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July 10, 2014

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey

I. SUMMARY

The Department determines that countervailable subsidies are being provided to producers and exporters of OCTG in Turkey, as provided in section 703 of the Act. The Department also finds that critical circumstances exist for imports from Turkey produced and/or exported by Borusan, Toscelik, and all other producers/exporters.

II. BACKGROUND

On December 23, 2013, the Department published its *Preliminary Determination* in the CVD investigation of OCTG from Turkey.[1] On January 27, 2014, the Department published a preliminary affirmative determination of critical circumstances.[2] The Department released post-preliminary analyses for both respondents, Borusan and Toscelik, on April 18, 2014.[3]

Between April 25, 2014, and May 2, 2014, we conducted verification of the GOT's, Borusan's, and Toscelik's questionnaire responses. We released verification reports on May 12, 2014, May 13, 2014, and May 16, 2014, for the GOT, Toscelik, and Borusan, respectively.[4]

On April 25, 2014, Petitioners filed a letter requesting that the Department amend the *Preliminary Determination*.[5] On May 21, 2014, the Department responded to the Petitioners'

[1] *See Preliminary Determination. See* attached Appendix for all complete citations.
[2] *See Preliminary Determination of Critical Circumstances.*
[3] *See* Toscelik Post-Preliminary Analysis and Borusan Post-Preliminary Analysis.
[4] *See* GOT Verification Report, Toscelik Verification Report, and Borusan Verification Report.

April 25 letter.[6] On May 23, 2014, Petitioners, Borusan, Toscelik, and the GOT submitted case briefs. On May 27, 2014, the Department rejected Toscelik's case brief and instructed Toscelik to resubmit it without new factual information. Toscelik timely resubmitted its case brief on May 28, 2014. Petitioners, the GOT, and Borusan submitted rebuttal briefs on May 28, 2014. On June 26, 2014, the GOT requested a meeting with the Department, and on July 3, 2014, the Department held a meeting in response with the GOT.[7]

General Issues

Comment 1: Treatment of Erdemir and Isdemir as Government Authorities
Comment 2: Distortion of the Turkish HRS Market and Use of External Benchmark
Comment 3: The Department's World Market Price Benchmark
Comment 4: Averaging of Benchmark Prices for HRS
Comment 5: Specificity of HRS Program
Comment 6: Application of AFA to Borusan's HRS Purchases
Comment 7: The Department's Adverse Inference for Purchases by Borusan's Halkali and Izmit Mills
Comment 8: Purchases of OCTG-Qualified HRS
Comment 9: Verification of the HRS for LTAR Program at the GOT
Comment 10: Toscelik Sales Denominator
Comment 11: Provision of Land for LTAR
Comment 12: Provision of Electricity for LTAR / Law 5084: Energy Support Program
Comment 13: Export Financing Loans: Subtraction of Bank Guarantee Fees from Benefit
Comment 14: Specificity and Countervailablity of the Investment Incentive Certificate Program
Comment 15: Basis for Affirmative Critical Circumstances Determination
Comment 16: Whether to Issue an Amended Preliminary Determination

III. CRITICAL CIRCUMSTANCES

In the *Preliminary Determination of Critical Circumstances*, the Department concluded that critical circumstances exist with respect to OCTG from Turkey produced and exported by Borusan and Toscelik. In the *Preliminary Determination of Critical Circumstances,* we found that both Borusan and Toscelik received subsidies from two programs contingent upon export performance and countervailable, as well as "massive imports" of OCTG over a relatively short period of time.[8] Our analysis of the results of verification and comments submitted by interested parties has not led us to change our findings from the *Preliminary Determination of Critical Circumstances*. Therefore, in accordance with section 705(a)(2) of the Act, we continue to find

[5] *See* Petitioners' April 25 Letter.
[6] *See* Department's May 21 Letter.
[7] *See* Department's July 3 Memo. The Department's July 3 Memo includes a copy of the GOT's meeting request dated June 26, 2014.
[8] *See Preliminary Determination of Critical Circumstances*, 79 FR at 4333.

that critical circumstances exist with respect to imports from Borusan, Toscelik, and "all other" exporters of OCTG from Turkey.[9]

IV. SUBSIDIES VALUATION INFORMATION

A. Period of Investigation

The POI for which we are measuring subsidies is January 1, 2012, through December 31, 2012.

B. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the 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.[10] The Department notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

Furthermore, for non-recurring subsidies, we 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 Department allocates the benefit to the year of receipt rather than across the AUL.

C. 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. These additional attribution rules cover subsidies to the following types of cross-owned affiliates: (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. The *Preamble* states:

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[9] *See* Final Critical Circumstances Memo.

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

> 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 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.[11]

Thus, the Department's regulations make clear that the agency must look at the facts in each case to determine whether cross-ownership exists.

The CIT 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.[12]

Borusan

Borusan responded to the Department's initial questionnaire on behalf of BMB and one cross-owned affiliate: Istikbal.[13] Borusan reported that Istikbal, an export sales company, exported subject merchandise produced by BMB to the United States during the POI.[14] Borusan further reported that BMB and Istikbal are held by a holding company, BMBYH, which owns the majority of the two companies' equity share capital.[15] Borusan also reported that BMBYH, Istikbal, and BMB are majority-owned by Borusan Holding.[16]

We find that BMB, Istikbal, BMBYH, Borusan Holding are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of Borusan Holding's ultimate ownership of BMB, Istikbal, and BMBYH. In accordance with 19 CFR 351.525(b)(6)(i), we are attributing subsidies received by BMB to the sales of BMB. Consistent with 19 CFR 351.525(c), we are cumulating the benefit from subsidies to Istikbal with the benefit from subsidies to BMB.

In its original questionnaire response, Borusan did not provide responses on behalf of BMBYH or Borusan Holding.[17] Noting that BMBYH owned a majority of BMB's outstanding shares and that Borusan Holding owned a majority of BMBYH's outstanding shares, we requested questionnaire responses for BMBYH and Borusan Holding.[18]

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[11] *See Preamble,* 63 FR at 65401.
[12] *See Fabrique*, 166 F. Supp. 2d at 600-604.
[13] *See* BQR-B.
[14] *See* BQR-A at 2-3.
[15] *Id*. at 2 and Exhibit 3
[16] *Id*. at 1-3 and Exhibits 1 and 3.
[17] *See* BQR-B.
[18] *See* BSQ1 at 3.

In its response, Borusan stated that it did not specifically respond to the questionnaire with respect to BMBYH or Borusan Holding because neither entity is engaged in production or sales activities that would make them eligible for any of the alleged subsidies in this investigation.[19] Borusan also specifically addressed each program in turn, explaining why neither company was eligible for any of the subsidies under investigation.[20] In particular, Borusan explained that neither company met the basic conditions for using the programs in question: neither had its own production or sales operations, neither was engaged in exports, and neither was located in a zone or province where companies would be eligible for the subsidies under investigation.[21] Moreover, Borusan claimed that neither received any other subsidies.[22]

We find that cross-ownership within the meaning of 19 CFR 351.525(b)(6)(vi) exists between BMB, Istikbal, BMBYH, and Borusan Holding because of Borusan Holding's ultimate controlling interest in BMBYH, BMB, and Istikbal. However, we find no evidence that Borusan Holding or BMBYH received any countervailable subsidies.

Borusan also identified other companies with which it is affiliated through Borusan Holding's direct and indirect ownership, including subsidiaries of an energy division named Enerji.[23] At page 6 of the BSQ1, we noted that cross-ownership within the meaning of 19 CFR 351.525(b)(6)(vi) exists between Enerji and its subsidiaries, BMB, and Borusan Holding through Borusan Holding's ultimate controlling interest in all of these companies. Thus, we asked Borusan to answer the "Affiliated Companies" questions at Section III, pages 1-2 of the Questionnaire for all of the subsidiaries of Enerji that Borusan listed in Exhibit 2 of the BQR-A.[24] We also requested complete questionnaire responses on behalf of Enerji and/or any of its subsidiaries that supply BMB with inputs to the production of subject merchandise.[25]

In the BSQR1-B, Borusan explained that Enerji is a holding company that Borusan Holding established in 2007 as its energy arm.[26] Borusan confirmed that neither Enerji nor any of its subsidiaries supply BMB with inputs used in the production of the subject merchandise.[27] Borusan also confirmed that the only input Enerji or its subsidiaries provided during the POI to Borusan was electricity that a subsidiary of Enerji provided for BMB's headquarters and a plant that produces non-subject merchandise.[28] Borusan noted that this company was a reseller of electricity, not a producer.[29]

[19] *See* BSQR-B at 2.
[20] *Id.* at 2-4.
[21] *Id.*
[22] *Id.*
[23] *See* BQR-A at 3-5 and Exhibit 2.
[24] *See* BSQ1 at 4.
[25] *Id.*
[26] *See* BSQR1-B at 6.
[27] *Id.*, at 7.
[28] *Id.* The name of this subsidiary is business proprietary information.
[29] *Id.*

On January 17, 2014, we sent a supplemental questionnaire to Borusan.[30] We asked Borusan to confirm that neither Enerji nor any of its subsidiaries provided electricity to BMB's Gemlik mill during the POI.[31] We also asked Borusan to confirm that the electricity reseller is not located in any of 49 provinces where companies were eligible to receive benefits under a GOT energy support program that provided grants for the purchase of electricity.[32] In its response, Borusan confirmed that neither Enerji nor any of its subsidiaries provided electricity to BMB's Gemlik mill during the POI.[33] Borusan also confirmed that the electricity reseller is not located in one of the 49 provinces in question.[34]

We find that cross-ownership within the meaning of 19 CFR 351.525(b)(6)(vi) exists between Enerji and its subsidiaries, BMB, and Borusan Holding because of Borusan Holding's ultimate controlling interest in all of these companies. We also find, however, that Enerji and its subsidiaries do not meet any of the attribution conditions of 19 CFR 351.525(b)(6)(ii)–(v) or 19 CFR 351.525(c). Therefore, we have not attributed the benefit from any subsidies to Enerji or its subsidiaries to Borusan.

Borusan identified numerous other companies in which Borusan Holding holds an ownership stake.[35] We requested additional information on certain of these companies in the BSQ1.[36] Regardless of whether cross-ownership under 19 CFR 351.525(b)(6)(vi) exists between Borusan and any of these companies, we find no evidence that any of these companies meet the attribution conditions of 19 CFR 351.525(b)(6)(ii)–(v) or 19 CFR 351.525(c). Therefore, we have not attributed the benefit from any subsidies that these companies may have received to Borusan.

Toscelik

Toscelik responded to the Questionnaire on behalf of Toscelik Profil, a producer of subject merchandise; Tosyali, the foreign trade company that is responsible for export sales of group products (including steel pipes produced by Toscelik Profil); Tosyali Electric, an electricity wholesaler that supplied electricity to Toscelik Profil during the POI; Tosyali Holding, the holding company for the entire group of companies (including Toscelik Profil and Tosyali); and Tosyali Demir, a producer of steel angles and profiles. Toscelik reported that three brothers, Mr. Fuat Tosyali, Mr. E. Ayhan Tosyali, and Mr. M. Fatih Tosyali, owned or controlled these five companies.[37]

[30] *See* BSQ2.
[31] *Id.* at 3.
[32] *Id.* For a description of the program in question, *see* the "Analysis of Programs - Provision of Electricity for Less Than Adequate Remuneration / Law 5084: Energy Support" program section below.
[33] *See* BSQR2 at 1.
[34] *Id.*
[35] *See* BQR-A at Exhibit 2.
[36] *See* BSQ1 at 3-4.
[37] *See* TQR at 2.

We determine that Toscelik Profil, Tosyali, Tosyali Electric, Tosyali Holding, and Tosyali Demir are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) through the Tosyali family's common ownership and control of all five companies.

In accordance with 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Toscelik Profil to its own sales.

As stated above, Tosyali is the foreign trade company of the group. Accordingly, we are cumulating the benefit from subsidies to Tosyali with the benefit from subsidies to Toscelik Profil, in accordance with 19 CFR 351.525(c).

Toscelik reported that Tosyali Electric supplied electricity to Toscelik Profil.[38] Regardless of whether subsidies to Tosyali Electric are attributable to Toscelik Profil under 19 CFR 351.525(b)(6)(ii)(v), we find no record evidence indicating that Tosyali Electric benefited from countervailable subsidies during the POI.

Tosyali Holding is the holding company for the Toscelik group of companies. Under 19 CFR 351.525(b)(6)(iii), subsidies to a parent or holding company are attributable to the consolidated sales of the parent or holding company and its subsidiaries. However, we find no record evidence indicating that Tosyali Holding benefited from countervailable subsidies during the POI.

Regarding Tosyali Demir, Toscelik explained that Tosyali Demir supplied Toscelik Profil with steel scrap during the POI.[39] In our first supplemental questionnaire to Toscelik, we noted that, based on Toscelik's response at page 2 of the TQR, scrap is an input in the production of subject merchandise.[40] Therefore, we requested a complete questionnaire response on behalf of Tosyali Demir.[41]

In its response, Toscelik asked the Department to rescind this request based on Toscelik's contentions that scrap is not primarily dedicated to production of subject merchandise and that Tosyali Demir is not a "producer" of an input.[42] On the original due date for Toscelik to file a questionnaire response on behalf of Tosyali Demir, Toscelik requested an extension for providing a response on behalf of Tosyali Demir if the Department did not rescind its request.[43] We again requested a response on behalf of Tosyali Demir, but granted Toscelik the extension it requested for filing the response.[44] On January 20, 2014, Toscelik filed its response on behalf of Tosyali Demir.[45]

[38] *Id.* at 4.
[39] *Id.* at 2.
[40] *See* TSQ1 at 3.
[41] *Id.*
[42] *See* TSQR1 at 1-5; *see also* 19 CFR 351.525(b)(6)(iv).
[43] *See* Toscelik December 6, 2013 Letter; *see also* TSQR1 at 1.
[44] *See* Toscelik January 7, 2014 Letter.
[45] *See* TSQR2.

We find that the scrap steel Tosyali Demir supplied to Toscelik Profil is primarily dedicated to production of OCTG and other downstream steel products, pursuant to 19 CFR 351.525(b)(6)(iv). Toscelik uses the scrap steel to produce intermediate products (*i.e.*, HRS and billets), which Toscelik uses in turn to produce OCTG and other downstream steel products.[46] Hence, this scrap is dedicated exclusively to Toscelik's production of higher value-added products, including OCTG, and is thus "merely a link in the overall production chain."[47] As a result, we are attributing the benefit from subsidies that Tosyali Demir received to the sales of Tosyali Demir plus the sales of Toscelik Profil (net of inter-company sales), in accordance with 19 CFR 351.525(b)(6)(iv).

Toscelik also reported six additional affiliates. Five of these affiliates (Toscelik Sigorta, Toscelik Elektrik Enerjisi Uretim, Tosyali Denizcilik, Tosyali Metal Ambalaj, and Tosyali Toyo Kohan) were either dormant or not operational during the POI.[48] Toscelik reported that a sixth affiliate, Toscelik Granul, is a producer of steel shot (used as an industrial abrasive).[49] Toscelik stated that steel shot is not an input to the production of OCTG, and that Toscelik did not buy steel shot from Toscelik Granul during the POI.[50] Regardless of cross-ownership between these six companies and Toscelik, we find that these companies do not meet any of the conditions of 19 CFR 351.525(b)(6)(ii)-(v). Therefore, we have 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 "Analysis of Programs - Programs Determined to Be Countervailable" section below, we describe the denominators that we used to calculate the countervailable subsidy rates for the various subsidy programs.[51]

V. BENCHMARK INTEREST RATES

We are investigating export loans and non-recurring, allocable subsidies that the respondents received.[52] In the section below, we discuss the derivation of the benchmarks and discount rates for the POI and previous years.

Short-Term Benchmarks

To determine whether government-provided loans under investigation conferred a benefit, the Department uses, where possible, company-specific interest rates for comparable commercial

[46] *See* TQR at 2-3.
[47] *See Preamble*, 63 FR at 65401.
[48] *See* TQR at 2-6.
[49] *Id.* at 3.
[50] *Id.*
[51] *See also* Borusan Final Calculation Memo and Toscelik Final Calculation Memo.
[52] *See* 19 CFR 351.524(b)(1).

loans.[53] 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. Borusan and Toscelik submitted weighted-average interest rates, along with the underlying data, that they paid on comparable short-term commercial loans.[54] Consistent with 19 CFR 351.505(a)(2)(ii), we are using the interest rates that Borusan and Toscelik submitted on comparable short-term loans as benchmarks.

Borusan reported that it paid commission with regard to countervailable loans (*e.g.*, Pre-Export Credit Program).[55] It is the Department's practice normally to compare effective interest rates rather than nominal rates in making the loan comparison.[56] "Effective" interest rates are intended to take into account the actual cost of the loan, including the amount of fees, commissions, compensating balances, government charges, or penalties paid in addition to the "nominal" interest rate.[57]

Long-Term Benchmarks

As discussed above, to determine whether government-provided loans under investigation conferred a benefit, the Department uses, where possible, company-specific interest rates for comparable commercial loans.[58] Where such benchmark rates are unavailable, consistent with 19 CFR 351.505(a)(3)(ii), we used lending rate data from the International Monetary Fund's *International Financial Statistics* as our national average benchmark.[59]

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government approved non-recurring subsidies.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

HRS for LTAR: Borusan's Reported Purchases

In the Questionnaire, we requested that Borusan report all purchases of HRS during the POI, regardless of whether it used the input to produce the subject merchandise during the POI.[60] Borusan reported that BMB has three pipe manufacturing facilities in Turkey: Gemlik, Halkali, and Izmit.[61] However, Borusan only reported its HRS purchases for Gemlik, the facility that,

[53] *See* 19 CFR 351.505(a)(2)(ii).
[54] *See* BQR-B at 19 and Exhibit 16; *see also* TQR, at 16 and Exhibit 23.
[55] *See* BQR-B at 18 and Exhibit 15.
[56] *See Preamble*, 63 FR at 65362.
[57] *See CWP Turkey 2011 AR*, and accompanying IDM at "Benchmark Interest Rates."
[58] *See* 19 CFR 351.505(a)(2)(ii).
[59] *See CWP from Turkey 2011 AR*, and accompanying IDM at "Benchmark Interest Rates."
[60] *See* Questionnaire at Section III, page 6.
[61] *See* BQR-B at 11.

according to Borusan, produces subject merchandise.[62] Borusan argued that only these purchases could have benefitted from subsidies attributable to the production or sale of subject merchandise.[63]

In the BSQ1, we reiterated our request that Borusan report all of its purchases of HRS, including purchases for the Halkali and Izmit mills.[64] We referred to the instructions in the Questionnaire to report all HRS purchases, regardless of whether Borusan used the HRS to produce subject merchandise.[65] We also stated the following: "If you are unable to provide this information, please explain in detail why you cannot provide this information and the efforts you made to provide it to the Department."[66]

In the BSQR1, Borusan again did not provide the HRS purchase data that we requested. Borusan stated that it experienced significant difficulties in compiling the HRS purchase data, primarily because Borusan has to compile the information from two separate data systems.[67] Borusan explained the steps it would require to obtain the requested purchase information.[68] Citing sections 782(c)(1) and (2) of the Act, Borusan requested that we consider the burden of reporting purchases for all three facilities and permit Borusan to report purchases only for the Gemlik plant.[69] However, Borusan stated that "if the Department insists on full reporting of all hot-coil purchases from every facility then BMB stands ready to provide that information with the understanding that it will require several weeks to do so."[70]

In the Questionnaire, we requested that Borusan report all of its purchases, regardless of whether it used the input to produce the subject merchandise during the POI.[71] Borusan had 37 days plus an additional extension of 12 days to provide this information in its BQR-B.[72] However, Borusan chose not to submit this information for the Halkali and Izmit mills based on its argument that the Gemlik mill's purchases "are the only purchases that could have benefitted from subsidies attributable to the production or sale of the OCTG subject merchandise."[73] Borusan's contention was not consistent with our instructions in the Questionnaire or past Department determinations.[74] Moreover, as we stated in the past, respondents must respond fully

[62] *Id.* at 11 and Exhibit 9A.
[63] *Id.* at 11.
[64] *See* BSQ1 at 4-5.
[65] *Id.*
[66] *Id.*
[67] *See* BSQR1-B at 8.
[68] *Id.* at 8-9.
[69] *Id.* at 9-10.
[70] *Id.* at 11.
[71] *See* Questionnaire at Section III, page 6.
[72] *See* Questionnaire at Section I, page 1 (establishing a deadline of 37 days); *see also* letter from the Department to Borusan dated September 10, 2013, "Countervailing Duty Investigation: *Certain Oil Country Tubular Goods from the Republic of Turkey*" (granting Borusan an extension of 12 days to respond to the Questionnaire).
[73] *See* BQR-B at 11.
[74] *See* Questionnaire at Section III, page 6; *see also*, *e.g.*, *OCTG from the PRC,* and accompanying IDM at Comment 13B.

to the Department's requests for information regardless of their positions on the countervailability of the programs at issue.[75]

As explained above, Borusan again did not provide all the HRS purchase information in the BSQR1-B.[76] Borusan did not state that it could not provide the information. Instead, Borusan explained the difficulties it faced in compiling the information and stated that it would need several weeks to compile the information if we "insist(ed) on full reporting of all hot-coil purchases from every facility."[77]

Moreover, Borusan did not at any point submit a formal extension request for providing the HRS purchase information, as required in our instructions. In particular, the Questionnaire stated the following:

> If you are unable to respond completely to every question in the attached questionnaire by the established deadline, or are unable to provide all requested supporting documentation by the same date, you must notify the officials in charge and submit a written request for an extension of the deadline for all or part of the questionnaire response…Statements included within a questionnaire response regarding a respondent's ongoing efforts to collect part of the requested information, and promises to supply such missing information when available in the future, do not substitute for a written extension request. All extension requests must be in writing and should state the reasons for the request pursuant to 19 CFR 351.302(c).
>
> …Therefore, failure to properly request extensions for all or part of a questionnaire response may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.[78]

Similarly, the BSQ1 stated the following:

> Please submit the response to the attached questions in accordance with the guidelines contained in the original questionnaire, and remember that pursuant to 19 CFR 351.302, information submitted after the deadline will be untimely filed and may be returned to the submitter.[79]

Borusan disregarded our instructions in both the Questionnaire and the BSQ1 to report all of its HRS purchases by the respective deadlines set in those questionnaires. While Borusan indicated that it could provide the information in the future, Borusan never properly requested an extension

[75] *See*, *e.g.*, *Seamless Pipe from the PRC*, and accompanying IDM at Comment 32.
[76] The time between our original request for the HRS purchase information in the Questionnaire and Borusan's submission of the BSQR1-B was 100 days (*i.e.*, August 27, 2013, to December 5, 2013).
[77] *See* BSQR1-B at 11.
[78] *See* Questionnaire at Section I, pages 9-10.
[79] *See* BSQ1 at 1. (Underscore in the original.)

in accordance with our instructions in the questionnaires, and as required under 19 CFR 351.302(c).[80]

Because Borusan failed to report its HRS purchases for the Halkali and Izmit mills when we requested that information in two different questionnaires, we find that necessary information regarding Borusan's HRS purchases for these facilities is not on the record. Without this information, we cannot fully determine the benefit that Borusan received from each purchase of HRS from Erdemir and Isdemir. Thus, we determine we must rely on "facts available" in this final determination in calculating Borusan's CVD margin.[81] Moreover, we find that Borusan failed to cooperate by not acting to the best of its ability because Borusan withheld requested information on its purchases of HRS, despite having two opportunities, and never requested an extension to provide this information in accordance with 19 CFR 351.302(c). Consequently, an adverse inference is warranted in the application of facts available.[82]

According to the Act, in making an adverse inference, the Department may rely on information derived from: (1) the petition; (2) a final determination in the investigation under subtitle IV; (3) any previous review under section 751 of the Act or determination under section 753 of the Act; or (4) any other information placed on the record.[83]

Consistent with the Borusan Post-Preliminary Analysis, we are inferring adversely that Borusan purchased all HRS for the Halkali and Izmit mills at the lowest price on the record for the Gemlik mill's HRS purchases from Erdemir and Isdemir.[84]

In the Borusan Post-Preliminary Analysis, we also inferred adversely that Borusan purchased the same quantity of HRS produced by Erdemir and Isdemir for each of these mills as it did for the Gemlik mill.[85] Based on comments from interested parties and record information, however, we adjusted that inference for this final determination. Accordingly, we now are inferring as adverse facts available that the Halkali and Izmit mills each purchased the same quantity of HRS during the POI as its annual production capacity. In accordance with that inference, we are presuming in our calculations that the Halkali and Izmit mills each purchased HRS from Erdemir and Isdemir in the same ratio as the Gemlik mill's purchases from Erdemir and Isdemir as a share of its total purchases. *See* Comment 6 below.

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[80] 19 CFR 351.302(c) states the following: "Before the applicable time limit specified under § 351.301 expires, a party may request an extension pursuant to paragraph (b) of this section. The request must be in writing, filed consistent with § 351.303, and state the reasons for the request. An extension granted to a party must be approved in writing."

[81] *See* sections 776(a)(1), (a)(2)(A) and (a)(2)(B) of the Act (stating that the Department may make a determination based on facts available if "(1) necessary information is not available on the record" or "(2) an interested party" "(A) withholds information that has been requested" by the Department or "(B) fails to provide such information by the deadline for the submission of the information").

[82] *See* section 776(b) of the Act (permitting the Department to "use an inference that is adverse to the interests of the party in selecting from among the facts otherwise available").

[83] *Id.*

[84] *Id.; see also* Borusan Post-Preliminary Analysis at 14.

[85] *Id.*

For additional details on the benefit calculation, *see* the "Analysis of Programs – Programs Determined to Be Countervailable – Provision of HRS for LTAR" section below.

VII. ANALYSIS OF PROGRAMS

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

A. Programs Determined To Be Countervailable

1. Deductions from Taxable Income for Export Revenue

Addendum 4108 of Article 40 of the Income Tax Law Number 193, effective June 2, 1995, allows taxpayers engaged in export activities to claim a lump sum deduction from gross income resulting from exports, construction, maintenance, assembly, and transportation activities abroad in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings from such activities.[86] This deduction is to cover the expenditures without documentation incurred from exports, construction, maintenance, assembly, and transportation activities abroad.[87] 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.[88] Under this program, marketing, selling, and distribution expenses are deductible expenditures for tax purposes. The Ministry of Finance is responsible for administering the program.[89]

Consistent with prior determinations, we find that this tax deduction is a countervailable subsidy.[90] The income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of 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. During the POI, BMB, Istikbal, and Tosyali reported receiving the deduction for export earnings program with respect to the 2011 tax returns filed during the POI.[91]

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.

To calculate the countervailable subsidy rate for Borusan, we divided BMB's and Istikbal's combined tax savings by Borusan's total export sales for the POI. For Tosyali, we divided its tax

[86] *See* GQR at 33 and 37.
[87] *Id.*
[88] *Id*. at Exhibit 13.
[89] *Id*. at 37 and Exhibit 13.
[90] *See, e.g*., *CWP Turkey 2010 AR,* and accompanying IDM at "Deduction from Taxable Income for Export Revenue."
[91] *See* BQR-B at 26; *see also* TQR at 22.

savings by Toscelik's total export sales for the POI. On this basis, we determine the net countervailable subsidy for this program to be 0.01 percent *ad valorem* for Borusan and 0.06 percent *ad valorem* for Toscelik.

2. Export Financing

Respondents reported receiving benefits from two Export Financing programs, "Rediscount Program (Short-Term Pre-Shipment Rediscount Program)" and "Pre-Export Credit Program."

Rediscount Program (Short-Term Pre-Shipment Rediscount Program)

The "Rediscount Program," known previously as the "Short-Term Pre-Shipment Rediscount Program," was established in 1999 and is administered by the Export Credit Bank of Turkey ("Turk Eximbank-TE").[92] The Rediscount Program was designed to provide financial support to Turkish exporters, manufacturer-exporters and manufacturers supplying exporters.[93] This program is contingent upon an export commitment.[94] Under the Rediscount Program, there is a minimum loan amount of USD 200,000 per company.[95] Loan payments shall be made within the credit period or at maturity to the Turk Eximbank-TE.[96] Companies can repay either in the foreign currency in which the loan was obtained or in a TL equivalent of principal and interest based on the exchange rates determined by the Turk Eximbank-TE.[97] Borusan and Toscelik, including Tosyali Demir, reported that they had loans outstanding under this program during the POI.[98]

We find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amount paid by the company for the loans during the POI and the amounts the company would have paid 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.[99]

In calculating the benefit for Borusan in the *Preliminary Determination*, we did not include fees paid to commercial banks for the required letters of guarantee in the benefit calculation.[100] Based on comments by Borusan, in a change from the preliminary calculations, we are subtracting fees that Borusan paid and reported for the required letters of guarantee from the benefit calculation, pursuant to section 771(6)(A) of the Act and 19 CFR 351.505(a)(1). *See*

[92] *See* GQR at 99-100.
[93] *Id*. at 99.
[94] *Id*. at 103, 105, and Exhibit 24.
[95] *Id*. at 103.
[96] *Id*. at 104.
[97] *Id*.
[98] *See* TQR at 16-17; *see also* TSQR2 at 9; *see also* BQR-B at 16-17.
[99] *See*, *e.g.*, *CWP Turkey 2011 AR,* and accompanying IDM at "Short-Term Pre-Shipment Rediscount Program."
[100] *See Preliminary Determination,* and accompanying PDM at 11-12.

Comment 12, below. For Toscelik, however, we did not subtract fees from the benefit calculation because we have no information regarding such fees in Toscelik's benchmark.

In accordance with 19 CFR 351.525(b)(2), we calculated the countervailable subsidy rates by dividing each company's benefit amount by its respective total export sales for the POI, as described above in the "Subsidies Valuation Information – Attribution of Subsidies" section. On this basis, we determine that the net countervailable subsidy rates for this program are 0.21 percent *ad valorem* for Borusan and 0.07 percent *ad valorem* for Toscelik.

Pre-Export Credit Program

The Pre-Export Credit Program in TL ("PEC-TL") and the Pre-Export Credit Program in foreign currency ("PEC-FX") were established in 1997 and 1994, respectively.[101] The Turk Eximbank-TE administers this program. The GOT designed this program to provide financial support to exporters, manufacturer-exporters and manufacturers supplying exporters, except Foreign Trade Corporate Companies and Sectoral Foreign Trade Companies without requiring any past export performance.[102] Companies must submit a written export commitment to receive the loan.[103]

Borusan and Toscelik reported that they had loans outstanding under this program during the POI. [104]

In calculating the benefit for Borusan in the *Preliminary Determination*, we did not include fees paid to commercial banks for the required letters of guarantee in the benefit calculation.[105] Based on comments by Borusan, in a change from the preliminary calculations, we are subtracting fees that Borusan paid and reported for the required letters of guarantee from the benefit calculation, pursuant to section 771(6)(A) of the Act and 19 CFR 351.505(a)(1). *See* Comment 12, below. For Toscelik, however, we did not subtract fees from the benefit calculation because we have no information regarding such fees in Toscelik's benchmark.

In accordance with 19 CFR 351.525(b)(2), we calculated the countervailable subsidy rates by dividing each company's benefit amount by its respective total export sales for the POI, as described above in the "Subsidies Valuation Information – Attribution of Subsidies" section. On this basis, we determine that Toscelik's net countervailable subsidy rate for this program is 0.01 percent *ad valorem*. The benefit that we calculated for Borusan under this program is less than 0.005 percent; therefore, it does not have an impact on Borusan's overall subsidy rate.[106]

[101] *See* GQR at 15.
[102] *Id*.
[103] *Id*. at 18.
[104] *See* BQR-B at 16; *see also* TQR at 16-17.
[105] *See Preliminary Determination,* and accompanying PDM at 11-12.
[106] *See*, *e.g.*, *Coated Paper from the PRC* IDM at 26.

3. Investment Encouragement Program ("IEP"): Customs Duty and VAT Exemptions

Petitioners did not allege this program, but both mandatory respondents reported receiving exemptions under this program in response to our request that they report "other subsidies."[107] The GOT provided a response with respect to this program.

The GOT provides certificates through the IEP that qualified recipients use to import items duty free. The Council of Ministers' Decision No. 2009/15199, replaced with Decree No: 2012/3305 in June 2012, provides producers Investment Encouragement Certificates to receive customs and VAT exemptions on equipment imported for use.[108] Investments in excess of TL 50 million and within certain regions are eligible to benefit under this program.[109] Additionally, the decree limits such exemptions for iron and steel investments to certain regions.[110] The Ministry of Economy and the Ministry of Customs and Trade administer this program.[111] Borusan and Toscelik reported receiving certificates under this program after 2009 and receiving exemptions on imports of equipment under the program.[112]

Consistent with previous determinations,[113] we find that benefits received under exemption licenses granted after January 1, 2009, constitute a financial contribution in the form of revenue forgone within the meaning of section 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 and to firms located in certain geographic regions. Thus, the program is specific under sections 771(5A)(D)(i) and (iv) of the Act.

Both Toscelik and Borusan submitted minor corrections for this program at verification. Toscelik reported that all of the capital goods that it imported during the POI were manufactured in EU countries, with which Turkey has a free trade agreement, and thus were zero-rated for import duty. Borusan reported that some items it reported as imported in 2013 were actually imported during the POI.

To calculate the benefit, we calculated the amount of import duties and VAT that Borusan and Toscelik would have paid absent the program. We first analyzed whether the exemptions on imports of capital equipment during the POI were allocable as non-recurring subsidies.[114] Both Toscelik's and Borusan's exemptions (inclusive of the minor corrections) during the POI were less than 0.5 percent of their sales during the POI. Therefore, we expensed the benefit to the year of receipt (*i.e*, the POI).[115]

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[107] *See* BQR-B at 21-21 and Exhibits 19 and 20; *see also* TSQR1, at 7-8 and Exhibit 1.
[108] *See* GQR at 80, 83, 90, and Exhibits 22 and 23.
[109] *Id*. at Exhibits 22 and 23; *see also* BQR-B at Exhibit 19.
[110] *See* BQR-B at Exhibit 20
[111] *See* GQR at 80-81 and 90.
[112] *See* BQR-B at 24, 36, and Exhibit 20; *see also* TSQR1 at 7-8 and Exhibit 1.
[113] *See CWP Turkey 2011 AR* IDM at "Investment Encouragement Program (IEP): Customs Duty Exemptions."
[114] *See* 19 CFR 351.524(c).
[115] *See* 19 CFR 351.524(b)(2).

To calculate the countervailable subsidy rates, we divided the benefit amount by each company's total sales during the POI, as described above in the "Subsidies Valuation Information – Attribution of Subsidies" section. On this basis, we determine that the net countervailable subsidy rates for this program are 0.09 percent *ad valorem* for Borusan and 0.44 percent *ad valorem* for Toscelik.

4. Provision of Electricity for Less Than Adequate Remuneration / 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.[116] According to the GOT, the main objective of this program is to reduce inter-regional disparities and to increase employment.[117] Specifically, all enterprises or industries established in the 49 provinces which have a GDP *per capita* equal to or less than USD 1,500 (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.[118] The GOT states that enterprises operating or investing in the designated provinces are eligible for support at rates ranging from 20 percent to 50 percent of the cost of electricity consumption depending on their existing employment levels and the number of new hires (not to exceed 50 percent support).[119]

Toscelik reported that it received a benefit under this program in the form of a grant.[120]

We determine that this program provides 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 prior determinations.[121]

To calculate the benefit, we summed the total amount of energy subsidies that Toscelik received during the POI 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 the AUL by dividing the approved amount by Toscelik's total sales during the POI, as described above in the "Subsidies Valuation Information – Attribution of Subsidies" section. The amount was less than 0.5 percent of Toscelik's POI sales. Therefore, we expensed the benefit to the year of receipt (*i.e*, the POI).[122] On this basis, we determine Toscelik's net countervailable subsidy rate under this program to be 0.02 percent *ad valorem.*

[116] *See* GQR at 47 and Exhibit 17
[117] *Id.*
[118] *See* GQR at 47.
[119] *Id*.
[120] *See* TQR at 27, 28, and 30.
[121] *See CWP Turkey 2011 AR* IDM at "Law 5084: Energy Support."
[122] *See* 19 CFR 351.524(b)(2).

5. *Provision of Land for LTAR*

According to the GOT, all enterprises or industries established in the 49 provinces which have a GDP *per capita* equal to or less than USD 1,550 (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.[123] Further, this program is used to promote development and increase employment in selected provinces.[124]

Toscelik reported receiving land under this program in 2008.[125] Toscelik received free land in the Osmaniye OIZ under Law 5084 Provisional Article 1. With respect to companies in the OIZs, the GOT states that pursuant to Provisional Article 1, non-allocated parcels in the OIZs 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.[126] For an investor to receive free land in the OIZs, the OIZ administration must approve the application, the investor must start production within two years, and the investor must employ at least ten people.[127]

The Department found this program to be countervailable in *CWP Turkey 2011 AR*. 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.[128] Further, the Department determined that OIZs constituted a government authority.[129] Consistent with *CWP Turkey 2011 AR*, information on the record of the instant review indicates that the OIZs themselves were established pursuant to Turkish law.[130] 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.[131]

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."[132] 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

[123] *See* GQR at 43-44 and Exhibits 15-16.
[124] *Id*., at Exhibit 16, Article 1.
[125] *See* TQR at 25.
[126] *See* GQR at 43.
[127] *Id*.
[128] *See CWP Turkey 2011 AR* IDM at "Law 5084: Allocation of Free Land and Purchase of Land for LTAR."
[129] *Id.*
[130] *See* GQR at Exhibit 16; *see also CWP Turkey 2011* IDM at "Law 5084: Allocation of Free Land and Purchase of Land for LTAR."
[131] *Id.*
[132] *Id.*

principles related with starting and completing any investment" subject to Law 5084.[133] Based on this record evidence, and consistent with *CWP Turkey 2011 AR*, we find that the OIZ is a GOT authority because the GOT created it and it implements GOT guidelines and goals.[134] Thus, we 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.

In *CWP Turkey 2011 AR*, the Department also 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.[135] 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.[136] Information on this case record, as described above, is consistent with the information cited in *CWP Turkey 2011 AR*. Therefore, consistent with *CWP Turkey 2011 AR*, we 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.

We are relying on the land benchmark data used in *CWP Turkey 2011 AR* and *CWP Turkey 2010 AR*. Specifically, we used as our benchmark publicly available information concerning industrial land prices in Turkey for purposes of calculating a comparable commercial benchmark price for land available in Turkey.[137] As shown at Exhibit 1 of the Toscelik Preliminary Calculation Memo, the source for these prices is an online source named "Land Bank Turkey." We find that this land price serves as a comparable commercial benchmark under 19 CFR 351.511(a)(2)(i).

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. Because the resulting ratio exceeded 0.5 percent of Toscelik's total sales, we allocated a portion of the benefit to the POI using the Department's standard grant allocation formula.[138] 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. *See* the "Benchmark Interest Rates" section above for a description of the source of this rate.

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[133] *Id.*
[134] *See CWP Turkey 2011 AR,* and accompanying IDM at "Law 5084: Allocation of Free Land and Purchase of Land for LTAR."
[135] *Id.*
[136] *Id*.
[137] *See* Toscelik Preliminary Calculation Memo for the benchmark data from *CWP Turkey 2011 AR* and *CWP Turkey 2010 AR*. We note that the benchmark data from *CWP Turkey 2010 AR* includes one price from another source called "Mondinion." No interested party commented on this price source. We have not included this price in the benchmark because the price listing shows no effective date on which the land price was in effect. Therefore, we cannot properly index the price to the year of Toscelik's land purchase.
[138] *See* 19 CFR 351.524(d).

We used the standard 15-year AUL described above in the "Allocation Period" section to calculate the grant allocation. Our approach in this regard is consistent with the Department's approach in other land for LTAR programs involving the outright sale of land.[139] We divided the amount of the subsidy allocated to the POI by Toscelik's POI sales. On this basis, we determine Toscelik's net subsidy rate under this program to be 0.31 percent *ad valorem*.

We address Toscelik's comments on this program at Comment 10, below.

6. Provision of HRS for LTAR

We initiated an investigation into whether Erdemir and its subsidiary Isdemir provided respondents with HRS for LTAR.[140] Borusan and Toscelik reported purchasing HRS from Erdemir and Isdemir during the POI.[141] In the GQR, the GOT provided information on Erdemir, Isdemir, and OYAK, the Turkish military pension fund that is the majority shareholder of Erdemir and Isdemir.[142] After the *Preliminary Determination*, we sent supplemental questionnaires to the GOT on January 17, 2014, and January 31, 2014.[143] We received timely responses to both questionnaires.[144]

OYAK, the Turkish military pension fund, holds a majority of the outstanding shares of Erdemir through a wholly-owned holding company, Ataer Holding A.S.[145] Erdemir owns 92.91 percent of Isdemir.[146] In the GQR, the GOT provided a response to the Input Producer Appendix for Erdemir and Isdemir.[147] After the *Preliminary Determination*, the GOT made publicly available a position paper on OYAK from a law firm and provided a response to the Input Producer Appendix for OYAK.[148] The law firm defined the purpose of the position paper as follows: "this position paper mainly addresses the statements made in the WYG report that OYAK should be qualified as a public undertaking and that State aid rules are applicable to OYAK's investment decisions."[149] We asked the GOT twice to submit a consulting company's report and four other documents that this position paper cited.[150] The GOT claimed it could not submit the documents under its confidentiality agreements with the European Union or provide public summaries of their contents.[151]

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[139] *See, e.g., CR Steel From Korea,* and accompanying IDM 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.
[140] *See* Initiation Checklist at 8.
[141] *See* BQR-B at 12; *see also* TQR at 14.
[142] *See* GQR at 9-11 and Exhibits 4A-4I.
[143] *See* GSQ1; *see also* GSQ2.
[144] *See* GSQR1; *see also* GSQR2.
[145] The GOT sold its 49.93 percent stake in Erdemir to OYAK in 2006. Erdemir holds approximately three percent of its own shares as treasury stock. Therefore, OYAK holds the majority of Erdemir's outstanding shares. *See* GQR at Exhibit 4, pages 4 and 14; *see also* Initiation Checklist at 9.
[146] *See* GQR at Exhibit 4, page 4.
[147] *Id.*, at Exhibit 4.
[148] *See* GSQR1 at Exhibit 4; *see also* GSQR2 at "Input Producer Appendix."
[149] *See* GSQR1 at Exhibit 4. "WYG" refers to consultancy firm WYG Group.
[150] *See* GSQ1 at 4; *see also* GSQ2 at 3.
[151] *See* GSQR1 at 3-4; *see also* GSQR2 at 2.

Analysis

The law establishing OYAK in 1961 states that the GOT created OYAK "as an institution related to the Ministry of National Defense."[152] Information in the GOT's responses, the Petition, and other submissions on the record shows extensive GOT involvement in OYAK. For example, OYAK's Representative Assembly comprises 50 to 100 members of the Turkish Armed Forces "designated by their respective commanders or superiors."[153] The Representative Assembly, in turn, elects 20 of the 40 members of OYAK's General Assembly.[154] Of the General Assembly's other 20 members, 17 are by statute government officials (*e.g.*, Ministers of Finance and Defense).[155] Members of the General Assembly elect the eight-person Board of Directors.[156] Also, OYAK's property has by law the "same rights and privileges of state property," OYAK is exempt from corporate and other taxes, and members of the armed forces must by law contribute part of their salaries to OYAK.[157] Finally, a study by TESEV states that "a review of the membership and administrative structure of OYAK reveals that the military is clearly in control."[158]

Record evidence shows that the government's significant involvement in OYAK extends to Erdemir and Isdemir. For example, Erdemir's 2012 Annual Report states that it "implemented policies which promoted the customers to engage in export-oriented production" and "supports the use of domestically mined resources for raw materials in view of…the added value created by the domestic suppliers in favor of the local industries."[159] These policies are in line with the GOT's stated policy in its 2012-2014 Medium Term Programme to improve Turkey's balance of payments.[160]

Further, the GOT explained that the TPA holds veto power over any decisions related to the closure, sale, merger, or liquidation of both Erdemir and Isdemir.[161] Expanding on the TPA's rights, Erdemir's 2012 Annual Report indicates that the TPA must approve "decisions regarding the closure, limitation upon restriction, or capacity curtailing of any of the integrated steel production plants or the mining plants owned by the Company and/or by the affiliates."[162] In

[152] *See* GSQR2 at Exhibit 2.
[153] *See* Petition at Volume X, Exhibit X-18 (Military Personnel Assistance {And Pension} Fund Law (translation), Law No. 205); *see also* GSQR2 at 4.
[154] *Id.*
[155] *Id.*
[156] *See* Petition at Volume X, Exhibit X-18 (Military Personnel Assistance {And Pension} Fund Law (translation), Law No. 205, Articles 5 and 8).
[157] *Id.* (Articles 18, 35, and 37).
[158] *See* Petitioners' November 27 Comments at Exhibit 1 (TESEV Publications, "Military-Economic Structure in Turkey: Present Situation, Problems, and Solutions").
[159] *See* GQR at Exhibit 4-C (Erdemir 2012 Annual Report at 29 and 35).
[160] *See* Petitioners' February 5 Comments at Exhibit 5 (Republic of Turkey, Medium Term Programme (2012-2014) (October 2011) at 23-24). Exhibit 5 at page 23 states the following: "In order to decrease high dependency of production and exports on imports, especially for intermediate and capital goods, policies and supports enhancing domestic production capacity will be carried on."
[161] *See* GQR at Exhibit 4-A (Erdemir's Articles of Association), Articles 21, 22, and 37; *see also* GQR at Input Producer Appendix, pages 4-5.
[162] *Id.* at Exhibit 4-C (Erdemir 2012 Annual Report, pages 62-63).

addition, Erdemir's 2012 Annual Report shows that OYAK and the TPA have members on Erdemir's Board of Directors, and one of the board's two auditors is a "Representative of the Ministry of Finance."[163] Moreover, OYAK effectively decides the composition of the majority of Erdemir's board through its majority shareholder voting rights in Erdemir.[164]

The Department has determined that enterprises with little or no formal government ownership can still be considered public bodies if the government exercises meaningful control over them.[165] The record evidence cited above shows that the GOT exercises meaningful control over Erdemir and Isdemir through its control of OYAK. Therefore, we find Erdemir and Isdemir to be public bodies, and hence "authorities," pursuant to section 771(5)(B) of the Act. Consequently, we find that the HRS Erdemir and Isdemir supplied to Borusan is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act.

Regarding the specificity of HRS for LTAR, the GOT provided a list of the industries that purchased HRS in Turkey during the POI.[166] The GOT identified eight industries: Construction, Automotive, Machinery & Industrial, Electrical Equipment, Appliances, Agricultural, Oil & Gas, and Containers & Packaging. Consistent with past determinations, we find that the provision of HRS is specific pursuant to section 771(5A)(D)(iii)(I) of the Act because the number of industries or enterprises using the program is limited.[167]

Finally, regarding benefit, the Department identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services, in accordance with 19 CFR 351.511(a)(2). This section of the Department's regulations specifies potential benchmarks 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 at 19 CFR 351.511(a)(2), the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[168] This is because such prices generally reflect most closely the prevailing market conditions of the purchaser under investigation.

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[163] *Id.,* at Exhibit 4-C (Erdemir 2012 Annual Report, pages 54-55).
[164] *Id.,* at 7 ("Each shareholder or the representative of the shareholder attending on Ordinary or an Extraordinary General Assembly Meetings shall have one voting right for each share.") and Exhibit 4-C, Article 10 ("Board of Directors consists of minimum 5 and maximum 9 members to be selected by the General Assembly of Shareholders under the provisions of Turkish Commercial Code and Capital Markets Board Law.").
[165] *See* Petitioners' February 5 Comments at Exhibit 8 (Memorandum from Shauna Biby, Christopher Cassel, and Timothy Hruby; for Paul Piquado, Assistant Secretary for Import Administration, re: *Section 129 Determination of the Countervailing Duty Investigation of Circular Welded Carbon Quality Steel Pipe; Light-Walled Rectangular Pipe and Tube; Laminated Woven Sacks; and Off-the-Road Tires from the People's Republic of China* (May 18, 2012) at 38).
[166] *See* GQR at Exhibit E4-14.
[167] *See*, *e.g.*, *CWP from the PRC,* and accompanying IDM at 62, citing *Steel from Belgium*, 58 FR at 37276.
[168] *See*, *e.g.*, *Softwood Lumber from Canada,* and accompanying IDM at "Market-Based Benchmark."

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving Turkish buyers and sellers that can be used to determine whether Erdemir and Isdemir sold HRS to the respondents 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 owns or controls the majority or a substantial portion of the market for the good or service, the Department will consider such prices to be significantly distorted and not an appropriate basis of comparison for determining whether there is a benefit.[169]

In response to our requests to provide production and consumption data for HRS during the POI and the previous two years, the GOT stated that such data were not available.[170] Instead, the GOT provided information for the broader "flat-rolled steel" category.[171] The GOT's information showed that domestic production of flat-rolled steel accounted for 58.5 percent and 58.4 percent, respectively, of the total supply of flat-rolled steel (inclusive of imports) in Turkey during 2011 and 2012.[172] Based on this information, we stated the following in the post-preliminary analyses: "Moreover, the GOT's information for the 'flat-rolled' steel category, which includes HRS, indicates that domestic production accounted for a majority of the total supply (inclusive of imports) in Turkey during the POI and previous year (2011) and a 'substantial portion of the market' in 2010."[173] (Footnote omitted.)

As Petitioners note at page 30 of the Petitioners' Rebuttal Brief, however, the flat steel category includes many products other than HRS. Information in the GOT's GQR demonstrates this. At page 4 of the GQR, for example, the GOT stated, "Flat steel products include hot-rolled coils, cold-rolled coils, stainless coils, etc." Moreover, the GOT identified five producers of HRS in Turkey, but the Flat Steel Import, Export and Industry Association's list of members at Exhibit 3 of the GQR lists dozens of companies. This information suggests that production and consumption data for flat-rolled steel may not reflect the same data for HRS, which the GOT stated were not available.[174]

The GOT, however, also reported import statistics for hot-rolled coil during 2010 – 2012.[175] Using these import statistics and certain business proprietary information that Petitioners submitted in the Petition Supplement, we are able to determine that domestic production of HRS accounted for a majority of the total supply (inclusive of imports) in Turkey during the POI and previous two years.[176] Moreover, the share of domestic production in total supply (inclusive of imports) for HRS for each of these three years is higher than the shares we calculated for flat-rolled steel in the post-preliminary analyses. Therefore, the Department has concluded that

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[169] *See Preamble*, 63 FR at 65377.
[170] *See* GQR at 4-5.
[171] *Id.*
[172] *Id.*
[173] *See* Borusan Post-Preliminary Analysis at 8-9; *see also* Toscelik Post-Preliminary Analysis at 7.
[174] *See* GQR at 4.
[175] *Id.* at 5.
[176] Because this information is business proprietary, we have shown this calculation in the Borusan Final Calculation Memo and the Toscelik Final Calculation Memo.

record information indicates domestic production accounts for a majority of the total supply (inclusive of imports) of HRS in Turkey during the POI.

Regarding domestic production of HRS, the GOT stated that Turkey has five HRS producers, but claimed that it does not maintain any ownership or management interest in any of them.[177] In the GSQ1, we requested data regarding Erdemir and Isdemir's share of HRS production during the POI and the previous two years.[178] The GOT claimed that the share of HRS production was not available; instead, the GOT provided Erdemir and Isdemir's share of production in the "flat-rolled steel category."[179] Although the GOT did not provide specific percentages for Erdemir and Isdemir's share of HRS production, the GOT stated that the Erdemir Group (which includes Erdemir and Isdemir) accounts for the majority of HRS production in Turkey.[180]

Therefore, Erdemir and Isdemir, the producers we are finding to be "authorities" pursuant to section 771(5)(B) of the Act, account for the majority of HRS production in Turkey. Moreover, as explained above, record information indicates that domestic production accounts for a majority of the total supply (inclusive of imports) of HRS in Turkey during the POI. Given these facts, we find that the level of government involvement in the market was such that prices would be significantly distorted.[181] Accordingly, we find that actual transaction prices in Turkey are not appropriate to use as a benchmark for the HRS purchased by respondents during the POI because they reflect significant distortion resulting from the government's involvement in the market.[182] 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.[183]

For these reasons, we find that HRS prices stemming from transactions within Turkey - either from domestic purchases or from imports into the country (*i.e.*, tier one prices) - cannot be considered to be independent of the government price. Therefore, use of these prices does not meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration.

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[177] *See* GQR at 5.
[178] *See* GSQ1 at 4.
[179] *See* GSQR1 at 4.
[180] *See* GQR at 7.
[181] As we explained above, we have determined that record information supports the conclusion that Erdemir and Isdemir accounted for a majority of domestic production of HRS during the POI, and domestic production accounted for a majority of the total supply (inclusive of imports) of HRS during the POI. A reasonable conclusion to draw from these facts is that, at a minimum, Erdemir and Isdemir account for "a substantial portion of the market." *See Preamble*, 63 FR at 65377.
[182] *See Softwood Lumber from Canada,* and accompanying IDM at "There are no market-based internal Canadian benchmarks" section.
[183] *Id*. at 38-39.

Because we find that tier one prices for HRS cannot serve as appropriate benchmarks, we next evaluated information on the record to determine whether, pursuant to 19 CFR 351.511(a)(2)(ii), tier two, or world market, prices were available to producers of subject merchandise in Turkey. Petitioners and Borusan submitted prices that they suggest are appropriate. Petitioners submitted POI monthly export prices for various countries from GTIS, POI transaction price indices from MEPS (International) Ltd., prices from a source named "CRU," and a price series from SBB.[184] Borusan submitted prices two price series from SBB: South Europe domestic ex-works prices and Black Sea Export FOB prices.[185]

Consistent with our practice, we have not relied on the MEPS (International) Ltd. prices, CRU prices, the SBB price series from Petitioners, or the SBB South Europe prices because record information indicates that all of these are domestic prices (not export prices) in specific countries.[186] Therefore, these are not prices of HRS that would be available to purchasers in Turkey.[187]

Regarding the Black Sea export price series that Borusan submitted, nothing on the record provides additional details on this price series. However, based on its title, this price series includes prices from Turkey. For example, Erdemir is located in Eregli, a city on the Black Sea.[188] As we explained above, we find that HRS prices stemming from transactions within Turkey - either from domestic purchases or from imports into the country (*i.e.*, tier one prices) - do not meet the statutory and regulatory requirement for the use of market-determined prices to measure the adequacy of remuneration. Therefore, we have not included the Black Sea price series in the benchmark because it includes prices from Turkey.

Instead, and consistent with our practice, we are relying on the GTIS monthly export prices during the POI.[189] The Department's regulations at 19 CFR 351.511(a)(2)(ii) states that where there is more than one commercially available world market price, the Department will average the prices to the extent practicable. Accordingly, we calculated a weighted average of the GTIS prices for each month. We were able to calculate a weighted average in this instance because the GTIS export prices are all on the same basis (*i.e.*, U.S. dollars per metric ton) and are all individual transactions in the same data series.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or 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. Regarding delivery charges, we added to the monthly benchmark prices ocean freight and inland freight charges that would be incurred to deliver HRS from a Turkish port to the companies' facilities. For ocean freight, Petitioners placed on the record ocean freight pricing

[184] Petitioners' Benchmark Submission.
[185] *See* BQR at Exhibit 12; *see also* Borusan Verification Exhibits (Public Version) at Exhibit 1.
[186] The MEPS (International) Prices are ex-mill prices. *See* Petitioners' Benchmark Submission at Exhibit 6. The CRU prices do not list sale terms, but the CRU defines the series as "USA, Midwest." *Id.* at Exhibit 7. The SBB prices are domestic prices for Japan, Mexico, Brazil, and Argentina. *Id.*, at Exhibit 8.
[187] *See*, *e.g.*, *Rebar from Turkey,* and accompanying PDM at 15.
[188] *See* GQR at Input Producer Appendix, page 3.
[189] *See*, *e.g.*, *Aluminum Extrusions from China,* and accompanying IDM at 27-28.

data from Maersk for the POI pertaining to shipments of HRS from various world ports to Turkey.[190] We averaged the international freight rates to derive the amount that we included in our benchmark. For inland freight rates, we used the rates that Borusan reported for domestic shipments of HRS in Turkey.[191] For Toscelik's inland freight rates, we used the rates that Toscelik reported for port-to-plant inland freight on imported coils.[192] For both companies' calculations, we also added the applicable VAT and import duties, at the rates reported by the GOT.[193] We address comments by interested parties on the benchmark at Comment 3, below. As we note in Comment 3, we excluded import duties from the benchmark for exports from certain countries in the GTIS data because record information shows that no importer in Turkey would pay import duties on imports of HRS from these countries.

We then compared the monthly benchmark prices to each company's actual purchase prices for HRS,[194] including taxes and delivery charges, as appropriate. For instances in which Borusan or Toscelik paid a lower unit price to Erdemir and Isdemir than the benchmark unit price, we multiplied the difference by the quantity of HRS that the company purchased to calculate the benefit.[195] Under this methodology, we find that Borusan and Toscelik received a benefit to the extent that the prices they paid for HRS produced by Erdemir and Isdemir were for LTAR.[196]

To calculate the net subsidy rate attributable to each company, we divided the benefit by each company's respective POI sales, as described in the "Subsidies Valuation Information – Attribution of Subsidies" section above.

On this basis, we find that Borusan received a countervailable subsidy of 15.58 percent *ad valorem*. We find that Toscelik received a countervailable subsidy of 1.40 percent *ad valorem*. *See* the Borusan Final Calculation Memo and the Toscelik Final Calculation Memo for the calculations.

7. 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

[190] *See* Petitioners' Benchmark Submission at Exhibit 1.
[191] *See* BQR at Exhibit 13.
[192] *See* TQR at Exhibit 22.
[193] *See* GQR at 66. Because the GOT reported that duties on HRS range between zero and 13 percent depending on the subheading of the Harmonized Tariff System classification for HRS, we are using the average of these numbers (*i.e.*, 6.5 percent) as the import duty rate in the benchmark.
[194] Borusan did not report actual purchase information for its Halkali and Izmit mills. As described in the "Use of Facts Otherwise Available and Adverse Inferences – Borusan's Reported Purchases of HRS" section above, the Department is making an adverse inference with respect to the quantity and price paid by Borusan to Erdemir and Isdemir for HRS for its Halkali and Izmit mills.
[195] *See* Toscelik Final Calculation Memo; *see also* Borusan Final Calculation Memo
[196] *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

and salaries of the workers.[197] According to the GOT, all enterprises or industries established in 49 specific provinces can benefit from this program.[198]

The GOT states that this program includes two levels of withholding based on where the enterprise is established in the 49 eligible provinces.[199] According to the GOT, firms whose premises are established in OIZs or Industrial Zones located in the 49 provinces can benefit from 100 percent cancellation of income tax calculated on the wages of all workers who have been hired by income or corporate tax payers hiring at least ten workers.[200] 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.[201] The GOT further states that the total amount to be cancelled cannot exceed the sum determined on the basis of the above-mentioned rates calculated on the value to be obtained by multiplying the number of employees and the income tax payable for the minimum wage.[202]

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.[203] Hence, the last date which the investment can benefit from this tax incentive program is December 31, 2012.[204]

Toscelik reported that it received a benefit under this program during the POI with respect to its facility in the Osmaniye OIZ.[205] 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.[206]

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 POI. To calculate the net subsidy rate, we divided the benefit by Toscelik's total sales

[197] *See* GQR at 55.
[198] *Id.*
[199] *Id.*
[200] *Id.*
[201] *Id.*
[202] *Id.*
[203] *Id.*
[204] *Id.*
[205] *See* TQR at 32.
[206] *See, e.g.*, *CWP Turkey 2011 AR,* and accompanying IDM at "Law 5084: Withholding of Income Tax on Wages and Salaries."

during the POI, as described in the "Subsidies Valuation Information – Attribution of Subsidies" section above. On this basis, we determine Toscelik's net subsidy rate under this program to be 0.03 percent *ad valorem*.

8. Exemption from Property Tax

The Turkish Ministry of Finance administers this program pursuant to Article 4 of Law No. 3365, which came into force on January 1, 1987.[207] The program's objective is to increase the investment opportunities in OIZs.[208] The GOT provides an exemption of property tax for the first five years following the completion date of the construction of buildings.[209] According to the GOT, there were 199 active OIZs in Turkey as of the end of the POI.[210]

Toscelik reported that it received an exemption from property tax during the POI with respect to its Osmaniye facility because of its location in the OIZ.[211]

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.[212]

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 POI and divided the amount of the benefit by Toscelik's total sales during the POI, as described in the "Subsidies Valuation Information – Attribution of Subsidies" section above. On this basis, we determine Toscelik's net subsidy rate under this program to be 0.01 percent *ad valorem*.

9. 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.[213] 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

[207] *See* GQR at 64.
[208] *Id.*
[209] *Id.*
[210] *Id.* at 68.
[211] *See* TQR at 34.
[212] *See, e.g.*, *CWP Turkey 2011 AR*, and accompanying IDM at "Organized Industrial Zone (OIZ): Exemption from Property Tax."
[213] *See* GQR at 72.

support for the employer's share of insurance premiums. According to the GOT, all enterprises or industries in the 49 provinces that hire at least ten workers can benefit from this program.[214]

The GOT states that this program includes two levels of activity based on where the enterprise is established in the 49 eligible provinces.[215] 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 support for income tax or corporate taxpayers (employers) hiring at least ten workers.[216] Companies whose premises are located at other areas of the 49 eligible provinces can benefit from 80 percent support for income tax or corporate taxpayers (employers) hiring at least ten workers.[217] The GOT further states that it will provide support 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, if they pay the amounts corresponding to the employees' share in the insurance premiums of all the insured, and if they pay the employers' share that is unmet by the Treasury.[218]

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.[219] Hence, the last date which the investment can benefit from this tax incentive program is December 31, 2012.[220]

Toscelik reported that it received benefits under this program during the POI because its Osmaniye plant is located in an OIZ in the Osmaniye province, which is one of the 49 eligible provinces.[221] In its first-day minor corrections at verification, Toscelik reported the amount of withholding attributed to the Osmaniye plant during the POI, as opposed to the amount of withholding for the entire company in 2011 that it reported in the TQR.[222]

We find that the insurance premiums paid by the GOT on behalf of Toscelik under this program during the POI 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 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 Toscelik 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

[214] *Id.*
[215] *Id.*
[216] *Id.* at 73.
[217] *Id.*
[218] *Id.*
[219] *Id.*
[220] *Id.*
[221] *See* TQR at 37.
[222] *See* Toscelik Verification Exhibits at Exhibits 1 and 8.

companies located in the 49 eligible provinces. The Department's findings in this regard are consistent with its practice.[223]

To calculate the benefit Toscelik received under the program, we summed the total amount of insurance premium savings reported by Toscelik during the POI, incorporating the minor correction. To calculate the net subsidy rate, we divided the benefit by Toscelik's total sales during the POI, as described in the "Subsidies Valuation Information – Attribution of Subsidies" section above. On this basis, we determine Toscelik's net subsidy rate under this program to be 0.18 percent *ad valorem*.

B. Program Found To Be Not Countervailable

Provision of Natural Gas for LTAR

On December 17, 2013, we initiated an investigation into whether respondents received natural gas for LTAR from BOTAS, the state-owned and controlled entity that supplies nearly all the natural gas in Turkey, including imported gas that BOTAS delivers through its pipelines.[224] Consistent with Petitioners' allegation, we investigated this program as being specific to the power industry in Turkey, with respondents benefiting from the program to the extent that they were co-generators of power and, thus, part of the power industry.

Borusan reported that neither it nor any of its cross-owned affiliates generated power during the POI.[225] Consequently, we find that Borusan is not part of the power industry and did not benefit from the program as alleged and on the basis on which we initiated the investigation.

Toscelik reported that it buys natural gas from OIZs that buy the gas from BOTAS.[226] Although Toscelik reported its purchases of natural gas from the OIZs during the POI, Toscelik explained that it does not use natural gas to generate power.[227] Toscelik also explained that it only uses an Organic Rankine Cycle generator to generate electricity by using thermal energy given off by its slab reheating furnace.[228] Consequently, we also find that Toscelik is not part of the power industry and did not benefit from the program as alleged and on the basis on which we initiated the investigation.

Although we find that Borusan and Toscelik are not part of the power industry and did not benefit from the program as alleged, we examined record information to determine whether the provision of natural gas to the respondents was specific for other reasons within the meaning of 771(5A) of the Act.

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[223] *See*, *e.g.*, *Turkey CWP 2011 AR,* and accompanying IDM at "Law 5084: Incentive for Employers' Share in Insurance Premiums."
[224] *See* NSA Initiation Memo at 10.
[225] *See* BNSA QR at 5; *see also* BNSA SQR at 1.
[226] *See* TNSA QR at 4.
[227] *Id.* at Exhibit 1; *see also* TNSA SQR at 1.
[228] *See* TNSA SQR at 1-2.

The GOT submitted data showing the relative share of consumption of natural gas by various industrial sectors in Turkey.[229] This usage information shows that while nearly all industries in Turkey (including services) used natural gas, the power industry was clearly the predominant user.[230] Therefore, we find that the provision of natural gas for LTAR is specific to the power industry within the meaning of section 771(5A)(D)(iii)(II) of the Act. Because we are finding that Borusan and Toscelik are not part of the power industry in Turkey, we also find that Borusan and Toscelik did not benefit from this program.

C. Programs Found Not To Be Used.

1. *Strategic Investment Incentives*
    a. *Value Added Tax ("VAT") and Customs Duty Exemptions*
    b. *Tax Reductions*
    c. *Income Tax Withholding*
    d. *Social Security and Interest Support*
    e. *Land Allocation*
2. *Large Scale Investment Incentives*
    a. *VAT and Customs Duty Exemptions*
    b. *Tax Reductions*
    c. *Income Tax Withholdings*
    d. *Social Security and Interest Support*
    e. *Land Allocation*
3. *Export Insurance Provided by Turk Eximbank*
4. *Preferential Tax Benefits for Turkish OCTG Producers Located in Free Zones*
5. *Incentives for Research and Development ("R&D") Activities*
    a. *Product Development R&D Support-UFT*
    b. *Tax Breaks*
6. *Provision of Steam Coal for LTAR*

VIII. ANALYSIS OF COMMENTS

Comment 1: Treatment of Erdemir and Isdemir as Government Authorities

At pages 11-25 of the Borusan Case Brief, Borusan argues that the Department's finding in the post-preliminary analyses that Erdemir is a government authority because of OYAK's ownership cannot be sustained. OYAK, Borusan argues is not the "government." Borusan contends that OYAK's purpose is to invest and make money for its military pension holders. Moreover, Borusan argues that GOT does not own shares in OYAK because OYAK is a corporate and administrative entity that does not have shareholders. The assets of OYAK, Borusan notes, consist exclusively of its members' contributions. Borusan contends that no record evidence

[229] *See* GNSA QR at 20-21.
[230] The GOT's data show that the power industry accounted for approximately 47.5 percent of natural gas consumption in Turkey during the POI. *Id.* In contrast, the share consumed by the iron and steel industry was only approximately five percent of the power industry's consumption. *Id.*

indicates the GOT controls OYAK or is in a position to require OYAK to carry out government functions.

Regarding Erdemir, Borusan argues that Erdemir is a public company that could not lawfully engage in any activities that would interfere with its obligations to its shareholders. OYAK and Erdemir, according to Borusan, must act in the best interests of their pension holders or shareholders. Because OYAK is not owned or controlled by the GOT, Borusan argues, there is no basis for treating Erdemir as a government authority.

Borusan also argues that even if the Department could demonstrate that a military pension fund such as OYAK was the "government," there is no evidence that OYAK vested Erdemir with government authority to carry out government functions. Borusan argues that the Department cannot apply a presumption that OYAK's barely majority ownership in Erdemir results in a government authority. Noting that Erdemir is a publicly-traded company, Borusan argues that any finding that Erdemir acts as a government authority that is allegedly lowering its revenues in order to carry out some unspecified Turkish government policy to sell HRS at below market prices is absurd.

At pages 4-7 of the Toscelik Case Brief, Toscelik argues that there is no evidence that the GOT has exercised any control over Erdemir during the POI. To the contrary, Toscelik argues, Erdemir operates entirely on market principles and is a profit maximizer. Toscelik notes that Erdemir's prices are higher than Toscelik's cost of production of HRS, and they are higher than Toscelik's selling prices for HRS.

At pages 3-9 of the GOT Case Brief, the GOT argues that the Department erred in its preliminary findings that Erdemir and Isdemir are public bodies and that the GOT exercises meaningful control over them. The record evidence, the GOT contends, shows that GOT does not exercise any control over Erdemir and Isdemir and that these companies do not exercise any governmental function.

At pages 13-28 of the Petitioners' Rebuttal Brief, Petitioners respond to the arguments by the GOT, Borusan, and Toscelik. Petitioners contend that all of the information the GOT placed on the record shows clearly that Erdemir and Isdemir are authorities within the meaning of the U.S. statute. Petitioners note that Erdemir and Isdemir are owned by OYAK, Turkey's military pension fund, which is created by statute to serve governmental functions. Accordingly, Petitioners argue, GOT officials dominate and control OYAK and support it with state assets.

Further, Petitioners argue, OYAK, Erdemir, and Isdemir continue to act to implement GOT industrial policy goals, as demonstrated by substantial evidence on the record. Petitioners assert that the Department's preliminary findings are in accordance with the law and should remain unchanged in the final determination.

Department's Position

In the post-preliminary analyses, as explained again in detail above at the "Programs Determined to Be Countervailable – Provision of HRS for LTAR" section, we determined Erdemir and

Isdemir to be public bodies, and hence "authorities" pursuant to section 771(5)(B) of the Act, based on our analysis of the record evidence as a whole. As described in detail in this section above, we cited the following record evidence in the post-preliminary analyses showing that the GOT exercised meaningful control over OYAK:

- OYAK's creation by GOT statute;
- Composition of OYAK's leadership;
- OYAK's property status;
- Requirement that members of the military must contribute to OYAK; and
- A foundation's study on OYAK.

Next, we provided evidence of how the GOT's meaningful control of OYAK extends to Erdemir (and its subsidiary Isdemir), as follows:

- OYAK's majority ownership of Erdemir;
- Erdemir's policies described in its Annual Report;
- GOT power over Erdemir's decisions on closure or capacity adjustments; and
- OYAK / GOT presence on Erdemir's Board of Directors.

The GOT, Borusan, and Toscelik argue against the significance of this evidence. For example, at page 16 of the Borusan Case Brief, Borusan cites *WTO DS 379* and states, "Even if the Department could somehow demonstrate that a military pension fund such as OYAK is the 'government' (which it cannot), OYAK's barely majority ownership in Erdemir is insufficient to justify treating Erdemir as a government authority." As described above in the "Programs Determined to Be Countervailable – Provision of HRS for LTAR" section, however, we did not rely only on OYAK's majority ownership of Erdemir. Instead, we considered this information on Erdemir's ownership together with other information on the record.

Borusan and the GOT, for example, dispute the significance of the following statement in the post-preliminary analyses: "For example, Erdemir's 2012 Annual Report states that it 'implemented policies which promoted the customers to engage in export-oriented production' and 'supports the use of domestically mined resources for raw materials in view of…the added value created by the domestic suppliers in favor of the local industries.'[231] For example, at page 18 of the Borusan Case Brief, Borusan claims that the "Department has selectively quoted the Annual Report and altered its meaning" with respect to the quotation on domestic suppliers.[232] Borusan's claim is simply not true. Erdemir's Annual Report for the POI states in plain

[231] *See* Borusan Post-Preliminary Analysis at 7 and Toscelik Post-Preliminary Analysis at 5, citing GQR at Exhibit 4-C.

[232] The full quotation from the Annual Report is as follows: "ERDEMİR Group also supports the use of domestically mined resources for raw materials in view of the close proximity of the resources to our production sites and the added value created by the domestic suppliers in favor of the local industries." This identifies two separate reasons why Erdemir supports the use of domestically mined resources. Therefore, as we explain above, Erdemir's Annual Report for the POI states in plain language that Erdemir supports the use of domestically mined resources for raw materials in view of the added value created by the domestic suppliers in favor of the local industries.

language that Erdemir implemented policies to promote its customers to engage in export-oriented production and supported domestic suppliers in favor of local industries. Although these statements alone may not indicate that Erdemir is acting as a government "authority," we continue to consider them as part of the record evidence as a whole on the GOT's meaningful control of Erdemir (and its subsidiary, Isdemir).

Borusan also asserts that "OYAK did not hold a majority on Erdemir's board during the POI and thus cannot control Erdemir" because the Annual Report only identified four of the nine members of Erdemir's board during the POI as OYAK or GOT representatives. *See* Borusan Case Brief at 19. This generalized statement, however, does not address the significant evidence we cited to explain how OYAK's majority shareholder position in Erdemir means that it controls the selection of Erdemir's board: "Each shareholder or the representative of the shareholder attending on Ordinary or an Extraordinary General Assembly Meetings shall have one voting right for each share," and "Board of Directors consists of minimum 5 and maximum 9 members to be selected by the General Assembly of Shareholders under the provisions of Turkish Commercial Code and Capital Markets Board Law."[233] Therefore, regardless of whether the Annual Report identifies a board member as a representative of the GOT or of OYAK, the record evidence indicates that, as a factual and legal matter, OYAK controls the selection of Erdemir's board. Moreover, Borusan's argument does not address the significant presence on Erdemir's board of GOT and OYAK representatives that the Annual Report identifies. In determining whether Erdemir is a government authority, we consider the totality of the record evidence regarding the GOT's meaningful control of Erdemir.

Concerning the GOT's authority over Erdemir's decisions on closure or capacity adjustments through the GOT's TPA, Borusan states, "These rights are very limited and do not indicate that the TPA controls Erdemir or has vested it with government authority."[234] Borusan offers no explanation or support for its claim, however, that these rights are "limited." Further, citing the Position Paper on OYAK in the GOT's response, Borusan argues that the provision in Turkish Law No. 205 granting OYAK's property the same rights as state property is also "very limited."[235] The plain language of Law No. 205, however, is as follows: "All of the property of the Fund as well as all of the revenue of and debts due to the Fund shall enjoy the same rights and privileges as State property."[236] Thus, the plain language of the law is inconsistent with Borusan's claim that the provision is "very limited." We continue to find that this record information (*i.e.*, the GOT's ultimate veto authority over Erdemir's capacity decisions and the provision regarding state property), together with the other record evidence described above, demonstrates that the GOT instead exercises meaningful control over Erdemir and Isdemir through its control of OYAK. On the other hand, there is no record evidence to support Borusan's claim of "limited" TPA or OYAK authority with respect to Erdemir.

[233] *See* Borusan Post-Preliminary Analysis at 7 and Toscelik Post-Preliminary Analysis at 6, citing GQR at Exhibit 4-C.
[234] *See* Borusan Case Brief at 19.
[235] *Id.* at 14.
[236] *See* Petition at Volume X, Exhibit X-18.

Further, the GOT, Toscelik, and Borusan argue that OYAK operates on a commercial basis to maximize profitability. For example, at page 5 of the GOT Case Brief, the GOT states, "In other words, OYAK utilizes its assets, all of which belongs to its members, in financial and subsidiary investments without compromising on its principles of efficiency and profitability." At page 15 of the Borusan Case Brief, Borusan states, "Given that OYAK is the trustee of the pension fund whose purpose is to provide retirement income to its military pension fund holders, it would be a breach of OYAK's fiduciary obligations if it were directing Erdemir to sell hot-coil to Turkish pipe producers for less than market prices." Similarly, at page 1 of the Toscelik Case Brief, Toscelik claims that "Erdemir does not sell coil at preferential prices; its prices are higher than Toscelik's cost of production, and they are higher than Toscelik's selling prices."

The Department, however, has explained why a firm's commercial behavior is not dispositive in determining whether that firm is a government "authority:"

> It has been argued that government-owned firms may act in a commercial manner. We do not dispute this. Indeed, the Department's own regulations recognize this in the case of government-owned banks by stating that loans from government-owned banks may serve as benchmarks in determining whether loans given under government programs confer a benefit. However, this line of argument conflates the issues of the 'financial contribution' being provided by an authority and 'benefit.' If firms with majority government ownership provide loans or goods or services at commercial prices, *i.e.*, act in a commercial manner, then the borrower or purchaser of the good or service receives no benefit. Nonetheless, the loans or goods or service is still being provided by an authority and, thus, constitutes a financial contribution within the meaning of the Act.[237]

Thus, as the Department explained in *Kitchen Racks from the PRC* with regard to similar arguments made in that proceeding, the respondents' arguments here, as noted above, are not relevant to whether Erdemir and Isdemir are public bodies, and hence government "authorities," within the meaning of section 771(5)(B) of the Act. Rather, they erroneously conflate the issues of "financial contribution" with "benefit."

Based on the record evidence as a whole, as described above under the "Analysis of Programs – Provision of HRS for LTAR" section, we find Erdemir and Isdemir to be public bodies, and hence "authorities," pursuant to section 771(5)(B) of the Act. Consequently, we find that the HRS Erdemir and Isdemir supplied to Borusan and Toscelik is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act.

Comment 2: Distortion of Turkish HRS Market and Use of External Benchmark

At pages 25-36 of the Borusan Case Brief, Borusan rejects the Department's use of a world market price benchmark based on a finding that the Turkish HRS market is distorted by the presence of Erdemir. First, Borusan argues that the Department's calculation of Erdemir's market share is wrong because it does not account for exports and assumes that all domestic production was from Erdemir. When the appropriate adjustments are made, Borusan asserts,

[237] *See Kitchen Racks from the PRC,* and accompanying IDM at Comment 4.

Erdemir's share of the domestic flat-rolled market is below 50 percent. Moreover, Borusan asserts that the Department has never relied on the fact that a domestic government producer controls a percentage of the market to be a sufficient basis alone to disregard significant imports into the market as a viable benchmark.

Regardless of whether Erdemir did supply just over fifty percent of the flat-rolled market, Borusan asserts, the Department cannot presume that a 50 percent government market share renders the entire Turkish market so distorted that import prices from international steel producers are unreliable as an indicator of market value. The Department's regulations at 19 CFR 351.511(a)(2), Borusan notes, include a preference for the use of actual company-specific benchmarks for measuring the adequacy of remuneration because such prices generally reflect most closely the prevailing market conditions of the purchaser in the country. Borusan asserts that the Department applies this preference in virtually all market economy cases, regardless of whether the government is a majority supplier in the market. Citing, *e.g.*, *CR Steel from Korea*, Borusan claims that the Department has never concluded that import prices are controlled by the government. Borusan argues that in the precedent the Department cited, *Softwood Lumber from Canada*, the Department stated that it would have used import prices as the tier one benchmark had they been on the record.[238] Borusan claims that the Department offers no explanation of why or how the facts of this case support such a departure from precedent. Finally, Borusan asserts, the Department must explain its reasoning that major global suppliers sell large amounts of HRS in Turkey to Borusan at distorted prices.

Citing 19 CFR 351.511(a)(2)(i), Toscelik argues at pages 6-9 of the Toscelik Case Brief that the regulations establish a preference that the Department use a market-determined benchmark price in the country in question if such a price is available. When a respondent purchases an input from a non-state-controlled supplier, Toscelik asserts, the Department has a preference for using that price as the benchmark. Toscelik claims the weighted-average price that it paid for HRS from Erdemir was higher than the weighted-average price for Toscelik's purchases from import (*i.e.*, world-market) sources. Toscelik asserts that the regulation and purchase information compel the Department to conclude that Toscelik did not acquire HRS from Erdemir for LTAR.

At pages 9-11 of the GOT Case Brief, the GOT argues that the Department incorrectly calculated that Erdemir and Isdemir account for a majority of the Turkish flat-rolled steel domestic market. Accordingly, the GOT concludes, the Department is in error by finding that actual transaction prices of HRS within Turkey are distorted.

At pages 28-32 of the Petitioners' Rebuttal Brief, Petitioners argue that the Department properly declined to use a tier one benchmark for the provision of HRS. Petitioners contend that the Turkish market, whether considered in terms of "flat products" or limited to HRS, is distorted by the government's significant share of domestic consumption. Petitioners argue that this distortion is unaffected by the presence of imports, which are not sufficient in this case pursuant to Department practice and cannot otherwise resolve the market distortions caused by the government. Petitioners assert, moreover, that the GOT's attempts to distort the Department's

[238] *See Softwood Lumber from Canada,* and accompanying IDM at 35-36.

findings by providing information only for flat products were unavailing and should remain so in the final determination.

Department's Position

Data on Turkish HRS Market

As explained above in the "Programs Determined to Be Countervailable - Provision of HRS for LTAR" section, we find that production and consumption data for flat-rolled steel products, which we relied on in the post-preliminary analyses, may not reflect the same data for HRS. The GOT stated that production and consumption data for HRS were not available.[239] However, the GOT reported import statistics for hot-rolled coil during 2010 – 2012.[240] Using these import statistics and certain business proprietary information that Petitioners submitted in the Petition Supplement, we are able to determine that domestic production of HRS accounted for a majority of the total supply (inclusive of imports) in Turkey during the POI and previous two years.[241] Moreover, the share of domestic production in total supply (inclusive of imports) for HRS for each of these three years is higher than the shares we calculated for flat-rolled steel in the post-preliminary analyses. Therefore, the Department has determined that the information on the record indicates that domestic production accounts for a majority of the total supply (inclusive of imports) of HRS in Turkey during the POI.

The GOT and Borusan argue extensively that the information the GOT provided demonstrates that Erdemir's and Isdemir's share of the flat-rolled steel market is well below 50 percent. We note initially that where the Department finds that the government owns or controls the majority *or a substantial portion* of the market for the good or service, the Department will consider such prices to be significantly distorted and not an appropriate basis of comparison for determining whether there is a benefit.[242] The Department has found distortion in input markets when government providers accounted for less than 50 percent of the market for an input.[243]

Moreover, to measure accurately the level of distortion in the Turkish HRS market, we required information on production and consumption of HRS in Turkey. The GOT stated that it was unable to provide this information. The GOT only provided production and consumption information for flat-rolled steel products.

We acknowledge that we are basing our finding on the share of imports into the Turkish HRS market on two sources which may, or may not, be reported on identical bases: import statistics and production data. However, no other data are available on the record. As explained above, the GOT only provided production and consumption information for flat-rolled steel products, but was unable to provide more specific production information on HRS. As we also discussed

[239] *See* GQR at 5.
[240] *Id*.
[241] Because this information is business proprietary, we have shown this calculation in the Borusan Final Calculation Memo and the Toscelik Final Calculation Memo.
[242] *See Preamble*, 63 FR at 65377.
[243] *See*, *e.g.*, *Coated Paper from the PRC,* and accompanying IDM at "Provision of Papermaking Chemicals For LTAR" and Comment 14.

above, record information suggests that production and consumption data for flat-rolled steel may not reflect the HRS market. Therefore, the Department has determined this information indicates that imports of HRS constituted an even lower share of the Turkish HRS market from 2010-2012 than the shares we used for flat-rolled steel products in the post-preliminary analyses. Moreover, the GOT stated that Erdemir and Isdemir account for the majority of HRS production in Turkey. Therefore, we conclude that Erdemir and Isdemir accounted for, at a minimum, a substantial portion of the HRS market in Turkey during the POI.[244]

The GOC and Borusan have provided no further information on the record to allow us to determine the domestic supply of HRS in Turkey as a whole. If the GOT does not maintain the information in the form and manner requested, then it is the GOT's responsibility to provide information on the administrative record so that the Department can analyze such information and determine a reasonable method to measure the volume of domestic supply of HRS in Turkey. The GOT has knowledge of how its agencies and organizations compile and maintain data, while the Department is not privy to such information. Therefore, as directed by section 782(c)(1) of the Act, the responsibility was with the GOT, and not the Department, to propose and present alternative data that we could use to analyze the Turkish HRS market. The information in the Petition Supplement, coupled with the import data, combined with the GOT's statement that Erdemir and Isdemir account for the majority of HRS production in Turkey, support a conclusion that Erdemir and Isdemir account for at least *a substantial portion* of the HRS market in Turkey.

Finally, both the GOT and Borusan assert that we should have excluded exports from our calculation of the share of domestic production in the total supply of flat-rolled steel in the Turkish market.[245] The GOT, for example, stated, "The Department should have calculated the total supply in Turkey by taking the sum of total domestic production and imports of flat-rolled steel and subtracting exports from this sum."[246] We disagree with the GOT and Borusan. Our calculation is of the total supply in Turkey, which is imports plus domestic production. Therefore, in calculating the share of domestic production in total supply (inclusive of imports) for HRS in the Toscelik Final Calculation Memo and Borusan Final Calculation Memo, we continue to base the calculation of total supply on imports plus domestic production.[247]

Use of External Benchmark

Regarding our use of an external (tier 2) benchmark under 19 CFR 351.511(a)(2) because of the level of government involvement in the Turkish HRS market, we also agree with Petitioners. The basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services is set forth under 19 CFR

[244] *See Preamble*, 63 FR at 65377. ("While we recognize that government involvement in a market may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, *a substantial portion* of the market. Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy.") (Emphasis added.)
[245] *See* Borusan Case Brief at 5; *see also* GOT Case Brief at 9.
[246] *See* GOT Case Brief at 9.
[247] *See* Toscelik Final Calculation Memo; *see also* Borusan Final Calculation Memo.

351.511(a)(2). 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). Although we agree with Borusan that the Act directs the Department to determine the adequacy of remuneration in relation to the prevailing market conditions in the country where the good is being provided, in this case we determine that the market for HRS is significantly distorted by the involvement of the government.[248] Therefore, the use of domestic prices of HRS in Turkey, including import prices, is not suitable for our analysis.

Toscelik contends that the prices it paid for HRS from Erdemir were higher than the weighted-average price for Toscelik's purchases from import (*i.e.*, world-market) sources. However, because we have determined that the prices in the HRS market in Turkey are significantly distorted because of the government's involvement in the market, using a price from within Turkey would not be appropriate. The proper analysis of whether Erdemir and Isdemir provided HRS for LTAR is to compare respondents' prices to world market prices that would be available to purchasers in the country under investigation, with adjustments pursuant to 19 CFR 351.511(a)(2)(iv).

Further, the Department's decision to use tier-two prices is consistent with the *Preamble*, which states, "{W}here it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative…"[249] Contrary to Borusan's assertion that the Department has never found that import prices are distorted by a government's presence in an input market, this reliance on world market prices is consistent with the Department's practice.[250]

Accordingly, as explained above in the "Programs Determined to Be Countervailable - Provision of HRS for LTAR" section, we determine that HRS supplied by Erdemir and Isdemir constitutes a financial contribution in the form of a governmental provision of a good. We also determine that the respondents received a benefit to the extent that the price they paid for HRS produced by Erdemir and Isdemir was for LTAR.[251]

Comment 3: The Department's World Market Price Benchmark

At pages 36-43 of the Borusan Case Brief, Borusan argues that even if the Department could maintain its use of a tier two benchmark, it has no lawful basis for excluding the SBB data that Borusan submitted. Citing *OCTG from the PRC AR*, Borusan argues that the Department regularly uses SBB data in other cases. The SBB pricing data for Southern Europe and the Black

[248] *See* above at "Provision of HRS for LTAR."
[249] *See Preamble*, 63 FR at 65377.
[250] *See*, *e.g.*, *Aluminum Extrusions from the PRC AR,* and accompanying IDM at "Provision of Primary Aluminum for LTAR" and Comment 13; *see also Wind Towers from the PRC,* and accompanying IDM at "Provision of Hot-Rolled Steel for LTAR;" *see also Coated Paper from the PRC,* and accompanying IDM at "Provision of Papermaking Chemicals For LTAR" and Comment 14.
[251] *See* sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

Sea, Borusan argues, are the most representative because these are prices that are actually available to Borusan in Turkey. Thus, Borusan argues, these price series most closely approximate the preference for in-country benchmarks under 19 CFR 351.511(a)(2). Borusan contends that the Department wrongly rejected those prices on the grounds that they would not be available to Turkey or might have included exports from Turkey. Instead, Borusan argues, the Department wrongly used GTIS data with prices from countries as far away as Singapore and Hong Kong for the benchmark. Further, Borusan asserts that the GTIS data include monthly quantities between two parties that are: (1) aberrationally high prices for alloy HRC (HTS 7225 and 7226) that is not used to produce the grades of OCTG that Borusan produces; and, (2) very low quantities too small to represent even a single coil of the size used by Borusan to produce OCTG, which in both cases result in substantially overstating the monthly world prices used by the Department.[252]

Borusan also asserts that the Department used exorbitantly high container freight rates that would never apply to imports of HRS. Borusan asserts that no company ships HRS in containers because the containers could not withstand the concentrated weight of the coils and because the cost is prohibitive. Use of such freight rates, Borusan contends, is unreasonable and violates the Department's obligation to calculate margins as accurately as possible. Borusan asserts that its sea freight rates on the record for domestic sea shipments by general cargo carriers are more representative for use in a benchmark. Given that the vast majority of Borusan's import purchases during the POI were from Russia and Ukraine, Borusan argues, it is reasonable to conclude that the average freight rate to ship imports of HRS to Borusan's Gemlik port on general cargo vessels would be similar to these domestic sea freight rates.

Regarding inland freight in Turkey, Borusan contends that the Department was also mistaken in including this in its benchmark calculations. Borusan notes that it purchased all imported coil on a delivered basis to the Gemlik port and incurred no additional freight charges. Thus, Borusan asserts, in calculating benchmark prices to reflect what it would pay for an imported product, there is no basis for adding "inland freight" on top of the ocean freight that would bring the hot coil to the Gemlik port.

Furthermore, Borusan argues, the Department's inclusion of import duties and VAT in the benchmark prices is in error. Record information, Borusan asserts, shows that imports from the EU incur zero duties on HRS and that Borusan's imports from non-EU sources are under Turkey's inward processing regime, thereby making the imports exempt from import duties and VAT. Thus, Borusan argues, the Department's decision to include the import duties and VAT as part of its benchmark is contrary to record evidence and does not represent charges that Borusan (or any firm) would actually incur if it imported from world market suppliers.

At pages 11-17 of the Toscelik Case Brief, Toscelik argues that the benchmark should not include value-added taxes or import duties because:

- The Erdemir price being compared to the benchmark does not include VAT;
- VAT is not a cost;

[252] *See* Borusan Case Brief at 37-38.

- Neither VAT nor import duties would apply to imported coils because Toscelik is a participant in Turkey's inward-processing regime; and
- Imports from the EU are duty-free because of Turkey's customs union with the EU; and
- The denominators of the benefit calculation exclude VAT.

Toscelik also argues that the Department's ocean freight rates are false. Toscelik contends that it is not believable that ocean freight, which is a very significant part of coil cost, increased so tremendously during the POI while the CIF cost of HRS remained perfectly flat.

At page 12 of the GOT Case Brief, the GOT argues that in calculating the benefit, the Department erred in determining the benchmark for HRS prices by adding VAT and customs duties, which artificially increased the subsidy margins.

At Pages 33-36 of the Petitioners' Rebuttal Brief, Petitioners argue that the Department should not base the tier two benchmark on, or even include, Borusan's SBB data. Petitioners argue that Borusan inappropriately changed the designation of this information from BPI to public as a "minor error correction" at verification. Regardless, Petitioners argue, these SBB prices are distorted because they include prices both into, and out of, the distorted Turkish market, prices which the Department regularly rejects for benchmarking purposes. Petitioners argue that the benchmark prices they submitted, including the GTIS data, are the proper basis for the Department's benchmark calculation.

Regarding adjustments to the benchmark, Petitioners argue that the benchmark calculation, pursuant to the clear requirements of the Department's regulations and practice, must continue to include adjustments for import duties, VAT, and freight. Petitioners argue that the Department has on numerous occasions rejected arguments identical to those of the GOT and the respondents.

Department's Position

SBB Prices and Black Sea Export Prices in the Benchmark

With regard to Borusan's request that we include the SBB pricing data for Southern Europe, we note that these are domestic prices for this region.[253] Therefore, for the same reasons that we explain below at Comment 4, we find that these are not prices of HRS that would be available to purchasers in Turkey. *See* below at Comment 4.

Regarding the Black Sea export prices, nothing on the record provides additional details on this price series. However, based on its title, this price series includes prices from Turkey. Erdemir, an HRS producer that we are treating as an "authority" pursuant to section 771(5)(B) of the Act, is located in Eregli, a Turkish city on the Black Sea.[254] As we explain above at Comment 1, we find that HRS prices stemming from transactions within Turkey - either from domestic purchases or from imports into the country (*i.e.*, tier one prices) - do not meet the statutory and regulatory

[253] *See* Borusan Verification Exhibits (Public Version) at Exhibit 1.
[254] *See* GQR at Input Producer Appendix, page 3.

requirement for the use of market-determined prices to measure the adequacy of remuneration. Therefore, we are not including the Black Sea price series in the benchmark because it includes prices from Turkey.

GTIS Prices Used in the Post-Preliminary Analyses

We disagree with Borusan that we must not use the GTIS prices for the reasons Borusan stated. Borusan argues that the GTIS benchmark prices are too far removed from Turkey to serve as comparable prices. As the Department stated in *Wind Towers from the PRC*, and consistent with 19 CFR 351.511(a)(2)(ii), we have not used world export prices where it is reasonable to conclude that they would not be available to purchasers of these inputs in the country under investigation.[255] However, we have interpreted this provision of our regulations within the context of our goal to derive the most robust benchmarks possible; thus, we have sought to include as many data points as possible.[256] The fact that some data sources contain prices between countries far from Turkey does not diminish the fact that they provide information concerning what an unfettered market would bear for HRS during the POI.[257] Borusan has not cited any evidence that firms in Turkey cannot purchase HRS on the world market at the prices reported in the GTIS data.

Similar to arguments in *Wind Towers from the PRC*, Borusan asserts that pricing data from small quantity purchases do not represent its purchasing practices or production requirements.[258] Under 19 CFR 351.511(a)(2)(ii), however, the Department compares the government price to a world market price, and "this provision contains no requirement that the Department calculate world market prices only from significant producers."[259] Nor does the regulation require the Department to match a respondent's production needs or purchasing practices in selecting the benchmark export prices.

Finally, regarding Borusan's argument that the GTIS data include "aberrationally high prices for alloy HRC…not used to produce the grades of OCTG that Borusan produces," we note that Borusan did not identify the grades of HRS that it purchased. We initiated an investigation into the provision of HRS for LTAR, not a specific type of HRS.[260] We did not limit our request for HRS purchase information only to certain types of HRS.[261] This is consistent with past cases in which the Department has not limited its investigation of LTAR programs only to grades of an input used in the production of subject merchandise.[262] Borusan has knowledge of the grades of steel that it purchased, but the Department is not privy to such information. Therefore, the responsibility was with Borusan, and not the Department, to propose and present this information

[255] *See Wind Towers from the PRC,* and accompanying IDM at Comment 15; see also *Citric Acid from the PRC 2011 AR,* and accompanying IDM at Comment 13.
[256] *Id.*
[257] *Id.*
[258] *See Wind Towers from the PRC,* and accompanying IDM at Comment 15.
[259] *See Bricks from the PRC*, and accompanying IDM at Comment 7; *see also Citric Acid from the PRC 2011 AR,* and accompanying IDM at Comment 13.
[260] *See* Initiation Checklist at 8-9.
[261] *See* Questionnaire at Section III, page 6.
[262] *See*, *e.g.*, *OCTG from the PRC,* and accompanying IDM at Comment 13.B.

if Borusan found that it was relevant to the Department's analysis. *See* section 782(c)(1) of the Act. However, because Borusan did not identify grades of HRS in its reported purchase database, Borusan has not provided information that would allow us to "mak{e} due allowance for factors affecting comparability," as 19 CFR 351.511(a)(2)(ii) instructs.[263]

Therefore, we will continue to use the GTIS prices to create a robust world market price for HRS. Our use of GTIS prices is consistent with the Department's practice.[264]

Ocean Freight and Inland Freight Rates Used in Post-Preliminary Analyses

We have continued to include the ocean freight pricing data that Petitioners placed on the record for the POI pertaining to shipments of HRS from various world ports to Turkey in our world market price benchmark.[265] Borusan is requesting that we exclude Petitioners' ocean freight data to calculate a "company-specific ocean freight benchmark."[266] Furthermore, Borusan requests that we base the ocean freight rates on its domestic freight expenses for shipping HRS by sea from one part of Turkey to another.[267] Although Borusan contends that the benchmark should reflect prices that Borusan itself would have paid, section 351.511(a)(2)(iv) of the Department's regulations directs the Department to adjust the price for freight "to reflect the price a firm actually paid or would pay if it imported the product." Thus, as long as the ocean freight costs are reflective of market rates for international ocean freight, and representative of the rates an importer – and not necessarily the respondent specifically – would have paid, then the prices are appropriate to include in our benchmark.[268] Because these prices are for shipping HRS from the countries included in our benchmark to Turkey, the prices are appropriate to include in our benchmark.

For the same reasons, the Turkish inland freight rates that respondents submitted are appropriate to include in our benchmark. Consistent with its request concerning ocean freight, Borusan contends that the inland freight component of the benchmark for Borusan should be company specific: *i.e.*, Borusan incurs no inland freight expenses because of its location at the Gemlik Port. Section 351.511(a)(2)(iv) of the Department's regulations, however, directs the Department to use delivered prices "to reflect the price a firm actually paid or would pay if it imported the product." Thus, this section of the regulations directs us to include inland freight in Turkey in the benchmark. The rates that Borusan submitted are for inland freight in Turkey, and

[263] As we explain below at Comment 11, in *HRS from India*, the Department stated the following: "{T}here is no requirement that the benchmark used in the Department's LTAR analysis be identical to the good sold by the foreign government. *See* section 771(5)(E)(iv) {of the Act} and 19 CFR 351.511." If Borusan wanted the Department to consider factors relevant to this comparison, then the responsibility was with Borusan to propose and present this information. *See* section 782(c)(1) of the Act.
[264] *See*, *e.g.*, *Aluminum Extrusions from the PRC AR,* and accompanying IDM at 28.
[265] *See* Petitioners' Benchmark Submission at Exhibit 1.
[266] *See* Borusan Case Brief at 42-43.
[267] *Id.* at 43 ("The freight expenses reported in Exhibit 13 of the October 31 response, which the Department used as the basis for its "inland freight" component of the benchmark were, in fact, the expenses incurred for shipping hot coil to the Gemlik port from domestic producers. Primarily, that expense consisted of shipping HRC by sea from Erdemir/Isdemir's plants to the Gemlik port.").
[268] *See OCTG from the PRC,* and accompanying IDM at Comment 13.D.

Borusan has not cited any other record information on inland freight rates in Turkey that we can consider as an appropriate benchmark.

Moreover, Borusan cited no evidence to support its claim that "nobody ships HRC in containers because the containers could not withstand the concentrated weight of the coils and because the cost is prohibitive."[269] Toscelik also provided no evidence to support its claim that the ocean freight rates are "manifestly false."[270] The responsibility was with Borusan and Toscelik, and not the Department, to propose and present information on international freight rates for HRS in response to the data that Petitioners submitted if Borusan and Toscelik found that the information was relevant to the Department's analysis. Despite Borusan's and Toscelik's claims about Petitioners' data on container shipments, these data are relevant price quotes from a freight provider.[271] No information on the record leads us to question the accuracy of these submitted ocean freight rates. Thus, we find that Petitioners' data are reflective of what an importer would have paid to import HRS, and have included the data in our benchmark calculation for HRS. Similarly, the responsibility was with Borusan to propose and present information on domestic freight rates for HRS other than its own domestic freight rates if it found that another source was more reflective of the cost of shipping HRS in Turkey. *See* section 782(c)(1) of the Act. Thus, we find that Borusan's and Toscelik's submitted inland freight rates are reflective of what an importer would have paid to import HRS, and we have included the rates in our benchmark calculation.

Import Duties and VAT in the Benchmark

Borusan and Toscelik both claim that the Department should exclude VAT and import duties from the benchmark because of Turkey's Inward Processing Regime. Toscelik and Borusan base this claim on their own participation in the Inward Processing Regime.[272] As we stated above with respect to ocean freight, section 351.511(a)(2)(iv) of the Department's regulations directs the Department to adjust the benchmark price "to reflect the price a firm actually paid or would pay if it imported the product." As long as VAT and import duties are reflective of what an importer – and not necessarily the respondent specifically – would have paid, then the VAT and duties are appropriate to include in our benchmark.

Borusan also claims that no firm would pay import duties or VAT on purchases of HRS because of the Inward Processing Regime.[273] Thus, Borusan is not only claiming that we should remove import duties based on its own experience, but that no firm in Turkey would pay import duties on imports of HRS because of the Inward Processing Regime. Record evidence, however, contradicts Borusan's assertion. Companies participating in the regime must apply to the program and meet certain export commitments.[274] As the Department has stated, "Under the Inward Processing Certificate (IPC) program, companies are exempt from paying customs duties

[269] *Id.* at 41.
[270] *See* Toscelik Case Brief at 16.
[271] *See* Petitioners' Benchmark Submission at Exhibit 1.
[272] *See* Toscelik Case Brief at 2; *see also* Borusan Case Brief at 8.
[273] *See* Borusan Case Brief at 8.
[274] *See* BQR at Exhibit 11 ("Inward Processing Certificate Regulation"), pages 7 and 11.

and {VAT} on raw materials and intermediate unfinished goods that are imported and used in the production of exported goods,"[275] (footnote omitted). In addition, the GOT, at page 12 of the GOT Case Brief, states, "Turkey has an 'Inward Processing Regime' (IPR) (duty drawback scheme) which enables exporting companies to import raw materials without paying any customs duty and VAT." Thus, only exporters that apply to the program and meet certain export commitments can use the program. As a result, exclusion of VAT and import duties from the benchmark because of the Inward Processing Regime would not be consistent with the directions in 19 CFR 351.511(a)(2)(iv) to adjust the comparison price to reflect the price that a firm would pay if it imported the product, including delivery charges and import duties.

Toscelik stated the following with respect to the inclusion of VAT in the benchmark: "Therefore, adding the 18% VAT to the benchmark price, and then comparing it to a purchase price without VAT, is imbalanced and distortive."[276] Toscelik's assertion is incorrect. As we stated in the Toscelik Post-Preliminary Analysis, we "compared the monthly benchmark prices to Toscelik's actual purchase prices for HRS, including taxes and delivery charges, as appropriate."[277] Our calculation incorporated VAT into both the benchmark and respondents' purchase prices.

Toscelik also contends that we should remove VAT from the benchmark because VAT is not a part of the sales that constitute the denominator of the benefit calculations.[278] As we described in the previous paragraph, however, the comparison of the monthly benchmark prices to respondents' actual purchase prices for HRS incorporates VAT on both sides. This is consistent with 19 CFR 351.511(a)(2)(iv), which directs the Department to adjust the price "to reflect the price a firm actually paid or would pay if it imported the product," including VAT. We compare any benefit that results from this calculation to respondents' FOB sales. As the Department has stated in past cases, the Department does not include taxes such as VAT in the FOB sales value that is the denominator of the subsidy calculation because these taxes are not part of a company's sales revenue.[279] This is consistent with 19 CFR 351.525(b)(6)(i), which states that the Department normally will attribute a subsidy to the *products* produced by the corporation that received the subsidy (emphasis added).

Borusan and Toscelik also argue that the benchmark should not include VAT because it is not a cost component of a company's purchasing decisions for HRS. Borusan states the following:

> In other words, any VAT paid on hot coil is offset (negated) by the VAT collected on the sale of the finished OCTG. Plainly stated, VAT is not a factor in Borusan's purchasing decisions because VAT is not a cost component and companies in Turkey (including

[275] *See CWP from Turkey 2011 AR* IDM at "Programs Determined to Not Confer Countervailable Benefits During the POR: Inward Processing Certificate Exemption."
[276] *See* Toscelik Case Brief at 14.
[277] *See* Toscelik Post-Preliminary Analysis at 9; *see also* Toscelik Post-Preliminary Calculation Memo.
[278] *See* Toscelik Case Brief at 11.
[279] *See*, *e.g.*, *HRS from Brazil* at Comment 3, citing *LEU from Germany, the Netherlands, and the United Kingdom* at Comment 14.

> Borusan) do not record it in their inventory records when raw materials are purchased.[280] (footnote omitted)

Toscelik states as follows:

> VAT is not a cost to Tosçelik; it is not included in the cost of goods sold or the cost of manufacture, nor is it included in gross sales or net sales in the financial statement. It is not included in the sales that constitute the denominator of the benefit ratio calculations.[281]

Borusan's and Toscelik's arguments that VAT is not a cost component are inapplicable to the directions in 19 CFR 351.511(a)(2)(iv) to use "delivered prices" as the comparison price. The "delivered price" under 19 CFR 351.511(a)(2)(iv) is simply the nominal price at the point of delivery. Thus, whether a firm recovers VAT subsequent to delivery of the input is immaterial to the delivered price that the Department must use as the comparison price under 19 CFR 351.511(a)(2)(iv). Consistent with this section of the Department's regulations, we added VAT to the benchmark prices at the rates that the GOT reported.[282]

With respect to import duties for exports from EU countries and certain other countries with export prices in the benchmark, however, we agree with Borusan and Toscelik that we should exclude import duties from these prices in the benchmark. The Turkish Harmonized Tariff Schedule on the record, which shows duty rates for the HTS numbers that the GOT provided for HRS in Turkey, shows that imports of HRS into Turkey from the EU and certain other countries are zero-rated for import duty.[283] This demonstrates that the import duties a firm would pay if it imported HRS from these countries would be zero. Therefore, for this final determination, we have removed import duties from the benchmark price for export prices from these countries in the data.[284] Excluding these duties is consistent with the Department's practice in cases where record evidence showed that import duties on the input were zero.[285]

Comment 4: Averaging of Benchmark Prices for HRS

At pages 2-3 of the Petitioners' Case Brief, Petitioners note that the Department calculated a weighted average of the GTIS prices for each month of the POI to calculate the benchmark for the HRS for LTAR program. In the final determination, Petitioners contend, the Department should calculate the monthly benchmark prices for HRS by using a simple average of the prices in the Petitioners' Benchmark Submission from GTIS, MEPS, CRU, and SBB. Citing 19 CFR 351.511(a)(2)(ii), Petitioners note that when the Department cannot use actual market transactions within the country under investigation to measure the adequacy of remuneration for a good or service, the Department relies on an average of commercially available world market

[280] *See* Borusan Case Brief at 41.
[281] *See* Toscelik Case Brief at 11.
[282] *See*, *e.g.*, Borusan Post-Preliminary Analysis at 8, citing GQR at 66.
[283] *See* BQR at Exhibit 10; *see also* GQR at 4-5.
[284] These countries are EU countries, EFTA countries, Israel, Macedonia, Croatia, Bosnia-Herzegovina, Morocco, West Bank and Gaza Strip, Tunisia, Egypt, Georgia, Albania, Jordan, Chile, Serbia, Montenegro, and Kosovo.
[285] *See*, *e.g.*, *Seamless Pipe from the PRC,* and accompanying IDM at 32.

prices. Further, Petitioners contend that where there are numerous sources on the record that the Department uses to value the benchmark, the Department uses a simple average of prices.[286] Petitioners contend that this includes the simple average for the specific countries provided in the GTIS export data along with the other non-GTIS sources.

Citing the post-preliminary analysis memoranda, the GOT, at pages 6-7 of the GOT Rebuttal Brief, asserts that the Department cannot rely on the MEPS, CRU and SBB data because these are not HRS prices that would be available to purchasers in Turkey. Accordingly, the GOT argues, the Department should reject Maverick's request.

Citing the post-preliminary analyses, Borusan contends at pages 4-7 of the Borusan Rebuttal Brief that the MEPS, CRU and SBB data are domestic prices in specific countries and, thus, are not prices of HRS that would be available to purchasers in Turkey. Borusan argues that this determination is fully consistent with the Department's practice and regulations.[287] Borusan notes that domestic prices outside Turkey would never be appropriate since there is no basis to assume that those would ever be the commercial alternative to Turkish OCTG producers. Rather than selecting countries or regions in close proximity to Turkey, Borusan notes, Petitioners have included domestic prices from places as far away as Japan, Mexico, Brazil, and Argentina in order to derive the highest possible benchmark prices plus freight. Borusan notes, for example, that the price series for Mexico and Argentina are delivered prices, and that the Brazil prices include a domestic tax. Therefore, Borusan notes, their inclusion in a simple average with the GTIS data would in effect double-count or triple count data for most of the countries in Petitioners' MEPS, CRU and SBB data. The Department, Borusan contends, properly rejected these price series as not being available to purchasers in Turkey.

Department's Position

We agree with the GOT and Borusan. In the post-preliminary analyses, we stated that we were not including the MEPS, CRU, or SBB prices because record information indicated that these were domestic prices (not export prices) in specific countries.[288] We cited record information on each price series demonstrating that the prices were domestic prices in these countries.[289] We concluded, therefore, that these were not prices of HRS that would be available to purchasers in Turkey.[290]

Petitioners did not contend that the MEPS, CRU, or SBB prices represent export prices. Rather, citing, *e.g.*, *HPSC from the PRC* and *Wind Towers from the PRC*, Petitioners argue that the Department has included these price series in past investigations.[291] Regardless of the Department's inclusion of these price series in past investigations, the information about the

[286] *See*, *e.g.*, *HPSC from the PRC,* and accompanying IDM at 18.
[287] *See* 19 CFR 351.511(a)(2)(ii); *see also Kitchen Racks from the PRC 2009 AR,* and accompanying IDM at Comment 5.
[288] *See* Borusan Post-Preliminary Analysis at 10; *see also* Toscelik Post-Preliminary Analysis at 9.
[289] *Id.*
[290] *Id.*
[291] *See* Petitioners' Case Brief at 2-3.

MEPS, CRU, and SBB price series for HRS on the record of this investigation indicates that these are domestic prices in countries other than Turkey.

Exclusion of these domestic prices is consistent with, for example, *Kitchen Racks from the PRC 2009 AR*, in which we excluded domestic prices from the input benchmark. In that case, we stated, "We have not included domestic or import prices in calculating the wire rod benchmark. The Department's preference is to use prices that are available to purchasers in {the country under investigation}, consistent with 19 CFR 351.511(b)(ii)."[292] Therefore, consistent with 19 CFR 351.511(b)(ii) and the *Kitchen Racks from the PRC 2009 AR*, we excluded these domestic prices from the benchmark for HRS.

We also disagree with Petitioners' assertion that we should calculate a simple average of country-specific prices in the GTIS export data. In a recent discussion of the input benchmark in *Citric Acid from the PRC 2011 AR*, we stated, "a reasonable methodology is to calculate a simple average of these prices *where the datasets on the record were not reported in a uniform manner*,"[293] (emphasis added). In the cases that Petitioners cited, *Wind Towers from the PRC*, *HPSC from the PRC*, and *Citric Acid from the PRC 2010 AR*, the Department calculated a simple average of multiple price series to use as the world market price benchmark.[294] In this case, we are relying on prices from only one source (*i.e.*, the GTIS prices). These GTIS prices in the Petitioners' Benchmark Submission are individual export transactions on a uniform basis (*i.e.*, U.S. dollars per metric ton). Using weighted-average prices where possible reduces the potential distortionary effect of any specific transactions (*e.g.*, extremely small transactions) in the data.[295] Therefore, we have continued to rely on weighted-average monthly GTIS prices for the HRS benchmark.

Comment 5: Specificity of HRS Program

At pages 44-46 of the Borusan Case Brief, Borusan argues that the Department's specificity determination is unsustainable. The Department, Borusan notes, found that because the GOT only identified eight broad industry groups that purchased HRS in Turkey, the industries receiving the HRS subsidy were "limited" in number and, thus, specific. Borusan argues that the Department cannot sustain this specificity determination because these eight broad industry groups constitute the entire universe of industries that would ever purchase HRS. Borusan argues that other industries not on this list, such as food, information technology, and entertainment, would never purchase HRS. Thus, Borusan argues, the fact that these industries

[292] *See Kitchen Racks from the PRC 2009 AR,* and accompanying IDM at Comment 5.
[293] *See Citric Acid from the PRC 2011 AR* at Comment 13.E.
[294] *See* Petitioners' Case Brief at 3, citing *Wind Towers from the PRC,* and accompanying IDM at Comment 15, *HPSC from the PRC,* and accompanying IDM at 18, and *Citric Acid from the PRC 2010 AR,* and accompanying IDM at 20.
[295] In *Wind Towers from the PRC*, the Department calculated a simple average of the different price series on the record. The Department, however, lacked record information that would have allowed it to calculate a weighted-average world market price benchmark. The Department stated, "We do not have information on the record that would allow the Department to weight-average the prices properly." *See Wind Towers from the PRC,* and accompanying IDM at Comment 15.

are not on this list does not demonstrate that the number of industries receiving the benefit is limited.

At pages 14-15 of the GOT Case Brief, the GOT argues that the Department incorrectly reached a decision of specificity for the provision of HRS by finding that the number of industries/enterprises using the program is limited. The GOT contends that the provision of HRS does not favor certain enterprises or industries over other industries that are not able to use this material in their production. No situation here, the GOT argues, discriminates among the enterprises or industries purchasing HRS or limits their access to HRS.

At pages 39-42 of the Petitioners' Rebuttal Brief, Petitioners argue that the Department should continue to find the provision of HRS for LTAR to be specific. Petitioners allege that Borusan's review of the statute's legislative history is manipulative and incomplete. Further, Petitioners argue, any inadequacies in the information provided by the GOT are a direct result of its refusals to cooperate. Petitioners contend that the Department's practice is clear that, as here, eight industry recipients of a subsidy qualifies as specific. Thus, Petitioners assert, the Department should continue to find the HRS for LTAR subsidy to be specific.

Department's Position

We continue to find that uses of HRS are limited and, consequently, that the provision of HRS is *de facto* specific under section 771(5A)(D)(iii)(I) of the Act. Although the eight industries that the GOT identified may comprise many companies, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Consistent with our past practice, the industries that the GOT identified (Construction, Automotive, Machinery & Industrial, Electrical Equipment, Appliances, Agricultural, Oil & Gas, and Containers & Packaging) are limited in number. For example, in *Belgian Steel*,[296] we concluded that eight industries (steel, food processing, paper, chemicals and fertilizer, mining, electromechanical, firearms, and cement and ceramics) were "too few" users, and as a result, found the subsidy to be *de facto* specific. Further, in *Stainless Steel Sinks from the PRC*, we found specificity within the meaning of section 771(5A)(D)(iii)(I) of the Act, based on information showing that potential users of stainless steel products fell into 20 or 32 different industry classifications under ISIC and Chinese national economy industry classifications, respectively.[297]

It is uncontroverted that the users of HRS in Turkey are, as a matter of fact, limited in number. Thus, the provision of HRS for LTAR by the GOT (by way of Erdemir) is *de facto* specific.

Comment 6: Application of AFA to Borusan's HRS Purchases

At pages 47 through 55 of the Borusan Case Brief, Borusan alleges that the Department abused its discretion by applying AFA to Borusan for not providing its HRS purchases at Borusan's Halkali and Izmit plants. Citing 19 CFR 351.525(b)(5), Borusan argues that the Department's long-standing practice is not to investigate and determine subsidies with respect to programs that

[296] *See Steel from Belgium*, 58 FR at 37276.
[297] *See Stainless Steel Sinks from the PRC,* and accompanying IDM at 45.

are specifically tied to non-subject merchandise. Borusan asserts that it only produced OCTG at one of its three facilities and that it transferred no HRS from the two facilities that did not produce the subject merchandise. Therefore, Borusan claims, it explained in its initial questionnaire response that it would be very burdensome to report the purchases of raw materials for other facilities and requested that the Department relieve it from reporting for those other facilities.

After the Department requested in a supplemental questionnaire that Borusan either report for the other mills or justify why it could not, Borusan notes, Borusan explained the immense difficulties associated with pulling the data from its two computer systems. Borusan notes that it cited sections 782(c)(1) and (2) of the Act and requested that the Department take these difficulties into account. Borusan explains that it stated its intention to cooperate fully and provide the data if the Department found it necessary. Despite specifically noting in the *Preliminary Determination* that it was postponing its decision on the HRS issue, Borusan notes, the Department made no follow-up requests to Borusan. Therefore, Borusan contends, the application of AFA under these circumstances is an abuse of discretion.

Borusan also argues that the Department ignored evidence on the record that directly contradicts its adverse inference that the quantity of HRS purchased at the Halkali and Izmit plants was as large as the Gemlik plant. Borusan notes that its product brochure lists the production capacity for these two mills as 100 and 250 thousand tons, respectively. Borusan notes that the Gemlik mill, by contrast, has a production capacity of 500 thousand tons and purchased less than half of this total capacity of HRS from Erdemir. When applying AFA, Borusan argues, the Department must corroborate the information on which it bases its determination and calculate margins as accurately as possible. If the Department continues to apply AFA in the final determination, Borusan argues, it must reduce the benefit to account for the limited production capacity at the Halkali and Izmit plants.

At pages 13-14 of the GOT Case Brief, the GOT notes that Borusan has always had a continuous cooperative approach in this and all CVD proceedings. The GOT argues that the WTO Appellate Body has clarified in pertinent disputes that authorities conducting an investigation must actively seek out pertinent information and may not remain passive in the face of possible shortcomings in the evidence. The GOT argues that the Department remained passive and used AFA without asking for further clarification. The GOT argues that Article 19.4 of the SCM Agreement requires that the CVD margin not exceed the actual per unit subsidization amount. The GOT argues that the Department calculated a subsidy margin exceeding the actual one by not requesting the HRS purchase data from Borusan.

At pages 43-45 of the Petitioners' Rebuttal Brief, Petitioners respond that the Department properly used adverse inferences with regard to Borusan in its findings regarding the provision of HRS for LTAR. Petitioners contend that Borusan now attempts to blame the Department for its refusal to cooperate. Petitioners argue that despite Borusan's stated ability to provide the HRS purchase information and its claimed willingness to cooperate to the best of its ability, Borusan did not provide the information. It is not the Department's responsibility, Petitioners argue, to ensure the completeness of respondents' information. Petitioners argue that the Department must not allow Borusan to shift this burden onto the Department.

Department's Position

Borusan and the GOT do not address the reasons we explained at pages 11-14 of the Borusan Post-Preliminary Analysis for applying AFA. The main points of why we applied AFA to Borusan's purchases, which we describe fully at pages 11-14 of the Borusan Post-Preliminary Analysis and above at the "Use of Facts Available and Adverse Inferences" section, are as follows:

- Borusan chose not to submit the HRS purchases for the Halkali and Izmit mills based on its argument that the Gemlik mill's purchases were the only purchases that could have benefitted from subsidies attributable to subject merchandise."[298] Borusan's contention was not consistent with our instructions in the Questionnaire or past Department determinations.[299]
- Borusan again did not provide the HRS purchase information in the BSQR1-B. Borusan did not state that it could not provide the information. Instead, Borusan explained the difficulties it faced in compiling the information and stated that it would need several weeks to compile the information if we continued to request it.[300]
- Borusan did not at any point submit a formal extension request for providing the HRS purchase information, as required in our instructions in the Questionnaire and 19 CFR 351.302(c).

Both Borusan and the GOT argue that we should have provided Borusan with another opportunity to provide this information because Borusan stated its willingness to provide it. Were the Department to accept Borusan's and the GOT's argument, however, respondents would be free to disregard our deadlines based on their assertions about the countervailability of programs or the Department's treatment of the programs. Such an interpretation undermines the Department's ability to conduct a proper CVD investigation. As we explained above at the "Use of Facts Available and Adverse Inferences" section, we provided Borusan with two opportunities to provide the purchase information. Borusan chose not to provide the information or submit a proper extension request for providing it, as 19 CFR 351.302(c) requires. Therefore, consistent with the Borusan Post-Preliminary Analysis, we have continued to apply AFA to Borusan's HRS purchases for the Halkali and Izmit mills.

We agree with Borusan, however, that an adjustment to account for the differences in capacity between the three mills is appropriate. As Borusan notes at page 54 of the Borusan Case Brief, "In other words, the Department adversely inferred that the Halkali mill's purchases of HRC from Erdemir and Isdemir alone were at quantities that are almost twice its maximum production capacity." Borusan makes a similar argument concerning the Izmit mill's capacity, based on proprietary information on Borusan's reported HRS purchases.[301] Moreover, as Borusan notes,

[298] *See* BQR at 11.
[299] *See* Questionnaire at Section III, page 6; *see also*, *e.g.*, *OCTG from the PRC,* and accompanying IDM at Comment 13.B.
[300] *See* BSQR1-B at 11.
[301] *See* Borusan Case Brief at 54.

we verified Borusan's reported purchase information for the Gemlik mill, including the identity of the producers of the HRS that Borusan purchased.[302]

In light of record information on Borusan's capacity for the two non-reporting mills, and the fact that we verified the HRS purchase information for the Gemlik mill,[303] the Department has determined that it is reasonable to adjust the calculation of the benefit from the Halkali and Izmit mills' HRS purchases accordingly. Therefore, pursuant to section 776(b) of the Act, we are inferring that the Halkali and Izmit mills purchased quantities of HRS during the POI equal to, and no more than, their entire annual production capacity. In addition, in accordance with this inference, we have presumed in our calculation that the Halkali and Izmit mills purchased HRS from Erdemir and Isdemir in the same ratio as the Gemlik mill's purchases from Erdemir and Isdemir as a share of its total purchases.

Comment 7: The Department's Adverse Inference for Purchases by Borusan's Halkali and Izmit Mills

At pages 3-5 of the Petitioners' Case Brief, Petitioners argue that the Department, in the Borusan Post-Preliminary Analysis, used a neutral inference in selecting from among the facts otherwise available with respect to HRS purchases by the Halkali and Izmit mills. Petitioners contend that in order to effectuate the purpose of the AFA provisions, the Department should infer that Borusan's Izmit and Halkali mills purchased the same quantity of HRS as the Gemlik mill, but that 100 percent of these purchases was from Erdemir and Isdemir.

At pages 7-11 of the Borusan Rebuttal Brief, Borusan points out that the Department treated all of the Halkali and Izmit mills' HRS purchases from Erdemir and Isdemir as if they were at the single lowest price during the POI that the Gemlik plant paid for HRS from Erdemir and Isdemir. Borusan notes that this treatment of the program was already very adverse to Borusan. Further, Borusan notes, the Department assumed that the purchase quantities were the same at those plants even though the total production capacity (of non-OCTG products) at those plants was much smaller than at Gemlik.

Department's Position

We agree with Borusan.

The adverse inference under section 776(b) of the Act in our post-preliminary analysis, which we explained, was that these two mills purchased the same quantity of HRS from Erdemir and Isdemir at the lowest price for another purchase from Erdemir and Isdemir on the record.[304] Therefore, contrary to Petitioners' assertion, the inference is adverse, not neutral. In addition, we verified that Borusan correctly reported the total quantity of its purchases for the Gemlik mill

[302] *See* Borusan Verification Report at 6-7.
[303] *See* BQR-B at Exhibit 9A; *see also* Borusan Verification Report at 6-7.
[304] *See* Borusan Post-Preliminary Analysis at 14.

and that it correctly identified the HRS producers for these purchases.[305] Therefore, the adverse inference that Petitioners have proposed would contradict record information that we verified.

As discussed above under the "Programs Determined to Be Countervailable – Provision of HRS" section and Comment 6, we are continuing to infer adversely pursuant to section 776(b)(4) of the Act that Borusan purchased all HRS for the Halkali and Izmit mills at the lowest price on the record for the Gemlik mill's HRS purchases from Erdemir and Isdemir. However, as explained in Comment 6, we have adjusted the benefit calculation by inferring that the Halkali and Izmit mills purchased quantities of HRS during the POI equal to, and no more than, their entire annual production capacity. In addition, we are presuming that the Halkali and Izmit mills purchased HRS from Erdemir and Isdemir in the same ratio as the Gemlik mill's purchases from Erdemir and Isdemir as a share of its total purchases.

Comment 8: Purchases of OCTG-Qualified HRS

At page 10 of the Toscelik Case Brief, Toscelik asserts that the investigation has a fatal defect in that the Department conducted its LTAR inquiry with respect to all hot-rolled coil purchases, whereas the only purchases used for production of subject merchandise are coils of a grade or grades suitable to production of OCTG. Toscelik argues that the over-breadth of coils under consideration, and the Department's failure to ask for purchases specifically of OCTG-qualified coils, renders any decision on LTAR unsupported by substantial evidence. Moreover, Toscelik asserts, the Department cannot infer, from total coil purchases, that Toscelik bought any OCTG-qualified coils from Erdemir in the POI, particularly since Toscelik produced over 80 percent of the coils it consumed and bought less than five percent of its coil consumption from Erdemir.

No other party commented on this issue.

Department's Position

We disagree with Toscelik. We initiated an investigation into the provision of HRS for LTAR, not a specific type of HRS.[306] We did not limit our request for HRS purchase information only to OCTG-qualified HRS.[307] In past cases, the Department has not limited its investigation of LTAR programs only to inputs used in the production of subject merchandise.[308] Absent a determination that a subsidy is "tied" to a specific product under 19 CFR 351.525(b)(5), the Department does not limit the attribution of a benefit from a subsidy program to a specific product. Toscelik has not argued that we should tie the subsidy under this program to a specific product under 19 CFR 351.525(b)(5). Moreover, Toscelik has not even provided information that would allow us to tie the benefit under the HRS for LTAR program to a specific product or

[305] *See* Borusan Verification Report at 6-7.
[306] *See* Initiation Checklist at 8-9.
[307] *See* Questionnaire at Section III, page 6.
[308] *See*, *e.g.*, *OCTG from the PRC,* and accompanying IDM at Comment 13.B.

to "mak{e} due allowance for factors affecting comparability," as 19 CFR 351.511(a)(2)(ii) instructs.[309]

Toscelik provided no identification of the grades of HRS that it purchased. Toscelik has knowledge of the grades of steel that it purchased and the grades that its individual suppliers provided, but the Department is not privy to such information. Therefore, the responsibility was with Toscelik, and not the Department, to propose and present this information if Toscelik found that it was relevant to the Department's analysis.[310] We relied on the purchase information that Toscelik submitted to calculate the benefit for the HRS for LTAR program.

Comment 9: Verification of the HRS for LTAR Program at the GOT

Citing Section 782(i) of the Act, Borusan argues at pages 56-58 of the Borusan Case Brief that the Department violated its statutory obligation to verify all information relied upon in making a final determination in an investigation. Specifically, Borusan contends, the Department failed to verify the GOT's responses concerning the single most important issue in this investigation – HRS for LTAR - even though the GOT specifically requested this. Borusan argues that this decision violates the plain language of the statue and renders the Department's entire determination on the HRS for LTAR issue unlawful.

At page 3 of the GOT Case Brief, the GOT asserts that the Department's finding is inconsistent with section 782(i)(1) of the Act because the Department did not verify the factual information on the HRS for LTAR issue.

At pages 10-13 of the Petitioners' Rebuttal Brief, Petitioners argue that the GOT's and Borusan's arguments turn the purpose of verification on its head. Petitioners contend that the Department's decision to accept as true all of the GOT's information cannot have any effect on its findings. Furthermore, Petitioners argue, any eleventh-hour concerns regarding the state of the factual record here are absurd in light of the GOT's and Borusan's attempts to conceal information throughout this investigation.

Department's Position

For topics in this investigation that the Department did not verify, we accepted the accuracy of the information that the GOT submitted on its face. As Petitioners noted, unless the GOT planned to provide new factual information at verification or claim that its own submissions were false, then verification would have no effect on the final determination.[311] Further, the CAFC, in

[309] As we state below at Comment 11, in *HRS from India*, the Department stated the following: "{T}here is no requirement that the benchmark used in the Department's LTAR analysis be identical to the good sold by the foreign government. *See* section 771(5)(E)(iv) {of the Act} and 19 CFR 351.511." If Toscelik wanted the Department to consider factors relevant to this comparison, then the responsibility was with Toscelik to propose and present this information. *See* section 782(c)(1) of the Act.

[310] *See* section 782(c)(1) of the Act.

[311] The Department's regulations at 19 CFR 351.301 establishes deadlines for the submission of different types of factual information in CVD investigations. Under the rules in section 351.301, the deadlines for submitting factual information in this investigation were prior to the start of verification.

Micron Technology, explicitly stated that verification procedures are statutorily delegated to the Department and "reviewed for abuse of discretion."[312] The CAFC also stressed that "all" information in the Act does not literally mean that the Department must verify "all" information.[313]

The CIT and CAFC have stated that the burden of creating an accurate and complete record is on respondents, not on the Department.[314] The record shows no evidence that the GOT requested the opportunity to update timely any previous information or correct any possible errors in the information it submitted. Although Borusan and the GOT assert that the Department should have verified the GOT's information on the HRS for LTAR program because the GOT requested such a verification, they make no argument as to what verification of the GOT's information would have accomplished. As we explained above, parties may not submit new factual information at verification under the deadlines in 19 CFR 351.301. In the event that the GOT realized it had inadvertently submitted inaccurate or unreliable information to the Department, it had ample opportunity to do so before verification.

The purpose of verification is to verify the accuracy of information already on the record, not to continue the information-gathering stage of the Department's investigation. Nor is verification an appropriate forum for respondents to present arguments with respect to the Department's analyses. We note that the briefing stage of the investigation provided parties with this opportunity to "present all arguments that continue in the submitter's view to be relevant to the Secretary's final determination or final results," pursuant to 19 CFR 351.309(c)(ii)(2). The record shows that for topics we did not verify, we have accepted the accuracy of the information that the GOT submitted. As such, Borusan's and the GOT's arguments that the Department's decision not to verify the HRS program information submitted by the GOT impacted the factual record of this investigation are misplaced. Moreover, the GOT and Borusan have made no arguments as to why accepting the accuracy of the GOT's information on its face has prejudiced the ability of either party to present any argument regarding those facts which it deemed relevant to the Department's final determination in this proceeding. Therefore, our decision not to verify the GOT's information with respect to the HRS program is in accordance with section 782(i) of the Act.

Comment 10: Toscelik Sales Denominator

At pages 3-4 of the Toscelik Case Brief, Toscelik asserts that the Department failed to include all Toscelik companies in the denominators that it used in the *Preliminary Determination*. In the *Preliminary Determination*, Toscelik notes, the Department excluded sales by Tosyali Demir from the total sales used as the denominator of benefit calculations for programs other than export subsidies. Toscelik asserts that the Department should include sales by Tosyali Demir in

[312] *See Micron Technology*, 117 F. 3d at 1396.
[313] *Id.*
[314] *See, e.g., QVD*, 658 F. 3d at 1324 ("{T}he burden of creating an adequate record lies with {interested parties} and not with Commerce,"); *see also SNR*, 910 F. Supp. at 694 ("Respondents 'must submit accurate data' and 'cannot expect Commerce, with its limited resources, to serve as a surrogate to guarantee the correctness of submissions.'"). (Citations omitted.)

the total sales as the denominator for programs other than export subsidies. Citing 19 CFR 351.525(b)(6)(iv), Toscelik argues that the Department should divide all countervailable benefits for domestic subsidies by the total sales of Toscelik Profil, Tosyali Demir, and Tosyali, exclusive intra-group transfers.

Further, Toscelik notes that the Department allocated export subsidies over the export sales of Toscelik Profil plus Tosyali, excluding the sales of Tosyali Demir. Toscelik contends that pursuant to 19 CFR 351.525(b)(6)(iv), and by the logic described above for domestic subsidies, the Department should include the exports of Tosyali Demir in this denominator.

No other party commented on this issue.

Department's Position

We disagree with Toscelik. Section 351.525(b)(6)(i) of the Department's regulations states that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. Section 351.525(b)(6)(iv) of the Department's regulations states the following:

> If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

Toscelik is requesting that we include the sales of Tosyali Demir in the denominator for any subsidies that Toscelik Profil or Tosyali received because Toscelik Profil supplies billets to Tosyali Demir.[315] As shown above, however, the Department attributes subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations if it determines that production of the input product is primarily dedicated to production of the downstream product. Tosyali Demir is a producer of non-subject merchandise.[316] We have made no determination that the input product Toscelik Profil supplies to Tosyali Demir (*i.e.*, billet) is primarily dedicated to Tosyali Demir's production of its downstream non-subject merchandise, and Toscelik has not presented evidence that the input product is primarily dedicated to the production of this downstream non-subject merchandise.

Absent a determination that Toscelik Profil's production of the input product is primarily dedicated to production of the downstream product, 19 CFR 351.525(b)(6)(i) applies. Therefore, in accordance with 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Toscelik Profil to its own sales. We are continuing to attribute the benefit from subsidies that Tosyali Demir received to the sales of Tosyali Demir plus the sales of Toscelik Profil (net of inter-company sales), in accordance with 19 CFR 351.525(b)(6)(iv). Likewise, for export sales, we have not

[315] *See* Toscelik Case Brief at 3.
[316] *See* TQR at 2.

included sales by Tosyali Demir in the attribution of export subsidies to Toscelik Profil or TDT, pursuant to 19 CFR 351.525(b)(6)(i) and 19 CFR 351.525(c).

Comment 11: Provision of Land for LTAR

At pages 17-19 of the Toscelik Case Brief, Toscelik argues the following regarding benefits under the Provision of Land for LTAR Program:

- The land LTAR benchmark should not include properties outside the 49 provinces to which the regional subsidy is directed;
- The Department included in the benchmark transactions from two parcels that are in Istanbul and Yalova, which are not among the 49 least-developed provinces;
- The subsidy at issue is derived as a result of Law 5084, which has the purpose of reducing regional disparities;
- The land valuation benchmark should be calculated on a weighted-average basis; and
- The Department must correct clerical errors in the land valuation and include 2010 values.

At pages 46-47 of the Petitioners' Rebuttal Brief, Petitioners respond that excluding the properties outside the 49 provinces from the land benchmark would defeat the purpose of the benchmark comparison. Petitioners argue that in order to ensure that the Department captures the full benefit of the subsidy, it must compare the actual prices to locations where land prices are driven solely by market forces. Also for this reason, Petitioners assert, the Department should take a simple average of all prices. Petitioners argue that taking a weighted average would unduly weight prices in the areas where land prices are distorted by subsidies.

Department's Position

We agree with Petitioners that we should not calculate the benchmark on a weighted-average basis. The Department normally derives the land benchmark price from a simple average of the reference land prices available in the record.[317] The record lacks sufficient detail regarding the characteristics of the land involved in the transactions underlying the benchmark data. In particular, we lack information on the extent to which the composition of our reference data set reflects 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. Therefore, 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. Our calculation of a simple average is consistent with the Department's calculation of the land benchmark in *CWP from Turkey 2011 AR*.[318]

[317] *See Steel Wire Garment Hangers From Vietnam Preliminary Determination,* 77 FR at 32932 ("Land Benchmarks"), unchanged in *Steel Wire Garment Hangers From Vietnam Final Determination,* and accompanying IDM at 6; *see also CWP Turkey 2011 AR,* and accompanying IDM at Comment 4.
[318] *See CWP from Turkey 2011 AR,* and accompanying IDM at Comment 4.

For similar reasons, we agree with Petitioners that we should not exclude properties outside of the 49 provinces from the benchmark. With respect to Toscelik's argument that the inclusion of the two land prices at issue in the Department's benchmark is flawed because they are not comparable in economic development, we disagree. As an initial matter, the Department found the following:

> {T}here is no requirement that the benchmark used in the Department's LTAR analysis be identical to the good sold by the foreign government. *See* section 771(5)(E)(iv) {of the Act} and 19 CFR 351.511. In fact, the imposition of such a requirement would likely disqualify most, if not all, potential benchmarks under consideration in a LTAR analysis.[319]

Although the two land purchases were not in the 49 provinces in question, these two benchmark prices nonetheless reflect contemporaneous private market sales prices involving industrial land in Turkey.

Moreover, although Toscelik argues that we should exclude the two properties outside of the 49 provinces because they are not comparable to properties within the 49 provinces, the prices on the record show that great disparities may exist between land prices within the same province or city. For example, one of the benchmark land prices for industrial land within the city of Gazantiep is only 3.31 TL per square meter.[320] Another benchmark price listed on the same day in a different district of the same city, however, is 76.91 TL per square meter.[321] Given that such large differences exist between prices within the same city, we have no basis to rely on land outside and inside the 49 provinces as the only factor that affects comparability between land prices in Turkey.

Thus, we have included all of the data points at Exhibit 1 of the Toscelik Preliminary Calculation Memo from the "Land Bank Turkey" data source to build the most robust data set possible based on the information on the record. As we explained above, the record lacks sufficient detail regarding the characteristics of the land involved in the transactions underlying the benchmark data; however, the Department's view is that the more commercial transactions within Turkey that the Department uses as part of its benchmark analysis, the greater the likelihood that the benchmark will accurately reflect the experience of commercial land purchasers in Turkey. This information is necessary to analyze fully the "factors affecting comparability" between land purchases in Turkey.[322] Therefore, we have continued to include the two properties outside of the 49 provinces in the benchmark. Our inclusion of these prices in the benchmark is also consistent with *CWP Turkey 2011 AR*.[323]

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[319] *See HRS from India*, and accompanying IDM at Comment 12.
[320] *See* Toscelik Preliminary Calculation Memo at Exhibit 1 (land price in Gazantiep – Araban on June 6, 2010).
[321] *Id.* (land price in Gazantiep – Sehitkamil on June 6, 2010).
[322] *See* 19 CFR 351.511(a)(2)(i).
[323] *See CWP from Turkey 2011 AR*, and accompanying IDM at Comment 4; *see also* Toscelik Preliminary Calculation Memo at Attachment 1.

Regarding the exclusion of the 2010 land values, however, we agree with Toscelik that this was a ministerial error. We have incorporated this correction into the benchmark.[324]

Comment 12: Provision of Electricity for LTAR / Law 5084: Energy Support Program

At page 19 of the Toscelik Case Brief, Toscelik argues that the Department should not countervail the energy support benefit under this program because the benefit is tied to non-subject merchandise. Toscelik argues that the only electricity usage that benefits from this subsidy is that used for the production of spiral pipe.

No other party commented on this issue.

Department's Position

We disagree with Toscelik. Absent a determination that a subsidy is "tied" to a specific product under 19 CFR 351.525(b)(5), the Department does not limit the attribution of a benefit from a subsidy program to a specific product. Regarding the tying of subsidies to a specific product, the *Preamble* states,

> Our tying rules are an attempt at a simple, rational set of guidelines for reasonably attributing the benefit from a subsidy based on the stated purpose of the subsidy or the purpose we evince from record evidence at the time of bestowal.[325]

Although record evidence shows that Toscelik applied the benefit from grants under this program to an electricity meter at part of the Osmaniye mill that produces non-subject merchandise, Toscelik cited no evidence to demonstrate that the GOT intended to benefit only non-subject merchandise under this program.[326] The mill at issue, Osmaniye, also produces subject merchandise.[327] Toscelik did not cite any case precedent in which the Department has tied benefits under this program to specific merchandise. Also, in *Kitchen Racks from the PRC*, the Department faced a similar request to tie the benefit from a subsidy to specific products.[328] The Department did not tie the benefit to specific merchandise because no record evidence showed that the government intended to benefit a specific product at the time of bestowal of the subsidy.[329] Consistent with this precedent, we have made no changes to the attribution methodology for this program.

Comment 13: Export Financing Loans: Subtraction of Bank Guarantee Fees from Benefit

At pages 59-60 of the Borusan Case Brief, Borusan argues that the Department should subtract the bank guarantee fees from the benefit calculated at the *Preliminary Determination* from the

[324] *See* Toscelik Final Calculation Memo.
[325] *See Preamble*, 63 FR at 65403.
[326] *See* Toscelik Verification Report at 5.
[327] *See* TQR at 2.
[328] *See Kitchen Racks from the PRC* IDM at Comment 10.
[329] *Id.*

short-term EXIMBANK financing loans. Borusan claims the statement made by the Department regarding the non-inclusion of fees paid to commercial banks for the required letters of guarantee in the benefit calculation due to lack of information regarding such fees in the benchmark is incorrect. Borusan states that the Department confirmed guarantee fees were paid on its EXIMBANK loans and refers to source documents collected by the Department during the verification of one export rediscount loan. Borusan further notes that the Department has followed this practice in other cases involving Turkey. Thus, Borusan argues, the Department should reduce the benefit from these loans by the amount of the guarantee fees that BMB and Istikbal paid.

No other party commented on this issue.

Department's Position

We agree with Borusan that, per section 771(6)(A) of the Act and 19 CFR 351.505(a)(1), we should subtract the guarantee fees related to the Pre-Export Credit Program loans from the calculation of the benefits Borusan received. For this final determination, we have revised the calculations to subtract the guarantee fees. For further discussion, please *see* the above section titled "Export Financing." *See also* Borusan Final Calculation Memo.

Comment 14: Specificity and Countervailablity of the Investment Incentive Certificate Program

At pages 58-59 of the Borusan Case Brief, Borusan claims the decision to find exemptions received under this program specific and countervailable is a departure from previous decisions regarding similar exemption programs. Referencing *CWP Turkey 2010 AR*, Borusan argues that the program is not specific.[330] Borusan states that, although at the *Preliminary Determination* the Department found the program under Decree No. 2009/15199 limited to firms making investments in excess of TL 50 million and located in certain geographical regions, all cities are entitled to use the investment incentive program per Clause 3 and Appendix 1 of Decree No 2009/15199. Borusan further states that Clause 4 and Appendix 4 do not specifically limit benefits only to investments in excess of TL 50 million.

At pages 16-17 of the GOT Case Brief, the GOT argues that the Department found this program specific and countervailable based on erroneous findings. The GOT notes that the Department previously examined similar decrees and found this program non-specific and non-countervailable. The GOT claims nothing has changed in the nature of the program except the name of the Decree. Referencing statements from its questionnaire responses, the GOT argues that the eligibility criteria do not exclude regions or cities from use of the program.

At pages 47-48 of the Petitioners' Rebuttal Brief, Petitioners argue that Department should continue to find that the Investment Encouragement Program is countervailable.

No other party commented on this issue.

[330] *See CWP from Turkey 2010 AR,* and accompanying IDM at 19.

Department's Position:

We agree with Petitioners.

In past CVD proceedings, the Department found this program not countervailable because it found benefits under the program to be not specific.[331] However, in *CWP from Turkey 2011 AR*, the Department examined certain changes to the program applicable to licenses issued after January 1, 2009.[332] The Department found that under these program changes, the GOT limited benefits under the program by the express inclusion of certain enterprises or industrial sectors and the express exclusion of others, as well as the restriction of benefits to certain investments in designated regions.[333] Record information in this investigation is consistent with the Department's findings in *CWP from Turkey 2011 AR*.

First, the GOT and Borusan argue that the GOT does not limit benefits under the program to firms making investments in excess of TL 50 million.[334] However, the decree governing the post-2008 iteration of the IEP program limits the customs duty and VAT exemptions under the program to firms that make investments in excess of TL 50 million.[335] Second, the GOT and Borusan argue that all cities and regions in Turkey may use the investment incentive program as a whole.[336] However, the decree limits customs duty and VAT exemptions for iron and steel investments to certain regions.[337]

Therefore, based on the information in the legislation that governs the IEP program, we continue to find that duty and VAT exemptions that respondents received under this program from January 1, 2009, onward constitute a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. Furthermore, we find that the duty and VAT exemptions confer a benefit within the meaning of section 771(5)(E) of the Act in the amount of the tax savings. Finally, we continue to 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. Thus, the program is specific under sections 771(5A)(D)(i) and (iv) of the Act, respectively.

Comment 15: Basis for Affirmative Critical Circumstances Determination

At page 61 of the Borusan Case Brief, Borusan argues the finding of critical circumstances at the *Preliminary Determination of Critical Circumstances* is flawed because section 705(a)(2)(A) of the Act requires the Department to find countervailable subsidies inconsistent with the SCM Agreement that rise to more than a *de minimis* level. Borusan claims that, as the Department only found 0.3 percent export subsidy benefits relating to Borusan, the Department should, therefore, not make an affirmative final critical circumstance determination.

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[331] *See, e.g., CWP from Turkey 2010 AR,* and accompanying IDM at 17.
[332] *Id.*, and at Comment 5.
[333] *Id.*
[334] *See* GOT Case Brief at 16; *see also* Borusan Case Brief at 59.
[335] *See* BQR-B at Exhibit 19 (Clauses 2 and 3).
[336] *See* GOT Case Brief at 16; *see also* Borusan Case Brief at 59.
[337] *See* BQR-B at Exhibit 19 (Appendix 3).

At pages 47-48 of the Petitioners' Rebuttal Brief, Petitioners argue that the Department should continue to find that critical circumstances exist. Petitioners claim Borusan's argument is based on a misreading of the statute and that the statute requires consideration of all net countervailable subsidies in the aggregate.

No other party commented on this issue.

Department's Position:

We agree with Petitioners.

Section 703(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect: (A) that "the alleged countervailable subsidy" is inconsistent with the SCM agreement of the WTO, and (B) that there have been massive imports of the subject merchandise over a relatively short period. The SCM Agreement prohibits "subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance." We found that both Borusan and Toscelik received subsidies from two programs contingent upon export performance and countervailable, as well as "massive imports" of OCTG over a relatively short period of time.[338] However, we also reached a negative preliminary CVD determination, as the aggregate of the net countervailable subsidies at the *Preliminary Determination* was less than one percent *ad valorem*, pursuant to section 703(b)(4) of the Act.[339] Because of the negative preliminary determination, we did not suspend liquidation of entries under section 703(e)(2) of the Act.

For the final determination section 705(a)(2) of the Act states that

> "If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 703(e), shall also contain a finding as to whether (A) the countervailable subsidy is inconsistent with the Subsidies Agreement, and (B) there have been massive imports of the subject merchandise over a relatively short period."

Although the *Preliminary Determination* was negative, the final determination is affirmative, as the aggregate of the net countervailable subsidies determined at the final determination is over one percent *ad valorem*. We continue to determine that critical circumstances exist for Borusan, Toscelik, and all other producers and exporters. We find that both Borusan and Toscelik received benefits from subsidies inconsistent with the SCM Agreement and that there have been massive imports of the subject merchandise over a relatively short period.

Although Borusan argues that the benefit percentage of the export subsidies inconsistent with the SCM Agreement is less than one percent, the statute does not mention a specific benefit

[338] *See Preliminary Determination of Critical Circumstances*, 79 FR at 4333.
[339] *See Preliminary Determination*, 78 FR at 77420.

percentage required for export subsidies. The statute only states that the determination of critical circumstances "contain a finding" of an inconsistent countervailable subsidy.

To determine a *de minimis* countervailable subsidy, section 705(a)(3) of the Act refers to section 703(b)(4) after defining how to determine critical circumstances in a final determination. Section 703(b)(4) states that "a countervailable subsidy is *de minimis* if the administering authority determines that the aggregate of the net countervailable subsidies is less than 1 percent ad valorem," as applied in the *Preliminary Determination*, where the aggregate of the net countervailable subsidies was less than 1 percent *ad valorem*.

Therefore, the Act's requirements for an affirmative critical circumstances determination are satisfied because the Department has determined that there are countervailable subsidies inconsistent with the SCM Agreement, massive imports of the subject merchandise over a relatively short period, and there is now an affirmative final determination with an aggregate of the net countervailable subsidies greater than one percent *ad valorem*.

Comment 16: Whether to Issue an Amended Preliminary Determination

At pages 5-10 of Petitioners' Case Brief, Petitioners argue that the Department should amend its *Preliminary Determination*, including its critical circumstances finding, and retroactively suspend liquidation and collect cash deposits on subject merchandise that entered 90 days prior to the date of the *Preliminary Determination*. Petitioners argue that the Department should amend the *Preliminary Determination* because:

- the post-preliminary analyses for both Borusan and Toscelik changed the aggregate subsidy amount from *de minimis* to a significant margin;
- post-preliminary analyses should be treated as significant ministerial errors;
- the *Preliminary Determination* is incomplete and should include all decisions completed before the final determination, as decisions on these issues would be preliminary decisions;
- subsidies countervailed in the post-preliminary analyses should be included in the aggregate calculation as to whether a *Preliminary Determination* is *de minimis*.

Petitioners also argue that the Department should retroactively collect duties:

- to provide relief to Petitioners,
- to avoid creating a perverse incentive for respondents to withhold information until after the *Preliminary Determination;* and
- because under the Act, the post-preliminary analyses require the Department to order the posting of a cash deposit, bond, or other security for each entry of the subject merchandise and to order the suspension of liquidation on all merchandise subject to the determination.

On page 3 of the GOT's Case Brief, the GOT rebuts Petitioners' argument that it did not cooperate and asserts it provided timely and accurate responses.

On pages 11-18 of Borusan's Rebuttal Brief, Borusan argues that Petitioners are seeking to have the Department change the *Preliminary Determination* based on subsequent analysis and information that was not considered by the Department in the *Preliminary Determination*.

Borusan supports the Department's decision to not amend the *Preliminary Determination*, retroactively suspend liquidation, and collect cash deposits. Borusan further argues that the Department should not change this decision in the final determination. Borusan argues that the legal authority regarding whether to amend a preliminary determination cannot vary based on if a preliminary determination is affirmative or negative. Thus, Borusan argues, the Department's *Preliminary Determination* was fully consistent with the statue and not incomplete or legally defective as claimed by Petitioners.

No other party commented on this issue.

Department's Position:

We agree with Borusan and the GOT.

We required more information to address certain outstanding issues at the time we issued the *Preliminary Determination*, as we expressly indicated in the *Preliminary Determination*.[340] Therefore, we could not address all of the issues in the proceeding by the necessary statutory deadline. The post-preliminary analyses provided notice to parties so that they could provide comments on the analyses before this final determination. The post-preliminary analyses were not, however, part of the *Preliminary Determination* as contemplated by the Act at sections 703 (d)(1)(B) and (2) for purposes of suspending liquidation.

In the Department's May 21 Letter, we stated that we would not publish an amendment to the *Preliminary Determination*, as requested in Petitioners' April 25 Letter. We continue to find that there is no requirement for the Department to amend the *Preliminary Determination* or issue cash deposit instructions pursuant to section 703 of the Act as a result of the post-preliminary analyses. This is consistent with the Department's practice with regard to post-preliminary analyses in past investigations.[341]

[340] *See Preliminary Determination*, and accompanying PDM at 20.
[341] *See, e.g., Bricks from the PRC*, 75 FR at 45472, and accompanying IDM at 1.

RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

✓

Agree Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

July 10, 2014

(Date)

APPENDIX

I. ACRONYM AND ABBREVIATION TABLE

Acronym/Abbreviation	Complete Title
Act	Tariff Act of 1930, as amended
AFA	Adverse Facts Available
AUL	Average Useful Life
BMB	Borusan Mannesmann Boru Sanayi ve Ticaret A.S.
BMBYH	Borusan Mannesmann Boru Yatirim Holding A.S.
Borusan	Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret, Borusan Mannesmann Boru Yatirim Holding A.S., and Borusan Holding A.S.
Borusan Holding	Borusan Holding A.S.
BOTAS	Boru Hatlari Ile Petrol Tasima AS
CFR	Code of Federal Regulations
CIT	Court of International Trade
CRU	CRU Group
CVD	Countervailing Duty
Department	Department of Commerce
EFTA	European Free Trade Association
Enerji	Borusan Enerji Yatrim (also known as Borusan EnMB Enerji)
Erdemir	Eregli Demir ve Celik Fabrikalari T.A.S.
GDP	Gross Domestic Product
GOT	Government of the Republic of Turkey
GTIS	Global Trade Information Systems
HRC	Hot-Rolled Coil
HRS	Hot-Rolled Steel
IDM	Issues and Decision Memorandum
Isdemir	Iskenderun Demir ve Celik A.S.
ISIC	International Standard Industrial Classification
Istikbal	Borusan Istikbal Ticaret
LTAR	Less Than Adequate Remuneration
MEPS	MEPS (International) Ltd.
OCTG	Certain Oil Country Tubular Goods
OIZ	Organized Industrial Zones
OYAK	Ordu Yardimlasma Kurumu
PDM	Preliminary Decision Memorandum
Petitioners	Maverick Tube Corporation; United States Steel Corporation; Boomerang Tube; Energex Tube, a division of JMC Steel Group; Northwest Pipe Company; Tejas Tubular Products; TMK IPSCO; Vallourec Star, L.P.; and Welded Tube USA Inc.

Acronym/Abbreviation	Complete Title
POI	Period of Investigation
SBB	Steel Business Briefing
TESEV	Turkish Economic and Social Studies Foundation
TL	Turkish Lira
Toscelik	Tosçelik Profil ve Sac Endustrisi A.S., Tosyali Dis Ticaret A.S., Tosyali Elektrik Enerjisi Toptan Satis Ith. Ihr. A.S., Tosyali Holding A.S., and Tosyali Demir Celik San. A.S.
Toscelik Granul	Toscelik Granul Sanayi A.S.
Toscelik Profil	Tosçelik Profil ve Sac Endustrisi A.S.
Tosyali	Tosyali Dis Ticaret A.S.
Tosyali Demir	Tosyali Demir Celik San. A.S.
Tosyali Electric	Tosyali Elektrik Enerjisi Toptan Satis Ith. Ihr. A.S.
Tosyali Holding	Tosyali Holding A.S.
TPA	Republic of Turkey Prime Ministry Privatization Administration
Turkey	Republic of Turkey
U.S.C.	U.S. Code
USD	U.S. Dollars
VAT	Value Added Tax
WTO	World Trade Organization
WTO SCM	World Trade Organization Agreement on Subsidies and Countervailing Measures

II. LITIGATION TABLE

Short Citation	Complete Court Case Title
Fabrique	*Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593 (CIT 2001).
Micron Technology	*Micron Technology, Inc. v. United States*, 117 F. 3d 1386, 1396 (Fed. Cir. 1997)
QVD	*QVD Food Co. v. United States*, 658 F.3d 1318 (Fed. Cir. 2011)
SNR	*Societe Nouvelle de Roulements (SNR) v. United States*, 910 F. Supp. 689 (CIT 1995)

III. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

Note: if "certain" is in the title of the case, it has been excluded from the title listing.

Short Citation	Administrative Case Determinations
Aluminum Extrusions from the PRC AR	*Aluminum Extrusions From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying Issues and Decision Memorandum
Bricks from the PRC	*Magnesia Carbon Bricks From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 45472 (August 2, 2010), and accompanying Issues and Decision Memorandum
Citric Acid from the PRC	*Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 16836 (April 13, 2009), and accompanying Issues and Decision Memorandum
Citric Acid from the PRC 2009 AR	*Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011), and accompanying Issues and Decision Memorandum
Citric Acid from the PRC 2010 AR	*Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 72323 (December 5, 2012), and accompanying Issues and Decision Memorandum
Citric Acid from the PRC 2011 AR	*Citric Acid and Certain Citrate Salts From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014), and accompanying Issues and Decision Memorandum
Coated Paper from the PRC	*Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 59212 (September 27, 2010), and accompanying Issues and Decision Memorandum
CR Steel From Korea	*Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea,* 67 FR 62102 (October 3, 2002), and accompanying Issues and Decision Memorandum

Short Citation	Administrative Case Determinations
CWP from the PRC	*Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008), and accompanying Issues and Decision Memorandum
CWP from Turkey 2010 AR	*Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 16, 2012), and accompanying Issues and Decision Memorandum
CWP from Turkey 2011 AR	*Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013), and accompanying Issues and Decision Memorandum
HPSC from the PRC	*High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying Issues and Decision Memorandum
HRS from Brazil	*Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil: Final Results of Countervailing Duty Administrative Review*, 76 FR 22868 (April 25, 2011), and accompanying Issues and Decision Memorandum
HRS from India	*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
Kitchen Racks from the PRC	*Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009), and accompanying Issues and Decision Memorandum
Kitchen Racks from the PRC 2009 AR	*Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of the Countervailing Duty Administrative Review*, 77 FR 21744 (April 11, 2012), and accompanying Issues and Decision Memorandum
Laminated Woven Sacks from the PRC	*Laminated Woven Sacks From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination, in Part, of Critical Circumstances*, 73 FR 35639 (June 24, 2008) , and accompanying Issues and Decision Memorandum
LEU from Germany, the Netherlands, and the United Kingdom	*Notice of Final Affirmative Countervailing Duty Determinations: Low Enriched Uranium From Germany, the Netherlands, and the United Kingdom*, 66 FR 65903 (December 21, 2001), and accompanying Issues and Decision Memorandum

Short Citation	Administrative Case Determinations
LWRP from the PRC	*Light-Walled Rectangular Pipe and Tube From People's Republic of China: Final Affirmative Countervailing Duty Investigation Determination*, 73 FR 35642 (June 24, 2008) , and accompanying Issues and Decision Memorandum
OCTG from the PRC	*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) , and accompanying Issues and Decision Memorandum
Off-the Road Tires from the PRC	*New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008), and accompanying Issues and Decision Memorandum
Rebar from Turkey	*Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Negative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Determination,* 79 FR 10771 (February 26, 2014), and accompanying Preliminary Decision Memorandum
Seamless Pipe from the PRC	*Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 75 FR 57444 (September 21, 2010), and accompanying Issues and Decision Memorandum
Softwood Lumber from Canada	*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), and accompanying Issues and Decision Memorandum
Stainless Steel Sinks from the PRC	*Drawn Stainless Steel Sinks From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 78 FR 13017 (February 26, 2013), and accompanying Issues and Decision Memorandum
Steel from Belgium	*Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium,* 58 FR 37273, 37276 (July 9, 1993)
Steel Wire Garment Hangers from Vietnam Final Determination	*Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 77 FR 75973 (December 26, 2012), and accompanying Issues and Decision Memorandum

Short Citation	Administrative Case Determinations
Steel Wire Garment Hangers from Vietnam Preliminary Determination	*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)
Wind Towers from the PRC	*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

IV. CASE-RELATED DOCUMENTS

Short Citation	Complete Document Title
Borusan Case Brief	Letter from Borusan to the Department, "Oil Country Tubular Goods from Turkey, Case No. C-489-817: Case Brief" (May 23, 2014)
Borusan Final Calculation Memo	Memorandum from Shane Subler to the File, "Final Determination Calculation Memorandum for Borusan" (July 10, 2014)
Borusan Post-Preliminary Analysis	Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey: Post-Preliminary Analysis Memorandum for Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret, Borusan Mannesmann Boru Yatirim Holding A.S., and Borusan Holding A.S. (collectively, "Borusan")" (April 18, 2014)
Borusan Post-Preliminary Calculation Memo	Memorandum to The File, "Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey: Post-Preliminary Analysis Memorandum for Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret, Borusan Mannesmann Boru Yatirim Holding A.S., and Borusan Holding A.S. (collectively, "Borusan"): Calculation Attachments" (April 18, 2014)
Borusan Preliminary Calculation Memo	Memorandum to Shane Subler, Senior International Trade Compliance Analyst, AD/CVD Operations, Office I, "Preliminary Determination Calculation Memorandum for Borusan" (December 16, 2013)
Borusan Rebuttal Brief	Letter from Borusan to the Department, "Oil Country Tubular Goods from Turkey, Case No. C-489-817: Rebuttal Brief," (May 28, 2014)
Borusan Verification Exhibits	Letter to the Department from Borusan, "Oil Country Tubular Goods from Turkey, Case No. C-489-817: Verification Exhibits," (May 12, 2014) (Public Version)

Short Citation	Complete Document Title
BNSA QR	Letter from the Borusan to the Department, "Oil Country Tubular Goods from Turkey, Case No. C-489-817, New Subsidy Allegation Questionnaire Response," (January 10, 2014)
BNSA SQR	Letter from Borusan to the Department, "Oil Country Tubular Goods from Turkey, Case No. C-489-817, Supplemental New Subsidy Allegations Questionnaire Response" (January 29, 2014)
Borusan Verification Report	Memorandum to Thomas Gilgunn, Acting Office Director, AD/CVD Operations, Office I, from Shane Subler and Jennifer Meek, International Trade Compliance Analysts, Office I, "Verification Report: Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret, Borusan Mannesmann Boru Yatirim Holding A.S., and Borusan Holding A.S. (collectively, "Borusan") (May 15, 2014)
BQR-A	Letter from Borusan to the Department, "Oil Country Tubular Goods from Turkey: Affiliated Company Questionnaire Response" (August 29, 2013)
BQR-B	Letter from Borusan to the Department, "Oil Country Tubular Goods from Turkey: Initial Questionnaire Response" (October 31, 2013)
BSQ1	Letter from the Department to Borusan, "Supplemental Questionnaire for Borusan Group Companies in the Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey"(November 21, 2013)
BSQR1-A	Letter from the Borusan to the Department, "Oil Country Tubular Goods from Turkey, Case No. C-489-817, Supplemental Questionnaire Response" (December 2, 2013)
BSQR1-B	Letter from the Borusan to the Department, "Oil Country Tubular Goods from Turkey, Case No. C-489-817, Supplemental Questionnaire Response" (December 5, 2013)
BSQ2	Letter from the Department to Borusan, "Second Supplemental Questionnaire for Borusan Group Companies in the Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey"(January 17, 2014)
BSQR2	Letter from the Borusan to the Department, "Oil Country Tubular Goods from Turkey, Case No. C-489-817, Supplemental Questionnaire Response" (January 23, 2014)
CC BQR	Letter from the Borusan to the Department, "Oil Country Tubular Goods from Turkey, Case No. C-489-817, Critical Circumstances Q&V Questionnaire Response" (January 9, 2014)
Department's July 3 Memo	Memorandum from Shane Subler, International Trade Compliance Analyst, to the File, "Conference Call with Government of the Republic of Turkey" dated July 3, 2014

Short Citation	Complete Document Title
Department's May 21 Letter	Letter from the Department to Petitioners, dated May 21, 2014, "Countervailing Duty Investigation: Certain Oil Country Tubular Goods from the Republic of Turkey"
Final Critical Circumstances Memo	Memorandum from Jennifer Meek, International Trade Compliance Analyst, to the File, "Calculation of Increase of Imports Over a Relatively Short Period of Time: CVD Investigation of OCTG from Turkey," dated July 10, 2014
GNSA QR	Letter from the GOT to the Department, "Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey: Response of the Government of Turkey to Supplemental New Subsidy Allegation (NSA) Questionnaire" (February 5, 2014)
GOT Case Brief	Letter from the GOT to the Department, "Countervailing Duty Investigation on Certain Oil Country Tubular Goods from the Republic of Turkey: Case Brief" (May 23, 2014)
GOT May 22 Letter	Letter from the GOT to the Department, "Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey: Correspondence," (May 22, 2014)
GOT May 23 Letter Response	Letter from the Department to Interested Parties regarding the GOT's May 22, 2014 submission of arguments, (May 23, 2014).
GOT Rebuttal Brief	Letter from the GOT to the Department, "Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey: Rebuttal Brief," (May 28, 2014).
GOT Verification Report	Memorandum to Thomas Gilgunn, Acting Office Director AD/CVD Operations, Office I, from Shane Subler and Jennifer Meek International Trade Compliance Analysts, Office I, "Verification Report: Government of Turkey" (May 12, 2014)
GQR	Letter from the GOT to the Department, "Initial Questionnaire Response" (November 22, 2013)
GSQ1	Letter from the Department to the GOT, "Countervailing Duty Investigation: Certain Oil Country Tubular Goods from the Republic of Turkey" (January 17, 2014)

Short Citation	Complete Document Title
GSQ2	Letter from the Department to the GOT, "Countervailing Duty Investigation: Certain Oil Country Tubular Goods from the Republic of Turkey," (January 31, 2014)
GSQR1	Letter from the GOT to the Department, "Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey: Response of the Government of Turkey to Supplemental Questionnaire" (January 27, 2014)
GSQR2	Letter from the GOT to the Department, "Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey: Response of the Government of Turkey to Second Supplemental Questionnaire" (February 13, 2014)
Initiation Checklist	"Countervailing Duty Initiation Checklist: Certain Oil Country Tubular Goods from the Republic of Turkey," (July 22, 2013)
NSA Initiation Memo	Memorandum to Thomas Gilgunn, Acting Office Director, AD/CVD Operations, Office I, "*Countervailing Duty Investigation" Certain Oil Country Tubular Goods (OCTG) from the Republic of Turkey (Turkey)*: Analysis of New Subsidy Allegations" (December 17, 2013)
Petition	Letter from Petitioners, "Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Oil Country Tubular Goods from India, the Republic of Korea, the Republic of the Philippines, Saudi Arabia, Taiwan, Thailand, the Republic of Turkey, Ukraine, and the Socialist Republic of Vietnam," (July 2, 2013).
Petition Supplement	Letter from Petitioners, re: Certain Oil Country Tubular Goods from Turkey: Supplement to Petition for the Imposition of Countervailing Duties (July 12, 2013)
Petitioners' April 25 Letter	Letter from Petitioner to the Department dated April 25, 2014, "Oil Country Tubular Goods from Turkey: Post-Preliminary Determinations."
Petitioners' Benchmark Submission	Letter from Maverick Tube Corporation, "Submission of Factual Information," (November 18, 2013).
Petitioners' Case Brief	Letter from Petitioners to the Department, "Oil Country Tubular Goods from Turkey: Case Brief," (May 23, 2014).

Short Citation	Complete Document Title
Petitioners' February 5 Comments	Letter from Petitioners to the Department, "Oil Country Tubular Goods from Turkey: Comments on the Government of Turkey's Supplemental Questionnaire Response," (February 5, 2014)
Petitioners' November 27 Comments	Letter from Petitioners to the Department, "Certain Oil Country Tubular Goods from Turkey: Comments on the Government of Turkey's Exhibit 4-I," (November 27, 2013)
Petitioners' Rebuttal Brief	Letter from Petitioners to the Department, "Oil Country Tubular Goods from Turkey: Rebuttal Brief," (May 28, 2014).
Questionnaire	Letter from the Department to the GOT, "Countervailing Duty Investigation: Certain Oil Country Tubular Goods from the Republic of Turkey,"(August 27, 2013)
Position Paper	"Application of State aid rules to OYAK Position paper" at Exhibit 4I of the GSQR1
Preliminary Determination	*Certain Oil Country Tubular Goods From the Republic of Turkey: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination,* 78 FR 77420 (December 23, 2013), and accompanying Preliminary Decision Memorandum.
Preliminary Determination of Critical Circumstances	*Certain Oil Country Tubular Goods from India and Turkey: Preliminary Determination of Critical Circumstances in the Countervailing Duty Investigations,* 79 FR 4333 (January 27, 2014)
TCCQR	Letter from Toscelik to the Department, "OCTG from Turkey; Toscelik response to "critical circumstances" Questionnaire" (January 5, 2014)
TNSA QR	Letter from Toscelik to the Department, "OCTG from Turkey; Toscelik 'new subsidy allegation' Questionnaire Response" (January 6, 2014)
TNSA SQR	Letter from Toscelik to the Department, "OCTG from Turkey; Toscelik supplemental questionnaire response (new subsidy allegation)" (January 29, 2014)

Short Citation	Complete Document Title
Toscelik Case Brief	Letter from Toscelik to the Department, "OCTG from Turkey; Toscelik case brief," (May 28, 2014)
Toscelik December 6, 2013 Letter	Letter from Toscelik to the Department, "OCTG from Turkey; Tosçelik conditional extension request," (December, 6, 2013)
Toscelik Final Calculation Memo	Memorandum from Shane Subler to the File, "Final Determination Calculation Memorandum for Toscelik," (July 10, 2014)
Toscelik January 7, 2014 Letter	Letter from the Department to Toscelik, " Certain Oil Tubular Goods from the Republic of Turkey," (January 7, 2014)
TQR	Letter from Toscelik to the Department, "OCTG from Turkey Questionnaire Response" (November 13, 2013)
Toscelik Post-Preliminary Analysis	Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey: Post-Preliminary Analysis Memorandum for Tosçelik Profil ve Sac Endustrisi A.S. , Tosyali Dis Ticaret A.S., Tosyali Elektrik Enerjisi Toptan Satis Ith. Ihr. A.S., Tosyali Holding A.S., and Tosyali Demir Celik San. A.S." (collectively "Toscelik") (April 18, 2014).
Toscelik Post-Preliminary Calculation Memo	Memorandum to The File, "Countervailing Duty Investigation of Certain Oil Country Tubular Goods from the Republic of Turkey: Post-Preliminary Analysis Memorandum for Tosçelik Profil ve Sac Endustrisi A.S. , Tosyali Dis Ticaret A.S., Tosyali Elektrik Enerjisi Toptan Satis Ith. Ihr. A.S., Tosyali Holding A.S., and Tosyali Demir Celik San. A.S." (collectively "Toscelik"): Calculation Attachments" (April 18, 2014)
Toscelik Preliminary Calculation Memo	Memorandum to the File from Joseph Shuler, regarding "Certain Oil Country Tubular Goods from the Republic of Turkey: Preliminary Determination, Calculation Memorandum for Toscelik," (December 16, 2013)

Short Citation	Complete Document Title
Toscelik Verification Exhibits	Letter from Toscelik to the Department, "Toscelik verification exhibits," (May 5, 2014)
Toscelik Verification Report	Memorandum to Thomas Gilgunn, Acting Office Director, AD?CVD Operations, Office I, from Shane Subler and Jennifer Meek, International Trade Compliance Analysts, Office I, "Verification Report: Tosyali Dis Ticaret A.S., Tosyali Elektrik Enerjisi Toptan Satis Ith. Ihr. A.S., Tosyali Holding A.S., Tosçelik Profil ve Sac Endustrisi A.S., and Tosyali Demir Celik San. A.S. (collectively, "Toscelik")," (May 12, 2014).
TSQ1	Letter from the Department to Toscelik dated November 22, 2013, "Countervailing Duty Investigation: Certain Oil Country Tubular Goods from the Republic of Turkey"
TSQR1	Letter from Toscelik to the Department, "OCTG from Turkey Supplemental Questionnaire Response" (December 2, 2013)
TSQR2	Letter from Toscelik to the Department, "OCTG from Turkey; Toscelik supplemental questionnaire response (TDC QR)," (January 20, 2014)

V. MISCELLANEOUS TABLE (REGULATORY, STATUTORY, ARTICLES, ETC.)

Short Cite	Complete Title
Preamble	*Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998)
SAA	*Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Doc. No. 316, 103d Cong., 2d Session (1994)
SCM Agreement	*Agreement on Subsidies and Countervailing Measures*, April, 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex IA, Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts 264 (1994)
URAA	*Uruguay Round Agreements Act*, Pub L. No. 103-465, 108 Stat. 4809 (1994)
WTO DS 379	*United States — Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*