sup> See Borusan's Final Results Calculation Memorandum dated October 24, 2013.

<sup>142</sup> See *Preamble to Countervailing Duty Regulations*, 63 FR 65348, 65407 (November 25, 1998) (*Preamble*).



We have reviewed the preliminary calculations and found that, in the *Preliminary Results*, the Department incorrectly included in the benefit calculation certain loans on which Borusan had no interest due during the POR. Therefore, in the calculations for the final results, we have corrected the inadvertent error by removing these loans from the benefit calculation.

### **Erbosan**

#### **Comment 3: Whether the Department Should Find Provision of Buildings and Land Use Rights for Less than Adequate Remuneration under the Free Zones Law Program Countervailable**

##### **Case Brief of Petitioners**

- 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. In the *Preliminary Results*, the Department incorrectly concluded 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.
- The record does not support a conclusion that Kayser A.S. was the owner prior to Erbosan's acquisition of the land. The GOT failed to provide documentation to substantiate its claim about the transfer of ownership from the Turkish Treasury to Kayser A.S. Further, at verification, Erbosan failed to document how Kayser A.S. became the owner of the land in the Kayseri Free Zone.
- Furthermore, evidence on the record indicates that the GOT is the "ultimate" owner of the Kayseri Free Zone rather than Kayser A.S.<sup>143</sup> For example, in the Turkish Free Zones Law number 3218 (the Free Zones Law) there is no clause that a private party may become the owner of land located in the free zone. The GOT Verification Report indicates that the GOT approves the establishment of free zones in Turkey, their activities and management, and retains ownership of the land in the free zones, including the land on which Erbosan's operations are located.<sup>144</sup>
- Further, the Free Zones Law governs the establishment and management of free zones in Turkey. Specifically, Article 4 of the Free Zones Law states that any company seeking to operate in a Turkish free zone must seek the approval of the GOT Supreme Coordination Council of Economic Affairs.<sup>145</sup>
- Additionally, Article 5 of the Free Zones Law demonstrates that the ultimate ownership of the land remains with the GOT. Plots and buildings in a free zone can be leased by the GOT for forty-nine years to the companies in Turkey. Therefore, the Department should treat Erbosan's purchase of land in the Kayseri Free Zone as a long-term grant of land that will revert to the GOT at the end of leasing period.<sup>146</sup>

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<sup>143</sup> See Petitioners' Case Brief dated May 9, 2013 at page 12.

<sup>144</sup> See Memorandum from John Conniff, Senior International Trade Analyst, AD/CVD Enforcement, Office 8 to Eric Greynolds, Program Manager, AD/CVD Enforcement, Office 8, regarding "Verification of Information submitted by the GOT," (GOT Verification Report) dated February 28, 2013 at page 5.

<sup>145</sup> See the GOT's QR at Exhibit 42 dated July 30, 2013.

<sup>146</sup> See Petitioners' Case Brief at pages 11-12.

- Thus, the record demonstrates that Kayser A.S. is acting as the GOT's leasing agent and manager of the Kayseri Free Zone, rather than as an independent owner and operator of the Kayseri Free Zone.<sup>147</sup>
- The process of obtaining land in the Kayseri Free Zone is "nearly identical" to that followed by Toscelik in obtaining land in the Osmaniye OIZ.<sup>148</sup> Therefore, the Department should find the Kayseri Free Zone is a GOT authority and Kayser to be an authority capable of providing a financial contribution, just as the Department did in its preliminary findings with regards to the Osmaniye OIZ operator.
- Furthermore, consistent with its preliminary findings the Department should find 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.
- In addition, consistent with 19 CFR 351.511(a)(2)(i), the Department should calculate the benefit from this program by comparing the price Erbosan paid to a comparable commercial benchmark price for land available in Turkey.
- Finally, the benefit from this program should be allocated beginning in 2008. Though Erbosan signed the land acquisition agreement in 2006, there is evidence that the actual land transfer was not finalized until December 2008. Accordingly, while the discount rate used to allocate the benefit over the AUL in this case should be based on 2006 data consistent with 19 CFR 351.524(d)(3)(i), the year of receipt for purposes of the allocation formula described under 19 CFR 351.524(d)(1) should be 2008.

#### Rebuttal Arguments of Erbosan

Respondent did not comment on the issue.

**Department's Position:** Consistent with the *Preliminary Results*, we continue to find that Erbosan's purchase of land from Kayser A.S. did not give rise to a financial contribution. Specifically, we find that Erbosan purchased the land in the Kayseri Free Zone from Kayser A.S., which the record establishes as a private entity. Thus, the transaction does not constitute a government financial contribution under section 771(5)(D)(iii) of the Act.

The findings of the GOT verification report indicate that there are three ownership models in the free zone: (1) the state owns the land, (2) the state owns land but the infrastructure is built by the private sector, or (3) both land and infrastructure are owned privately.<sup>149</sup> In the case of the Kayseri Free Zone, the GOT reported that the land sold to Erbosan was privately held.<sup>150</sup> Therefore, contrary to Petitioners' contentions, information on the record supports the conclusion that Erbosan acquired the land from a private entity.

Other information on the record supports the findings contained in the GOT Verification Report. For example, proprietary ownership information (*e.g.*, information concerning board members and shareholders) examined at verification indicates that Kayser A.S. is owned by individuals

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<sup>147</sup> *Id.* at page 14.

<sup>148</sup> See Petitioners' Case Brief at page 8 dated May 9, 2013.

<sup>149</sup> See GOT Verification Report at 5.

<sup>150</sup> *Id.*

and not GOT authorities.<sup>151</sup> Further, we find that the sales contract between Kayser A.S. and Erbosan for the land in question, the sales invoice, and land deed contain no information that would indicate that the GOT dictated or otherwise influenced the terms of sale.<sup>152</sup> Lastly, we find that Article 5 of Free Zones Law 3218 indicates that land, building plots, and buildings in free zones may be leased or granted as an easement to investor users of free zones.<sup>153</sup>

Petitioners argue that Article 4 of the Free Zones Law, which states that any company seeking to operate in a Turkish Free Zone must seek the approval of the GOT's Supreme Coordination Council of Economic Affairs, demonstrates that Kayser A.S. sold Erbosan the land in question for LTAR. However, we find that the fact that the GOT has approval authority over firms that locate in the Turkish Free Zone does not, in and of itself, serve as a sufficient basis for the Department to conclude that Kayser A.S. acted as a GOT authority or was indirectly compelled by the GOT to sell the land in question to Erbosan for LTAR.

We find there is no basis to conclude that the GOT's approval authority somehow resulted in the GOT's *de facto* ownership of the land that Kayser A.S. sold to Erbosan. As noted above, record evidence indicates that Kayser A.S. operates as a private entity. Additionally, the deed to the land in question was held and transferred by Kayser A.S. to Erbosan, thus demonstrating that it was Kayser A.S. and not the GOT that was the entity that possessed the land at the time of the sale. For these reasons, we conclude that the sale of the land by Kayser A.S. did not give rise to a financial contribution as described under section 771(5)(D)(iii) of the Act.

We disagree with Petitioners' argument that the Department should treat the land obtained by Erbosan in the Kayseri Free zone on the same grounds as the land obtained by Toscelik in the Osmanyie OIZ. We find that the circumstances surrounding Erbosan's land acquisition in the Kayseri Free Zone were different from those surrounding Toscelik's land acquisition in the Osmanyie OIZ. Namely, Erbosan obtained its land from a private entity whereas Toscelik obtained its land from an entity that the Department finds is a Turkish government authority. Therefore, we find no record evidence to support Petitioners' argument that Erbosan obtained land in the Kayseri Free Zone through a "nearly identical" process as Toscelik obtained land in the Osmanyie OIZ.

### **Toscelik**

#### **Comment 4: Benchmark Used to Calculate the Benefit under the Land for LTAR Osmaniye Organized Industrial Zone Program Used by Toscelik**

##### **Case Brief of Petitioners**

- The Department should utilize the data Petitioners placed on the record when calculating the land for LTAR benchmark.

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<sup>151</sup> See Exhibit S-14a of Erbosan's September 24, 2012, QR; see also Erbosan Verification Report at 11.

<sup>152</sup> See Exhibits 20, 21, and 23 of Erbosan's July 30, 2012, QR, which contain the sales contract, sales invoice, and deed, respectively.

<sup>153</sup> See Exhibit S-13 of Erbosan's September 24, 2012, QR; see also the GOT's July 30, 2012, QR at II-100 and Exhibit 42.

- Further, when calculating the benchmark, the Department should use a simple average, rather than a weighted average, which the Department used in the *Preliminary Results* and in previous administrative reviews. It is the Department's practice to use a simple average of available land prices.
- Also, the Department should include in its land benchmark only parcels that are shown to have access to industrial electricity and/or natural gas.

*Rebuttal Arguments of Toscelik*

- The Department's derivation of the land benchmark methodology has been established in previous reviews and should not be subject to alterations in subsequent reviews.
- Additionally, the Department should reject the Petitioners averaging arguments because they amount to nothing more than a land benchmark containing data points which are most favorable to high valuation.

**Department's Position:** In consideration of Petitioners' comments and upon further review of the timely additional benchmark data submitted by Petitioners, the Department finds that the data Petitioners placed on the record<sup>154</sup> are appropriate for inclusion in our benchmark calculation. We have decided to add Petitioners' twelve additional data points to our existing data set to build a more robust data set since these data are from the same information sources. We have, therefore, incorporated the data in our benchmark in these final results. However, we disagree with Petitioner's request to limit the data to only those land parcels that indicate natural gas/electrical facilities because we find the information provided to be insufficient to create a more accurate benchmark. Specifically, a one-word reference in an "Other Features" category that does not differentiate between commercial and residential does not provide sufficient information to find that one price is more comparable than another.

We agree with Petitioners that the Department normally derives the benchmark price from a simple average of the reference land prices available in the record.<sup>155</sup> Given the lack of sufficient detail regarding the characteristics of the land involved in the transactions underlying the benchmark data -- in particular, the extent to which the composition of our reference data set reflect the broader market, *e.g.*, whether the proportion of large/small tracts in the benchmark data compares to the proportion of large/small tracts throughout Turkey--we have no basis to assume that any one parcel of land among the reference set is more representative than any other parcel for the purpose of deriving a market price by which to determine adequate remuneration

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<sup>154</sup> See Petitioners' August 20, 2012 Factual Information Submission at Exhibit 4.

<sup>155</sup> See *Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 77 FR 32930 (June 4, 2012), at "Land Benchmarks," unchanged in the *Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 75973 (December 26, 2012), and accompanying Issues and Decision Memorandum at 6. Moreover, the Department has also used simple when deriving a benchmark price for other types of inputs, *see, e.g.*, *Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination* 77 FR 75978 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 15; and *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28577 (May 21, 2010), and accompanying Issues and Decision Memorandum at Comment 14.

for the land in question. Moreover, obtaining more detailed information beyond the general comparability factors such as land-use classification would be impracticable for the Department. Given these inherent limitations, for these final results, we are applying a simple average, which gives all benchmark data on the record equal weight rather than weight based on a factor (or factors) which, in this case, have not been demonstrated to be relevant for an appropriate benchmark price.

#### **Comment 5: Treatment of Investment Encouragement Program (IEP)**

Background: Prior to the 2010 review, the Department found this program to be not countervailable on the basis that benefits were not specific. However, based on allegations from Petitioners of changes to the program starting in January 1, 2009, the Department, in the 2010 review, initiated an investigation of this program as it pertains to licenses issued starting January 1, 2009.

##### **Case Brief of Petitioners**

- Toscelik purchased imported and domestic machinery and equipment during the POR under the never-before-reviewed certificate 100814B. In the *Preliminary Results*, the Department incorrectly implied that certificate 100814B was received before January 1, 2009, when in fact it was received after January 1, 2009.
- Thus, in the *Preliminary Results*, the Department incorrectly concluded that Toscelik received benefits in connection with certificate 100814B during a time when the IEP program operated in a manner that was not specific.
- After January 1, 2009, the IEP program operated in a manner that provided benefits to a limited number of recipients, as evidenced by the fact that the GOT excludes certain industries from receiving VAT and import duty exemptions under the program.
- Thus, in the final results, the Department should find the exemptions received under IEP certificate 100814B to be *de jure* specific and countervailable.

##### **Rebuttal Arguments of Toscelik**

- The Department found the IEP program is not countervailable in the 2010 administrative review because the benefits were not specific. Certificate 100814B was issued under the same non-countervailable IEP program and the Department does not investigate countervailability on a certificate-by-certificate basis.

**Department's Position:** In the *Preliminary Results* of the instant review, we treated Toscelik's IEP certificate 100814B as having been received prior to January 1, 2009, and, thus, found that any benefits received in connection with the license were not specific. However, based on Petitioners' case brief arguments and upon further review of the record, we find that the license was received after January 1, 2009. As a result, we find that Toscelik received benefits from this program pursuant to the post-2008 modified IEP regime, under which the benefits were limited by the express inclusion of certain enterprises or industrial sectors and the express exclusion of others, as well as restricted to certain investments in designated regions.<sup>156</sup> Moreover, the

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<sup>156</sup> See Toscelik's July 30, 2012 QR at 36.

governing decree governing the post-2008 iteration of the IEP program limits the duty and VAT exemptions to firms that make investments in excess of TL 50 million decree limits, a threshold that Toscelik met. Additionally, this decree limits such exemptions for iron and steel investments to certain regions.<sup>157</sup> The Toscelik facility in question is located in one of the designated geographical regions specified under program. Therefore, for these final results, we determine that this program is specific under sections 771(5A)(D)(i) and (iv) of the Act and, thus, that Toscelik received countervailable benefits under the IEP program pursuant to a license granted after these modifications to the program were implemented.

## **V. 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*.

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Agree

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Disagree

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Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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Date

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<sup>157</sup> See the GOT's Fifth Supplemental Response at Exhibit 1, page 2.