C-489-819
Investigation
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OPIII: KJ/RC

DATE: February 19, 2014

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Negative Countervailing Duty Determination and Preliminary Negative Critical Circumstances Determination in the Countervailing Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey

I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of steel concrete reinforcing bar (rebar) in the Republic of Turkey (Turkey), as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On September 4, 2013, the Rebar Trade Action Coalition and its members[1] (collectively, Petitioner) filed a petition with the Department seeking the imposition of antidumping (AD) and countervailing duties (CVDs) on rebar from, *inter alia*, Turkey.[2] Supplements to the petition and our consultations with the Government of the Republic of Turkey (GOT) are described in the Initiation Checklist.[3] On October 2, 2013, the Department published the initiation of a CVD investigation on rebar from Turkey.[4]

[1] The members are Nucor Corporation, Gerdau Ameristeel US Inc., Commercial Metals Company, Cascade Steel Rolling Mills, Inc., and Byer Steel Corporation.
[2] *See* Letter from Petitioner regarding "Petition for the Imposition of Antidumping and Countervailing Duties on Steel Concrete Reinforcing Bar from Mexico and the Republic of Turkey " (September 4, 2013).
[3] *See* "Countervailing Duty Initiation Checklist: Steel Concrete Reinforcing Bar from Turkey" (September 24, 2013) (Initiation Checklist).
[4] *See Steel Concrete Reinforcing Bar from Turkey: Initiation of Countervailing Duty Investigations*, 78 FR 60831 (October 2, 2013) (*Initiation Notice*).

We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation. On September 25, 2013, we released the CBP entry data under administrative protective order (APO).[5]

We received respondent selection comments from Petitioner on October 25, 2013.[6] Also, on October 25, 2013, Petitioner submitted an additional subsidy allegation.[7] On November 14, 2013, we selected Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas) as the mandatory respondents[8] and issued the initial CVD questionnaire to those companies and the GOT.[9] On November 25, 2013, we declined to initiate on the additional subsidy allegation (*i.e.*, Purchase of Electricity for More Than Adequate Remuneration).[10]

Petitioner submitted a critical circumstances allegation on December 4, 2013,[11] and Icdas filed comments on that allegation on December 18, 2013.[12] On January 2, 2014, Petitioner subsequently filed rebuttal comments to Icdas' submission.[13]

We received timely responses to our initial CVD questionnaire from Habas on December 31, 2013, and Icdas and the GOT on January 2, 2014.[14]

On January10, 2014, we issued supplemental questionnaires to Icdas and the GOT,[15] and critical circumstances shipment questionnaires to Habas and Icdas.[16] Also on January 10, 2014, Petitioner submitted comments on the initial questionnaire responses filed by the GOT and Icdas, and submitted supplemental information to the alleged program Provision of Steam Coal for Less Than Adequate Remuneration (LTAR), on which the Department initiated.[17]

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[5] *See* Department Memorandum regarding "Release of Customs and Border Protection Data" (September 25, 2013).
[6] *See* Letter from Petitioner regarding "Respondent Selection Comments" (October 25, 2013).
[7] *See* Letter from Petitioner regarding "Additional Subsidy Allegation" (October 25, 2013).
[8] *See* Department Memorandum regarding "Respondent Selection" (November 14, 2013).
[9] *See* Department Letter to GOT regarding "Countervailing Duty Questionnaire" (November 14, 2013).
[10] *See* Department Memorandum regarding "Decision Memorandum on Additional Subsidy Allegation" (November 25, 2013).
[11] *See* Letter from Petitioner regarding "Critical Circumstances Allegation" (December 4, 2013) (Critical Circumstances Allegation).
[12] *See* Letter from Icdas regarding "Comments regarding Petitioner's Critical Circumstances Allegation" (December 18, 2013).
[13] *See* Letter from Petitioner regarding "Rebuttal to Icdas' Critical Circumstances Comments" (January 2, 2014).
[14] *See* Letter from Habas regarding "Initial Questionnaire Response" (December 31, 2014) (Habas IQR), Letter from Icdas regarding "Initial Questionnaire Response" (January 2, 2014) (Icdas IQR), and Letter from GOT regarding "Initial Questionnaire Response" (January 2, 2014) (GOT IQR).
[15] *See* Department Letter to GOT regarding "First Supplement Questionnaire" (January 10, 2014), and Department Letter to Icdas regarding "First Supplement Questionnaire" (January 10, 2014); *see also* Department Letter to Icdas regarding "Addendum to First Supplement Questionnaire" (January 17, 2014).
[16] *See* Department Letter to Habas regarding "Critical Circumstance Shipment Questionnaire" (January 10, 2014), and Department Letter to Icdas regarding "Critical Circumstance Shipment Questionnaire" (January 10, 2014).
[17] *See* Letter from Petitioner regarding "Comments on the Turkish Government's Response to Questions Regarding the Provision of Steam Coal for Less Than Adequate Remuneration" (January 10, 2014), and Letter from Petitioner regarding "Amendment of Subsidy Allegation" (January 10, 2014).

Habas and Icdas submitted their critical circumstances shipment questionnaire responses on January 15 and 17, 2014, respectively.[18]

On January 22, 2014, we issued a supplemental questionnaire to Habas.[19] Also on January 22, 2014, Petitioner submitted new factual information concerning benchmark pricing data for coal and natural gas.[20]

On January 27, 2014, the GOT submitted its supplemental questionnaire response for the Provision the Steam Coal for LTAR.[21] Also on January 27, 2014, we issued to Habas and Icdas clarification questionnaires regarding their submitted critical circumstances shipment data.[22] On January 28, 2014, Petitioner filed comments on questionnaire responses submitted by respondents regarding the Provision of Natural Gas for LTAR.[23] On January 29, 2014, Icdas filed its first supplemental questionnaire response.[24]

On January 29, 2014, Habas submitted its response to the Department's first supplemental questionnaire.[25] On January 31, 2014, we issued a second supplemental questionnaire to Icdas concerning the Provision the Steam Coal for LTAR.[26] Also on January 31, 2014, we issued a second and third supplemental questionnaire to the GOT regarding the Provision the Steam Coal for LTAR and the Provision the Natural Gas for LTAR.[27]

On February 3, 2014, Icdas submitted its clarification response with regard to its critical circumstances shipment data.[28] On February 4, 2014, Habas submitted it clarification response regarding its critical circumstances shipment data.[29] On February 5, 2014, Petitioner filed pre-preliminary comments.[30] On February 7, 2012, Icdas submitted its second supplemental questionnaire response on the Provision the Steam Coal for LTAR.[31] On February 10, 2014, the

[18] *See* Letter from Habas regarding "Response to Critical Circumstance Questionnaire" (January 15, 2014), and Letter from Icdas regarding "Response to Critical Circumstance Questionnaire" (January 17, 2014).
[19] *See* Department Letter to Habas regarding "First Supplemental Questionnaire for Habas Sinai ve Tibbi Istihsal Endustrisi A.S. (HABAS)" (January 17, 2014).
[20] *See* Letter from Petitioner regarding "Submission of Factual Information" (January 22, 2014).
[21] *See* Letter from GOT regarding "First Supplemental Questionnaire Response" (January 27, 2014) (GOT First SQR).
[22] *See* Department Letter to Habas regarding "Critical Circumstance Shipment Questionnaire" (January 27, 2014), and Department Letter to Icdas regarding "Critical Circumstance Shipment Questionnaire" (January 27, 2014).
[23] *See* Letter from Petitioner regarding "Comments on Questionnaire Responses" (January 28, 2014).
[24] *See* Letter from Icdas regarding "Supplemental CVD Questionnaire Response" (January 29, 2014) (Icdas First SQR).
[25] *See* Letter from Habas regarding "Steel Concrete Reinforcing Bar from Turkey; Habas supplemental questionnaire response" (January 29, 2014).
[26] *See* Department Letter to Icdas regarding "Second Supplemental Questionnaire" (January 31, 2014).
[27] *See* Department Letter to GOT regarding "Second Supplemental Questionnaire" (January 31, 2014), and Department Letter to GOT regarding "Third Supplemental Questionnaire" (January 31, 2014).
[28] *See* Letter from Icdas regarding "Critical Circumstance Shipment Questionnaire Response" (February 3, 2014).
[29] *See* Letter from Habas regarding "Steel Concrete Reinforcing Bar from Turkey; Habas supplemental questionnaire response (February 4, 2014).
[30] *See* Letter from Petitioner regarding "Pre-Preliminary Comments" (February 5, 2014).
[31] *See* Letter from Icdas regarding "Second Supplemental CVD Response" (February 7, 2014) (Icdas Second SQR).

GOT submitted its response to the second and third supplemental questionnaires on the Provision the Steam Coal for LTAR and the Provision the Natural Gas for LTAR.[32]

Extension of Preliminary Deadline: As explained in the memorandum from the Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 1, through October 16, 2013.[33] Accordingly, all deadlines in this segment of the proceeding were extended by an additional 16 days. Because the new deadline, December 14, 2013, fell on a non-business day (*i.e.*, a Saturday), in accordance with the Department's practice, the effective new deadline is the next business day.[34] As such, the revised deadline for the preliminary determination of this investigation became December 16, 2013.

On November 21, 2013, Petitioner requested the Department to postpone the preliminary determination of this investigation.[35] On December 9, 2013, the Department postponed the preliminary determination until February 19, 2014, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).[36]

B. Period of Investigation

The period of investigation (POI) is January 1, 2012, through December 31, 2012.

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and we encouraged all parties to submit comments within 20 calendar days of the signature date of that notice.[37] On November 1, 6, and 12, 2013, we received scope comments from Deacero S.A. de C.V. and Deacero USA.[38] On November 25, 2013, Petitioner filed rebuttal scope comments.[39]

We are evaluating the scope comments filed by the interested parties. We will issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigations, which are due for signature on April 18,

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[32] *See* Letter from the GOT regarding "Second Supplemental Questionnaire Response" (February 10, 2014) (GOT Second SQR), and Letter from the GOT regarding "Third Supplemental Questionnaire Response" (February 10, 2014) (GOT Third SQR).
[33] *See* Department Memorandum from Paul Piquado, Assistant Secretary for Enforcement and Compliance, regarding "Deadlines Affected by the Shutdown of the Federal Government" (October 18, 2013).
[34] *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).
[35] *See* Letter from Petitioner regarding "Request to Extend Preliminary Determination" (November 21, 2013).
[36] *See Steel Concrete Reinforcing Bar from Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,*78 FR 73838 (December 9, 2013).
[37] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); *see also Initiation Notice*.
[38] *See* Letters from Deacero S.A. de C.V. and Deacero USA regarding "Scope Comments" (placing comments made in AD investigation on rebar from Mexico (A-201-844) on the record of this CVD investigation (November 1 and 6, 2013); and Letter from Deacero S.A. de C.V. and Deacero USA regarding "Rebuttal Comments on Product Characteristics" (November 12, 2013).
[39] *See* Letter from Petitioner regarding "Rebuttal Scope Comments" (November 25, 2013).

2014. We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determinations after considering any relevant comments submitted in case and rebuttal briefs.

IV. SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the HTSUS primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth rebar). HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

V. INJURY TEST

Because Turkey is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a U.S. industry. On November 13, 2013, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of rebar from, *inter alia*, Turkey.[40]

VI. CRITICAL CIRCUMSTANCES

On December 4, 2013, Petitioner submitted its Critical Circumstances Allegation. In the Critical Circumstances Allegation, Petitioner alleges that there have been "massive imports" of subject merchandise in the months leading up to the September 4, 2013, Petition. Petitioner also alleges that there is a reasonable basis to believe that Habas and Icdas received subsidies in this investigation which are inconsistent with the World Trade Organization Agreement on Subsidies and Countervailing Measures (Subsidies Agreement).[41]

Section 703(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A) the alleged countervailable subsidy is inconsistent with the Subsidies Agreement, and (B) there have been massive imports of the subject merchandise over a relatively short period.

[40] *See* Steel Concrete Reinforcing Bar from Mexico and Turkey: Inv. No. 701-TA-502 and 731-TA-1227-1228 (Preliminary) (November 2013); and *Steel Concrete Reinforcing Bar from Mexico and Turkey*, 78 FR 68090 (November 13, 2013).

[41] *See, e.g.*, Initiation Checklist, at 12-15 and 23, where Petitioner alleges that the following programs are contingent upon exports: Pre-Shipment Export Credits from Turk Eximbank, Turkish Eximbank's Foreign Trade Company (FTC) Export Loans, Turk Eximbank's Pre-Export Credits Program, Short-term Export Credit Discount Program, Export Insurance Provided by Turk Eximbank, and Deductions from Taxable Income for Export Revenue.

When determining whether an alleged countervailable subsidy is inconsistent with the Subsidies Agreement, the Department limits its findings to those subsidies contingent on export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the Subsidies Agreement).[42]

In determining whether imports of the subject merchandise have been "massive," 19 CFR 351.206(h)(1) provides that the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, the Department will not consider imports to be massive unless imports during the "relatively short period" (comparison period) have increased by at least 15 percent compared to imports during an "immediately preceding period of comparable duration" (base period).[43]

Under 19 CFR 351.206(i), the Department defines "relatively short period" as normally being the period beginning on the date the proceeding commences (*i.e.*, the date the petition is filed) and ending at least three months later. Subparagraph (i) further explains that if the Department finds that importers, exporters, or producers had reason to believe, at some point prior to the beginning of the proceeding, that a proceeding was likely, then the Department may consider a period of not less than three months from that earlier time.

Citing to press articles as well as a meeting that GOT officials held with officials from the Department, Petitioner argues in its Critical Circumstances Allegation that Turkish exporters had knowledge of a possible case in advance of the actual filing of a petition.[44] Petitioner further alleges that due to trends associated with the months of peak construction activity, seasonality should be considered in the Department's base and comparison periods used in its analysis for Turkey.[45] Also, Petitioner argues that, apart from the standard base and comparison periods, the Department should also compare rebar trends on a year over year basis, as there is some seasonality with regard to rebar imports.[46] Specifically, Petitioner argues that information from the ITC's injury hearing concerning the rebar investigation indicates that that imports typically increase in the first half of the year to feed into the distribution network for consumption in the second and third quarters, which are the peak times for U.S. construction.[47]

Thus, contends Petitioner, to account for the Turkish exporters' prior knowledge of the Petition filing and seasonal trends, the Department should rely on alternate base and comparison periods (*i.e.*, December 2012-April 2013 and May 2013-September 2013, respectively) to analyze the import trends for Turkey.[48]

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[42] *See, e.g., Notice of Preliminary Negative Determination of Critical Circumstances: Certain New Pneumatic Off-the-Road Tires From the People's Republic of China*, 73 FR 21588, 21589-90 (April 22, 2008), unchanged in *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod From Germany*, 67 FR 55808, 55809 (August 30, 2002).
[43] *See* 19 CFR 351.206(h)(2).
[44] *See* Critical Circumstances Allegation, at 10.
[45] *Id*., at 14.
[46] *Id*., at 14-15.
[47] *Id*., at 14
[48] *Id*., at 15.

In its December 18, 2013, submission, Icdas argues that evidence of prior knowledge does not exist. Concerning the evidence cited by Petitioner (*e.g.*, the meeting held between Turkish and Departmental officials in June 2013 and press articles), Icdas argues that it does not constitute sufficient evidence of advanced knowledge of the Petition filing. Specifically, Icdas argues that the evidence cited by Petitioner is vague, contradictory, and, in the case of the meeting between Turkish and Departmental officials, devoid of any reference to an imminent petition filing.[49] Thus, Icdas argues that Petitioner's alternative base and comparison periods constitute nothing more than a "cherry picked" date ranged designed to create the illusion of an import surge of Turkish rebar.

Preliminary Critical Circumstances Determination

For purposes of this preliminary determination, we do not consider Petitioner's evidence of advanced knowledge by importers, exporters or producers to be sufficient evidence that would require us to rely on alternate base and comparison periods. Petitioner provides no evidence that the meeting held between Turkish officials and our officials discussed the possibility of rebar petitions being filed against Turkey.[50] Further, we find that the press articles cited by Petitioner as evidence of prior knowledge do not constitute sufficient evidence that Turkish rebar producers and exporters knew or should have known of the imminent filing of an AD or CVD petition on rebar from Turkey. Though the press articles quote industry sources discussing the possibility of a petition filing, the articles also quote members of the rebar industry dismissing the possibility of a petition filing as "saber rattling."[51] On this basis, we find that the articles, in and of themselves, do not constitute a sufficient basis for finding prior knowledge.

Concerning seasonality, both Petitioner and Icdas agree that rebar imports into the United States typically peak during the first half of the year.[52] Thus, we find the parties' arguments do not support the use of the base and comparison periods advocated by Petitioner because Petitioner's base period (*i.e.*, December 2012 – April 2013) contains several months when imports are low relative to the peak demand months in early spring through early summer, as evidenced by seasonal import data from the ITC that is included in Icdas' submission.[53] Rather, for purposes of the preliminary determination, we find it more appropriate to evaluate whether critical circumstances exist using the standard base and comparison periods of June 2013-August 2013 and September 2013-November 2013, respectively.

As explained in this preliminary determination, we find that Habas and Icdas have used subsidy programs that are contingent upon exports. Therefore, we preliminarily determine that there is a reasonable basis to believe or suspect that these two programs are inconsistent with the Subsidies Agreement.

[49] *See* Icdas Critical Circumstances Submission (December 18, 2013), at 6.
[50] *See* Critical Circumstances Allegation, at 10.
[51] *Id.*, at Exhibit 7.
[52] *See* Critical Circumstances Allegation, at 14; *see also* Icdas Critical Circumstances Submission (December 18, 2013), at 2.
[53] *See also* Icdas Critical Circumstances Submission (December 18, 2013), at Exhibit 6.

In determining whether there were massive imports from Habas and Icdas, we analyzed company-specific shipment data for the period June 2013-August 2013 and September 2013-November 2013.[54] These data indicate that there was not a massive increase in shipments of subject merchandise to the United States by Habas and Icdas during the three month period following the filing of the Petition.[55] Specifically, shipments of subject merchandise to the United States from the two companies decreased, both in terms of volume and value.

With regard to whether imports of subject merchandise by the "all other" exporters of rebar from Turkey were massive, we preliminarily determine that because there is evidence of the existence of countervailable subsidies that are inconsistent with the Subsidies Agreement, an analysis is warranted as to whether there was a massive increase in shipments by the "all other" companies, in accordance with 19 CFR 351.206(h)(1). Therefore, we analyzed, in accordance with 19 CFR 351.206(i), monthly shipment data for the period June 2013-August 2013 and September 2013-November 2013, using shipment data from the ITC's Dataweb, adjusted to remove the shipments by the Habas and Icdas.[56] For this analysis, we used only the data pertaining to the HTSUS numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010, as these categories represent the primary HTSUS numbers under which subject merchandise enters the United States. These data indicate that there was not a massive increase in shipments of subject merchandise to the United States during the three month period following the filing of the Petition.[57]

Therefore, we preliminarily determine that critical circumstances do not exist for imports of rebar from Turkey. Although the preliminary determination indicates that Habas and Icdas benefited from programs that are inconsistent with the Subsidies Agreement, the companies' shipment data do not indicate a massive increase in shipments of subject merchandise to the United States nor do shipment data from the ITC's dataweb indicate a massive increase in shipments of subject merchandise by the "all others" companies. Therefore, we preliminarily determine that critical circumstances do not exist with regard to imports of rebar from Turkey.

We will make a final determination concerning critical circumstances for rebar from Turkey when we issue our final countervailable subsidy determination in this investigation.

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[54] We instructed Habas and Icdas to base their shipment date on the bill of lading date.

[55] *See* Memorandum to Eric B. Greynolds, Program Manager, "Preliminary Analysis of Critical Circumstances Shipment Data for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas)" (February 19, 2014), and Memorandum to Eric B. Greynolds, Program Manager, "Preliminary Analysis of Critical Circumstances Shipment Data for Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas)" (February 19, 2014).

[56] *See, e.g., Certain Oil Country Tubular Goods from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination*, 74 FR 47210, 47212 (September 15, 2009), unchanged in *Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination: Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009).

[57] *See* Memorandum to Eric B. Greynolds, Program Manager, "Preliminary Analysis of Critical Circumstances Shipment Data for All Others Rate Companies" (February 19, 2014).

VII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of 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.[58] The Department notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding has disputed this allocation period.

Furthermore, for non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

Cross Ownership: In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to the Department's regulations further clarifies the Department's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through

[58] *See* U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

> common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.[59]

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.[60]

Habas –Established in 1956 as an oxygen producer under a different name, the company changed its name to Habas in 1964. Habas' steel division produces and sells carbon steel billets, rebar, and wire rod, which the company produces at its facility in Aliaga. Habas also owns and operates two power plants, one near Izmir and one near Bilecik. The company's industrial gas division produces, distributes, and sells oxygen, nitrogen, and other industrial gases. The company's corporate headquarters are located in Istanbul.[61]

Habas reported that the company is family owned and has a variety of affiliated companies.[62] Habas responded to the Department's questionnaires on behalf of itself only, claiming that there is no cross-owned company that met the criteria for providing a response.[63] We preliminarily determine that none of Habas' affiliated companies meet any of the conditions of 19 CFR 351.525(b)(6)(ii)-(v). Therefore, we have preliminarily not included any company other than Habas in our subsidy analysis.

Icdas –In its questionnaire response, Icdas responded on behalf of itself and one cross-owned affiliate: Icdas Elektrik Enerjisi Uretim Yatirim A.S. (Icdas Elektrik). Icdas, established in 1969, is a privately-owned corporation and the parent company of a group of companies whose operations include steel manufacturing, steel trading, ocean and transportation, freight brokerage, and insurance.[64] Icdas and its affiliates are family-owned, private corporations.[65]

Icdas is the sole manufacturing company of the subject rebar and the only sales company for the export of rebar to the United States.[66] Icdas produces rebar at its facilities in Karabiga, Canakkale Turkey.[67] Icdas' corporate headquarters and sales offices are located in Istanbul.[68]

Icdas Elektrik, established in 2006, is an electricity production company, whose power plant is located near Icdas' manufacturing facilities in Karabiga, Canakkale.[69] Icdas and Icdas Elektrik

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[59] *See Countervailing Duties*, 63 FR 65348, 65401 (November 25, 1998).
[60] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[61] *See* Habas IQR (January 2, 2014), at 1-6.
[62] *Id.*, at 2 and Exhibit 1.
[63] *Id.*, a 3-4.
[64] *See* Icdas IQR (January 2, 2014), at 2 and 6.
[65] *Id.*, at 7.
[66] *Id*., at 2 and 6.
[67] *Id*.
[68] *Id*.
[69] *Id*., at 5-7.

have a common ownership, board of directors, and managers.[70] We preliminarily determine that Icdas and Icdas Elektrik are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) through common family ownership and control.[71] Though there is cross-ownership, we preliminarily find no record evidence indicating that Icdas Elektrik benefitted from countervailable subsidies during the POI.

Concerning the other affiliated companies, which are involved in port loading and handling services,[72] domestic market sales, insurance, transportation, freight brokerage, and electricity trading, we preliminarily find that these companies do not meet any of the conditions of 19 CFR 351.525(b)(6)(ii)-(v). Therefore, we have preliminarily not included these companies in our subsidy analysis.

Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.

C. Short-Term Benchmark Interest Rate

We are examining export financing provided by the GOT.[73] To determine whether government-provided loans confer a benefit, the Department uses, where possible, company-specific interest rates for comparable commercial loans.[74] When loans are denominated in a foreign currency, 19 CFR 351.505(a)(2)(i) directs us to use a benchmark denominated in the same foreign currency as the loan. As discussed below at "Rediscount Program," Icdas reported that it paid interest against export financing, denominated in U.S. dollars (USD), that was outstanding during the POI. Icdas submitted a weighted-average interest rate, along with the underlying data, that it paid on comparable short-term, USD commercial loans during the POI.[75] Consistent with 19 CFR 351.505(a)(2)(ii), we preliminarily determine to use the weighted-average interest rate that Icdas submitted on comparable short-term loans as the benchmark to calculate the benefit under the Rediscount Program.[76]

VIII. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following.

[70] *Id*., at 3.
[71] We use the term Icdas Companies to collectively refer to Icdas and Icdas Elektrik.
[72] *Id*., at 2-3.
[73] *See* Initiation Checklist.
[74] *See* 19 CFR 351.505(a)(2)(ii).
[75] *See* Icdas IQR (January 2, 2014), at Exhibit 25.
[76] *See* Department Memorandum regarding "Icdas Preliminary Calculations" (February 19, 2014).

A. Programs Preliminarily Determined To Be Countervailable

1. Provision of Natural Gas for LTAR

We initiated an investigation of whether, during the POI, Turkish rebar producers received countervailable subsidies by purchasing natural gas from Boru Hatlari Ile Petrol Tasima AS BOTAS (BOTAS) for less than adequate remuneration.[77] For the reasons explained in the Initiation Checklist, we did not initiate an investigation of whether Turkish rebar producers received countervailable subsidies by purchasing natural gas from private suppliers in Turkey.

Habas reported it produces rebar at its plant in Aliaga, Turkey, and that Aliaga is located near Ismir.[78] Habas reported that, during the POI, the company made direct purchases of natural gas from BOTAS and provided a copy of the purchase agreement.[79] Therefore we preliminarily determine that Habas used this program during the POI.

Icdas and Icdas Electrik reported that the Icdas Companies did not purchase natural gas from BOTAS during the POI and that they purchased natural gas from a private supplier.[80] We preliminarily determine that there is no information on the record indicating that the supplier from which the Icdas Companies purchased natural gas during the POI was owned or controlled by BOTAS or the GOT during the POI. Therefore, we preliminarily determine that Icdas Companies did not use this program during the POI.

Petitioner alleged that the GOT controls the market for natural gas in Turkey, arguing that it controls the import, export, transmission, and storage of natural gas in Turkey. The GOT confirmed that BOTAS takes title to all of the gas it imports; thus, most of the gas that BOTAS delivers involves resale of gas from BOTAS to the buyer, whether a final consumer, power producer or trader.[81]

With regard to whether the GOT provides a financial contribution through the sale of natural gas by BOTAS, the GOT reported that, according to Article 3, Paragraph 1, of BOTAS' Articles of Association (AOA), BOTAS is a state-economic enterprise[82] and that, according to Article 3 (titled "Legal Nature"), Paragraph 6, of BOTAS' AOA, BOTAS is affiliated with the Turkey's Ministry of Energy and Natural Resources.[83] The GOT also reported that, according to Article 6 of Decree Law No. 233, all members of BOTAS' board of directors are appointed by approval of the Turkish President and the Turkish Prime Minister. For these reasons, we preliminarily find BOTAS to be a government authority that provides a financial contribution within the meaning section 771(5)(D)(iii) of the Act.

With regard to specificity, Petitioner alleged that the "predominant user" of natural gas in Turkey (*i.e.*, the sector or group which receives "a disproportionally large amount of the subsidy") is the

[77] *See* the Department's Initiation Checklist (September 24, 2013), at 6-9.
[78] See Habas IQR (January 2, 2014), at 5-6 and Exhibit 11.
[79] *Id.*
[80] *See* Icdas IQR (January 2, 2014), at 14.
[81] *See* GOT Third SQR (February 10, 2014), at 1.
[82] *See* GOT IQR (January 2, 2014), at 13 and Exhibit 5.
[83] *Id.*, at Exhibit 5.

power industry. The GOT reported that the total consumption of natural gas in Turkey in 2012 was 45,190,143.008 Sm^3.[84] The GOT reported that 632 million Sm^3 was produced by domestic producers in Turkey during 2012 and that the percentage of domestic consumption accounted for by natural gas from domestic producers was 1.36 percent.[85] The GOT provided a breakdown of the industries that purchased natural gas 2012.[86] This information indicates that that power producers accounted 21,635,709.530 Sm^3, which is approximately 47.88 percent of all natural gas purchases in 2012, and that the next largest sector of the 6 sectors that use natural gas (the "Industry Sector") accounted for 10,032,203.033 Sm3, which is only 22.20 percent of the total.[87]

The GOT also reported that the volume of natural gas imported by BOTAS during 2012 was 42.362 million Sm^3 (which is 93.74 percent of total volume of natural gas consumed) and that the volume sold by BOTAS in Turkey during 2012 was 40.734 million Sm^3 or 91.39 percent of the total volume consumed in Turkey in 2012.[88] Evidence on the record also indicates that, during 2012, BOTAS sold a large percentage of volume of natural gas it imported directly to power producers.[89]

Because BOTAS' imports account for such a larger percentage of overall natural gas consumption in Turkey and power producers purchased such a large proportion of the natural gas sold by BOTAS, we preliminarily determine that the provision of natural gas by BOTAS is predominantly used by, and specific to, the power production sector under sections 771 (5A)(D)(iii)(II) and (III) of the Act.

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[90] This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

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[84] *Id.*, at 17.
[85] *Id.*
[86] *Id.*, at 18 and 20-21.
[87] *Id*.
[88] See GOT Third SQR (February 10, 2014), at 1.
[89] *Id.*, at 3. The breakdown of BOTAS's sales of natural gas is proprietary. For a calculation of the percentage of natural gas that BOTAS sold to power producers, *see* the Calculation Memorandum titled Preliminary Calculations for Habas (February 19, 2014) (Habas' Calculation Memorandum).
[90] *See also Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum at "Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark."

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions that can be used to determine whether BOTAS sold natural gas to Habas for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.[91]

As explained above, the GOT provided information on the total volume natural gas sales in Turkey that is accounted for by BOTAS. The GOT reported that the volume of natural gas that was imported by BOTAS during 2012 was 42.362 million Sm^3 and that the volume of natural gas sold by BOTAS inside Turkey was 40.734 million Sm^3, which is approximately 90.14% of the total volume of natural gas consumption in Turkey in 2012.[92] Based on this large share of the natural gas market, we preliminarily determine that BOTAS dominates the natural gas market. Consequently, because of the government's overwhelming involvement in the natural gas market, the use of private producer prices in the Turkey would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government presence).[93] As we explained in *Softwood Lumber from Canada*:

> Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.[94]

For these reasons, prices stemming from private transactions for natural gas within Turkey cannot give rise to a price that is sufficiently free from the effects of the GOT's actions and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration. As such, we preliminarily determine that we cannot use for benchmark purposes prices charged by domestic suppliers during the POI.

Because the GOT reported that other companies in Turkey imported natural gas during the POI, we also analyzed whether the import prices from such transactions could provide a viable "tier one" benchmark.[95] The GOT reported that domestic consumption accounted for by imports by companies other than BOTAS was 3,552,259.598 Sm3, which was approximately 7.86 percent of total natural gas consumption.[96] Such an amount is insignificant in light of the over 90 percent share accounted for by the government through BOTAS, and does not surmount the market distortion stemming from the government's predominance in the market. Therefore, we

[91] *See Countervailing* Duties, 63 FR 65348, 65377 (November 25, 1998).
[92] See GOT Third SQR (February 10, 2013), at 1.
[93] *See Softwood Lumber from Canada*, and accompanying Issues and Decision Memorandum at "Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark Analysis."
[94] *Id*., at 38-39.
[95] *See* GOT Third SQR (February 10, 2014), at 2.
[96] *Id*.

preliminarily determine that there were no viable "tier one" benchmarks for natural gas in Turkey in 2012.

Because there were no viable "tier one" benchmarks for our analysis, we next examined whether there are any price on the record that are suitable for use under "tier two" of the hierarchy. Under 19 CFR 351.511(a)(2)(ii), if there is no useable market-determined price under with which to make the comparison under "tier one", the government price is compared to a world market price where it is reasonable to conclude that such price is available to purchasers in the country in question, in this case Turkey.

Habas placed prices for natural gas in the United States on the record.[97] Petitioner placed on the record a set of "border" prices for natural gas sales between Norway and various European countries and between Russia and various European countries.[98] In addition, Petitioner placed a set of prices for natural gas from Russia to Germany and derived quarterly natural gas prices charged by Gasprom, a large Russian gas company, using data from the company's financial statements.[99]

Because there is no natural gas pipeline between the United States and Turkey, we preliminarily determine that the U.S. prices placed on the record by Habas are not useable for benchmark purposes under tier two of the hierarchy because they represent prices for natural gas that would not be available to purchasers in Turkey. Because the pipelines in Europe and Russia are interconnected, we preliminarily determine that data sets of the European and Russian prices placed on the record by Petitioner represent prices of natural gas that would be potentially available to purchasers in Turkey. On this basis, we preliminarily determine that these three sets of prices are useable for benchmark purposes under 19 CFR 351.511(a)(2)(ii), "tier two" of the hierarchy.

19 CFR 351.511(a)(2)(ii) stipulates averaging when there is more than one commercially available world market price. Therefore, we calculated monthly average prices using all three sets of prices placed on the record by Petitioner. Because one of these sets of prices does not contain volume information, we were unable to derive weighted average monthly prices and instead calculated monthly prices by simple averaging.[100]

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties, *i.e.*, a "delivered" price to the factory. Therefore, in order to ensure that the monthly benchmark prices reflect what Habas would have paid if it had imported natural gas directly, the regulation stipulates that the monthly average prices are to be adjusted by adding the delivery charges for the transmission of natural gas in Turkey and any import duties.

[97] *See* Habas IQR (January 2, 2014), at 12-13.
[98] *See* Petitioner's Factual Submission (January 22, 2014), at 1 and Exhibits 2A and 2B.
[99] *Id.*, at 1 and Exhibit 2E.
[100] *See* Habas Calculation Memorandum (February 19, 2014).

The purchase agreement between Habas and BOTAS indicates that Habas paid delivered prices for its purchases of natural gas from BOTAS.[101] Habas also reported that it paid domestic value-added tax (VAT).[102] The GOT reported that prices charged by BOTAS consist of a per-unit charge for the natural gas and some per-unit transmission and capacity fees. However, the benchmark prices provided by Petitioner are the prices for natural gas to the borders of the importing countries and, therefore, do not include transmission fees within the borders of the purchasing countries. In order to ensure that the monthly benchmark prices reflect delivery charges in Turkey, we added the per-unit transmission and capacity fees charged by BOTAS to each monthly average world market price. The GOT reported that there are no import duties on imports of natural gas.[103] However, we have no record information as to what import duties would be charged by the purchasers of the Russian and European natural gas exports. Therefore, we are unable to make any adjustment to the monthly average benchmark prices for import duties.

To calculate the program benefit, we compared the corresponding monthly benchmark unit prices to the unit prices that Habas paid BOTAS, including taxes and delivery charges, during the POI. In instances where the benchmark unit price was greater than the price paid to BOTAS, we multiplied the difference by the quantity of natural gas purchased from BOTAS to arrive at the benefit. We next summed the benefits and divided that amount by Habas' total sales for the POI. On this basis, we preliminarily calculate a net countervailable subsidy rate of 0.70 percent *ad valorem* for Habas.

2. Provision of Steam Coal for LTAR

We initiated an investigation into whether Turkish steel producers that produce power with coal receive subsidies from the GOT in the form of reduced coal prices. In the allegation, Petitioner claimed that the GOT controls the steam coal market in Turkey, including both the hard coal and lignite coal sub-sectors through state-owned enterprises Turkish Hard Coal Enterprises (TTK) and Turkish Coal Enterprises (TKI), respectively. No respondent reported purchases of hard coal from TTK during the POI.[104] Habas reported that it did not purchase lignite coal during the POI.[105] Icdas, however, reported that it purchased lignite coal from TKI during the POI.[106]

The GOT reported that TKI, a state-economic enterprise, established in 1957, whose board members and senior managers are government officials, is responsible for selling lignite coal in Turkey.[107] Because TKI is a government-owned enterprise, we preliminarily find TKI to be a government authority that provides a financial contribution within the meaning section 771(5)(D)(iii) of the Act.

[101] *See* Habas IQR (January 2, 2014), at 13 and Exhibit 11.
[102] *Id.*, at Exhibit 11.
[103] *See* GOT IQR (January 2, 2014), at 19.
[104] *See* Icdas IQR (January 2, 2014), at 21-26, and Habas' IQR (January 2, 2014) at16.
[105] *See* Habas First SQR (January 29, 2014), at 7.
[106] *See* Icdas IQR (January 2, 2014), at 21. Icdas Elektrik reported no purchases of lignite coal during the POI. *See id.*
[107] *See* GOT First SQR (January 27, 2014), at "Provision of Steam Coal for LTAR."

Icdas reported that it purchases coal for its power plants that supply the steel mill in Biga.[108] The GOT provided a list of the industries that purchased lignite coal in 2011.[109] The information indicates that power plants accounted for 81.6 percent of lignite coal purchases for 2011.[110] We thus preliminarily determine that the provision of lignite coal is specific under sections 771 (5A)(D)(iii)(II) and (III) of the Act because the predominate user of lignite coal are power plants.

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[111] This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions that can be used to determine whether TKI sold lignite coal to Icdas for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.[112]

The GOT provided information on the total volume of domestic production of lignite coal production and total volume of domestic production that is accounted for by TKI.[113] Using the volume data provided by the GOT, we calculated TKI's percentage of domestic production of lignite coal for 2010, 2011, and 2012 to be 93.3 percent, 89.5 percent, and 88.95 percent, respectively.[114] Furthermore, information on the record indicates that Turkey imports a negligible amount of lignite coal.[115] Based on TKI's share of domestic production of lignite coal and the fact that the vast majority of coal consumed in Turkey during the POI was produced by TKI, we preliminarily determine that TKI dominates the lignite coal market. Consequently, because of the government's overwhelming involvement in the lignite coal market, the use of private producer prices in the Turkey would be akin to comparing the benchmark to itself (*i.e.*,

[108] *See* Icdas IQR (January 2, 2014), at 21.
[109] *See* GOT First SQR (January 27, 2014), at "Provision of Steam Coal for LTAR."
[110] *Id*.
[111] *See also Softwood Lumber from Canada*, and accompanying Issues and Decision Memorandum at "Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark."
[112] *See Countervailing Duties*, 63 FR 65348, 65377 (November 25, 1998).
[113] *See* GOT First SQR (January 27, 2014), at "Provision of Steam Coal for LTAR."
[114] *See* Department Memorandum regarding "TKI's Share of Domestic Production of Lignite Coal" (February 19, 2014).
[115] *See* GOT First SQR (January 27, 2014) at "Provision of Steam Coal for LTAR."

such a benchmark would reflect the distortions of the government presence).[116] As we explained in *Softwood Lumber from Canada*:

> Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. It is impossible to test the government price using another price that is entirely, or almost entirely, dependent upon it. The analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.[117]

For these reasons, prices stemming from private transactions for lignite coal within Turkey cannot give rise to a price that is sufficiently free from the effects of the GOT's actions and, therefore, cannot be considered to meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration. As such, we preliminarily determine that we cannot use as the benchmark price the prices Icdas reported paying to private domestic suppliers of lignite coal during the POI.

Because Icdas and Icdas Elektrik (*i.e.*, Icdas Companies) imported hard coal during the POI to operate their coal-fired electric power plants,[118] we next analyzed the Turkish hard coal market. The GOT provided total domestic production and consumption volumes for 2010, 2011 and 2012, along with total import values of hard coal for the same periods.[119] The GOT reported that domestic consumption accounted for by domestic production was 9.8 percent and 9.9 percent in 2010 and 2011, respectively,[120] indicating that imports of hard coal accounted for 90 percent of domestic consumption in each year. The importance of hard coal imports to meet Turkish domestic consumption is supported by a report of the International Energy Agency, which states "Turkey produces all the lignite it uses, but imports around 90 percent of its hard coal market needs."[121] Based on that information, we preliminarily determine that the record evidence does not support a finding that the Turkish hard coal market is distorted. We also find that, because the lignite and hard coal markets are sub-sectors of the steam coal market, and both types of coal are used to produce power at coal-fired power plants,[122] the coals are, for purposes of our analysis, interchangeable. Thus, we preliminary determine that the Icdas Companies' import prices for hard coal can serve as a tier-one benchmark. Therefore, pursuant to 19 CFR

[116] *See Softwood Lumber from Canada*, and accompanying Issues and Decision Memorandum at "Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark Analysis."
[117] *Id*., at 38-39.
[118] *See* Icdas IQR (January 2, 2014), at 21.
[119] *See* GOT Second SQR (February 10, 2014), at 7.
[120] *Id*.
[121] *See* International Energy Agency's "Energy Policies of IEA Countries, Turkey 2009 Review," at Petition Exhibit IV-22 (page 85).
[122] *See* Initiation Checklist, at "Provision of Steam Coal for LTAR."

351.511(a)(2)(i), we are using the companies' actual import prices for hard coal to calculate the benefit from Icdas' purchases of lignite coal from TKI.[123]

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties, *i.e.*, a "delivered" price to the factory. Because we are using actual import prices paid by Icdas and Icdas Elektrik, the benchmark prices already include the delivery charges and VAT paid. There was no import tariff rate in effect for hard or lignite coal during the POI.[124] Regarding inland freight charges that would be incurred to deliver coal from the port to the company facilities, we did not add any such charges to the benchmark prices because Icdas reported that it does not incur freight expenses for coal imports or other inputs delivered to their power plant.[125]

Under 19 CFR 351.511(a)(2), the Department will consider product similarity and other factors affecting comparability. We preliminarily determine that information on the record indicates that, when selecting a benchmark price for coal, it is necessary to adjust for any differences in calorific value (*i.e.*, energy value of coal).[126] Therefore, we adjusted the monthly benchmark prices on a *pro rata* basis to reflect the calorific value of the lignite coal that Icdas purchased from TKI. For a full explanation of how we derive the monthly benchmark prices, *see* Icdas Preliminary Calculations. Our decision to adjust the hard coal benchmark for differences in calorific value is consistent with our approach in other CVD proceedings in which the Department has made adjustments to the LTAR subsidy calculation to account for differences impacting comparability.[127]

To calculate the program benefit, we compared the benchmark unit prices to the unit prices that Icdas paid to TKI, including taxes and delivery charges, during the POI. In instances where the benchmark unit price was greater than the price paid to TKI, we multiplied the difference by the quantity of lignite coal purchased from TKI to arrive at the benefit. We next summed the benefits and divided that amount by Icdas' total sales for the POI. On this basis, we preliminarily calculate a net countervailable subsidy rate of 0.02 percent *ad valorem* for Icdas.

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[123] On January 22, 2014, Petitioner submitted on the record world market prices for steam coal. However, because there are useable tier-one prices for coal on the record that can serve as a benchmark, the Department need not analyze the tier-two pricing data provided by Petitioner. As discussed at 19 CFR 351.511(a)(2)(i), which sets forth the basis for identifying appropriate market-determined benchmarks, the Department's preference is to apply a benchmark that is based on market prices from actual transactions within the country under investigation, such as the POI import prices that the Icdas Companies paid for hard coal, which we find to be comparable to lignite coal. Moreover, we find that, even if we had to consider a tier-two benchmark, the pricing data provided by Petitioner does not include the calorific content of the coal and, thus, could not be adjusted to reflect the calorific value of the lignite coal that Icdas purchased from TKI.

[124] *See* GOT Second SQR (February 10, 2014), at 8, and GOT's First SQR (January 27, 2014), at "Provision of Steam Coal for LTAR."

[125] *See* Icdas IQR (January 2, 2014), at 25.

[126] *Id*., at 23-24, Icdas First SQR (January 29, 2014), at 5-7, and Icdas Second SQR (February 7, 2014), at 1-3.

[127] *See, e.g., Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009), and accompanying Issues and Decision Memorandum, at "Provision of SSC for LTAR"; *see also Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009), and accompanying Issues and Decision Memorandum, at "Sale of High-Grade Iron Ore for LTAR" and Comment 12.

3. Rediscount Program

Icdas received financing under the Rediscount Program, which was previously known as the Short-Term Pre-Shipment Rediscount Program.[128] This financing program, established in 1999, is administered by the Export Credit Bank of Turkey (Turk Eximbank) and provides financial support to Turkish exporters, manufacturer-exporters, and manufacturers supplying exporters.[129] Under this program the Turk Eximbank provides pre-shipment financing through intermediary commercial banks in foreign currency or TL, and requires collateral from the borrower in the form of promissory notes/bonds payable to Turk Eximbank.[130] Financing provided under this program is contingent upon an export commitment and has a minimum loan amount of USD 200,000.[131] A borrower pays the interest when the loan is received; principal can be paid during the credit period or at maturity in either the foreign currency in which the loan was obtained or in the TL equivalent.[132] Icdas reported that it paid interest against Rediscount Loans, denominated in USD, during the POI.[133]

We preliminarily determine that this export financing confers 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 771(5)(D)(i) of the Act. 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. A benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amount of interest the company would have paid on comparable commercial loans and the amount of interest the company paid on the rediscount loans during the POI. Because a borrower pays the interest due upfront when the loan is received, to compute the benefit, we applied a discounted benchmark interest rate calculated using Icdas' short-term weighted-average commercial interest rate.[134] We then summed the benefits from the loans and divided that amount by Icdas' total export sales for the POI. On this basis, we preliminarily calculate a net countervailable subsidy rate of 0.08 percent *ad valorem* for Icdas.

4. Deductions from Taxable Income for Export Revenue

In its initial January 2, 2014, questionnaire response, the GOT reported that under Article 40 of Income Tax Law 193, of January 6, 1961, as amended by Law 4108 of June 1995, taxpayers may claim a deduction of a lump sum amount from their gross income resulting from exporting, construction, maintenance, assembly and transportation activities abroad. The amount of the deduction may not exceed 0.5 percent of the proceeds earned in foreign exchange from such activities. The deduction is presumed to cover undocumented expenditures, which are expenses

[128] *See* Icdas IQR (January 2, 2014), at 26.
[129] *See* GOT IQR (January 2, 2014), at 72-78.
[130] *Id*.; *see also* Icdas IQR (January 2, 2014), at 29-30.
[131] *See* GOT IQR (January 2, 2014), at 76.
[132] *See* Icdas IQR (January 2, 2014), at 29, *see also* GOT IQR (January 2, 2014), at 77.
[133] *See* Icdas IQR (January 2, 2014), at 26 and 29.
[134] For more information of the construction of the discounted benchmark interest rate, *see* Icdas' Preliminary Calculations.

that are not supported by invoices such as lodging, food, and gas expenses incurred on overseas travel.[135]

Consistent with our practice, we preliminarily determine that this tax deduction is a countervailable subsidy.[136] The deduction from taxable income provides a financial contribution within the meaning of section 771 (5)(D)(ii) of the Act, because it constitutes 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. The deduction is also specific under section 771(5A)(B) of the Act because its receipt is contingent upon export earnings. In this investigation, 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 2012, Habas claimed deductions from taxable income under this program. The Department typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1). To calculate Habas' countervailable subsidy rate for this program, we first calculated the tax savings realized by Habas in 2012 as a result of claiming the deduction in the annual tax return filed during the POI by multiplying the amount of the deduction by Habas' corporate tax rate. We then divided the amount of tax savings realized by Habas, (*i.e.*, the amount of benefit received, as reflected in the annual tax return filed during the POI) by the total value of the company's exports during 2012.

On this basis, we preliminarily determine the net countervailable subsidy rate for Habas under this program to be 0.08 percent *ad valorem.*

B. Program Determined Not To Confer a Benefit During the POI

1. Research and Development Grant Program

Habas claimed a tax deduction on the tax return it filed during the POI.[137] In response to our inquiry about this deduction, Habas reported that it claimed this tax deduction for research and development expenditures under Corporate Tax Law Article 10/1-a and provided a copy of Article 10/1/-a of the tax law.[138]

The copy of Corporate Tax Law Article 10/1-a provided by Habas does not contain language indicating that tax deductions under this provision of the tax law are contingent upon export performance. However, assuming *arguendo,* that the benefit Habas received under this program during the POI is specific under section 771(5A)(B) (*i.e.*, is contingent upon export performance) and constitutes a financial contribution under 771(5A)(D) of the Act, the benefit received by Habas would amount to less than 0.005 percent of the value of Habas' exports during the POI.

[135] *See* GOT IQR (January 2, 2014), at 38-44.
[136] *See, e.g., Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 6, 2012), and accompanying Issues and Decision Memorandum at "Deduction from Taxable Income for Export Revenue."
[137] *See* Habas IQR (January 2, 2014), at Exhibit 6.
[138] *See* Habas First SQR (January 29, 2014), at 9-11 and Exhibit 4.

Therefore, consistent with the Department's practice, we preliminarily determine that this program did not confer a benefit to Habas during the POI.[139]

C. Programs Preliminarily Found Not To Be Used

1. Export Credits, Loans and Insurance from Turk Eximbank
    a. Pre-Shipment Export Credits from Turk Eximbank
    b. Turk Eximbank's Foreign Trade Company Export Loans
    c. Turk Eximbank's Pre-Export Credits Program
    d. Short-term Export Credit Discount Program
    e. Export Insurance Provided by Turk Eximbank

2. Regional Investment Incentives
    a. Value Added Tax (VAT) Exemptions, Customs Duty Exemptions, Income Tax Reductions, and Social Security Support
    b. Land Allocation

3. Large-Scale Investment Incentives
    a. VAT and Customs Duty Exemptions
    b. Tax Reduction
    c. Income Tax Withholding Allowance
    d. Social Security and Interest Support
    e. Land Allocation

4. Strategic Investment Incentives
    a. VAT and Customs Duty Exemptions
    b. Tax Reductions
    c. Income Tax Withholding
    d. Social Security and Interest Support
    e. Land Allocation
    f. VAT Refunds

5. Incentives for Research & Development (R&D) Activities
    a. Tax Breaks and Other Assistance
    b. Product Development R&D Support – UFT

6. Provision of Land for Less than Adequate Remuneration
7. Provision of Electricity for Less than Adequate Remuneration
8. Withholding of Income Tax on Wages and Salaries
9. Exemption from Property Tax
10. Employers' Share in Insurance Premiums Program
11. Preferential Tax Benefits for Turkish Rebar Producers Located in Free Zones

[139] *See, e.g., Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013), and accompanying Issues and Decision Memorandum, at "Grants Under the Guangdong Province Coast Region Fisherman's Job Transferring Bill Fishery Industry Development Project Fund."

12. Preferential Lending to Turkish Rebar Producers Located in Free Zones
13. Exemptions from Foreign Exchange Restrictions to Turkish Rebar Producers Located in Free Zones
14. Preferential Rates for Land Rent and Purchase to Turkish Rebar Producers Located in Free Zones

IX. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information pertaining to this case, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

In accordance with section 705(b)(2) of the Act, if our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

X. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.[140] Case briefs or other written comments for all non-scope issues may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[141]

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[142] This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.[143] Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date and time to be determined. Parties will be notified of the date and time of any hearing.

[140] *See* 19 CFR 351.224(b).
[141] *See* 19 CFR 351.309.
[142] *See* 19 CFR 351.309(c)(2) and (d)(2).
[143] *See* 19 CFR 351.310(c).

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using IA ACCESS.[144] Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,[145] on the due dates established above.

XI. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

XII. CONCLUSION

We recommend that you approve the preliminary findings described above.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

19 February 2014
(Date)

[144] *See* 19 CFR 351.303(b)(2)(i).
[145] *See* 19 CFR 351.303(b)(1).