C-489-819
Investigation
Public Document
POI: 01/01/2012 – 12/31/2012
OPIII: KJ

DATE: September 8, 2014

MEMORANDUM TO: Paul Piquado
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 Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination in the Countervailing Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey

I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of steel concrete reinforcing bar (rebar) in the Republic of Turkey (Turkey), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The Department also determines, pursuant to section 705(a)(2) of the Act, that critical circumstances do not exist for imports of rebar from Turkey.

II. BACKGROUND

A. Since Publication of the *Preliminary Determination*

On February 26, 2014, we published the *Preliminary Determination* in this investigation.[1] We preliminarily calculated *de minimis* rates for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas), the two mandatory respondents.[2]

On March 28, 2014, Petitioner[3] requested a hearing in this investigation.[4] From April 10, 2014, through April 18, 2014, we conducted verification of the questionnaire responses submitted by

[1] *See 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) (*Preliminary Determination*).
[2] *Id.*
[3] Petitioner is the Rebar Trade Action Coalition.

the Government of Turkey (GOT), Habas, and Icdas. On June 19, 2014, Petitioner requested that the scope of this investigation be amended to exclude certain types of deformed steel wire.[5] On June 9, 10, and 14, 2014, we released the verification reports regarding the meetings held with the GOT, Icdas, and Habas, respectively.[6] On July 23, 2014, we received case briefs from Petitioner, Habas, and Icdas,[7] and on July 28, 2014, received rebuttal briefs from the same parties.[8] On August 5, 2014, we held a public hearing in this investigation at the Department.[9]

B. Period of Investigation

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

C. Comments

We analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which contains the Department's positions on the issues raised in the briefs. Based on the comments received, and our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed under each applicable program in the "Analysis of Programs" section below. The issues in this investigation for which we received comments from the parties are:

Comment 1: Whether the Department Used an Improper Methodology for Deriving the Benchmark for Purchases of Natural Gas for Less Than Adequate Remuneration (LTAR)
Comment 2: Whether Value Added Tax (VAT) Should Be Included in the Natural Gas Benchmark
Comment 3: Whether Sales by Habas to Affiliates Should Be Included in the Sales Denominators
Comment 4: Whether Corrections to Habas' Natural Gas Purchase Data Collected at Verification Should Be Used for the Final Calculations
Comment 5: Whether the Department Should Use a Lignite Price to Calculate the Benefit for the Provision of Lignite for LTAR

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[4] *See* Letter from Petitioner regarding "Request for Hearing" (March 28, 2014).
[5] *See* Letter from Petitioner regarding "Request to Amend Scope Language" (June 19, 2014).
[6] *See* Department Memoranda regarding "Verification of the Questionnaire Responses Submitted by the Government of the Republic of Turkey" (July 9, 2014) (GOT Verification Report); "Verification of the Questionnaire Responses Submitted by Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S." (July 10, 2014) (Icdas Verification Report); and "Verification of the Questionnaire Responses Submitted by Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S." (July 14, 2014) (Habas Verification Report).
[7] *See* Letter from Habas regarding "Case Brief" (July 23, 2014) (Habas Case Brief). At the request of the Department, because of untimely filed new factual information, Petitioner and Icdas resubmitted their July 23, 2014, case briefs. *See* Letter from Petitioner regarding "Resubmission of Case Brief Pursuant to the Department's Request" (July 29, 2014) (Petitioner Case Brief); and Letter from Icdas regarding "Revised Case Brief" (July 28, 2014) (Icdas Case Brief).
[8] See Letter from Petitioner regarding "Rebuttal Case Brief" (July 28, 2014) (Petitioner Rebuttal Brief); and Letter from Habas regarding "Rebuttal Brief" (July 28, 2014) (Habas Rebuttal Brief). At the request of the Department, because of untimely filed new factual information, Icdas resubmitted its July 28, 2014, rebuttal brief. *See* Letter from Icdas regarding "Revised Rebuttal Brief" (July 31, 2014) (Icdas Rebuttal Brief).
[9] The transcript of the hearing is available in the Department's IA ACCESS.

Comment 6: Calculation of the Export Revenue Tax Deduction for Icdas
Comment 7: Whether the Department Unjustly Rejected Petitioner's New Subsidy Allegation
Comment 8: Whether the Department Failed to Initiate on the GOT's Purchase of Electricity for More Than Adequate Remuneration (MTAR)

III. SCOPE COMMENTS

In the *Initiation Notice*, we invited parties to submit comments regarding product coverage.[10] We received scope comments from Deacero S.A. de C.V. and Deacero USA, the mandatory respondent in the antidumping duty (AD) investigation on rebar from Mexico,[11] and rebuttal scope comments from Petitioner.[12] We evaluated those comments in the context of the companion AD investigations on rebar from Mexico and Turkey,[13] and preliminarily determined that the products at issue are within the scope.[14]

On June 19, 2014, Petitioner submitted a request that the Department amend the scope of this investigation to exclude certain types of deformed steel wire by inserting the sentence below immediately before the last sentence of the current scope language: "Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size, or grade) and without being subject to an elongation test." We solicited comments on the scope of the investigation from interested parties in the *Initiation Notic*e[15] and case briefs.[16] Based on the fact that no other interested party has submitted comments regarding the Petitioner's request to amend the scope language, we incorporated this amendment into the "Scope of the Investigation" section below.

IV. SCOPE OF THE INVESTIGATION

The merchandise subject to this investigation is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010.

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[10] *See Steel Concrete Reinforcing Bar from Turkey: Initiation of Countervailing Duty Investigation*, 78 FR 60831 (October 2, 2013) (*Initiation Notice*), and accompanying Initiation Checklist.
[11] *See* Letters from Deacero S.A. de C.V. and Deacero USA regarding "Scope Comments" (placing comments made in AD investigation on rebar from Mexico (A-201-844) on the record of this CVD investigation (November 1 and 6, 2013); and Letter from Deacero S.A. de C.V. and Deacero USA regarding "Rebuttal Comments on Product Characteristics" (November 12, 2013).
[12] *See* Letter from Petitioner regarding "Rebuttal Scope Comments" (November 25, 2013).
[13] *See Steel Concrete Reinforcing Bar from Turkey: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 22804 (April 24, 2014), and accompanying Issues and Decision Memorandum (IDM) at "Scope Comments;" and *Steel Concrete Reinforcing Bar from Mexico: Preliminary Determination of Sales at Less Than Fair Value, Preliminary Affirmative Determination of Critical Circumstances, and Postponement of Final Determination*, 79 FR 22802 (April 24, 2014), and accompanying IDM at "Scope Comments."
[14] *See* Department Memorandum regarding "Scope Comments Decision Memorandum" (June 25, 2014), which contains the "Scope Comments Decision Memorandum for the Preliminary Determination of the Antidumping Duty Investigation of Steel Concrete Reinforcing Bar from Mexico" (April 18, 2014) (public version).
[15] *See Initiation Notice*.
[16] *See Preliminary Determination*.

The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size, or grade) and without being subject to an elongation test. HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

V. CRITICAL CIRCUMSTANCES

In the *Preliminary Determination*, we preliminarily determined that critical circumstances did not exist for imports of Turkish rebar from Habas, Icdas, or the all other companies.[17] We verified Habas' and Icdas' company-specific shipment data for the base period of June 2013-August 2013, and comparison period of September 2013-November 2013.[18] We found no errors or discrepancies in the data submitted on the record by either respondent.[19]

To be consistent with the companion AD investigation on rebar from Turkey, for the final critical circumstances analysis, we used import data from the U.S. Census Bureau. That data was obtained from the Global Trade Atlas and is consistent with the import data that was submitted by Petitioner in its allegation.[20]

Although Habas and Icdas received subsidies from programs contingent upon export performance,[21] the companies' shipment data do not indicate a massive increase in shipments of subject merchandise to the United States.[22] The shipment data, however, indicate a massive increase in shipments of subject merchandise by the all others companies.[23]

Therefore, for this final determination, pursuant to section 705(a)(2) of the Act, we determine that critical circumstances exist with regard to imports of rebar from Turkey for all other companies.

[17] *See Preliminary Determination*, and accompanying IDM at "Critical Circumstances."
[18] *See* Habas Verification Report at "Sales and Export Information – *Exports of Subject Merchandise to the United States from June 2013 to November 2013*," and Icdas Verification Report at "Sales Reconciliation – *Critical Circumstance*s."
[19] *Id*.
[20] *See* Letter from Petitioner regarding "Critical Circumstances Allegation for Turkey" (December 3, 2013).
[21] We find that Habas and Icdas used the following export subsidy programs: "Rediscount Program" and "Deductions from Taxable Income for Export Revenue." *See* below for a discussion of these programs.
[22] *See* Department Memorandum regarding "Final Critical Circumstances Shipment Data Analysis" (September 8, 2014).
[23] *Id*.

VI. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[24] 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.

B. Attribution of Subsidies

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

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

> the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through 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.[25]

[24] *See* U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.
[25] *See Countervailing Duties, Final Rule*, 63 FR 65348, 65401 (November 25, 1998) ("*Preamble*").

Thus, the Department's regulations make clear that the agency must look at the facts presented in each case to determine whether cross-ownership exists. The U.S. Court of International Trade (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.[26]

Habas –Established in 1956, as an oxygen producer under a different name, the company changed its name to Habas in 1964. Habas' steel division produces and sells carbon steel billets, rebar, and wire rod, which the company produces at its facility in Aliaga. Habas also owns and operates two power plants, one near Izmir and one near Bilecik. The company's industrial gas division produces, distributes, and sells oxygen, nitrogen, and other industrial gases. The company's corporate headquarters are located in Istanbul.[27]

Habas reported that the company is family-owned and has a variety of affiliated companies.[28] Habas responded to the Department's questionnaires on behalf of itself only, claiming that there is no cross-owned company that meets the criteria for providing a response.[29] We determine that none of Habas' affiliated companies meet any of the conditions of 19 CFR 351.525(b)(6)(ii)-(v). Therefore, Habas is the only company included in our subsidy analysis.

Icdas – Icdas responded on behalf of itself and one cross-owned affiliate: Icdas Elektrik Enerjisi Uretim Yatirim A.S. (Icdas Elektrik) (collectively, the Icdas Companies). Icdas, established in 1969, is a privately-owned corporation and the parent company of a group of companies whose operations include steel manufacturing, steel trading, transportation, freight brokerage, and insurance.[30] Icdas and its affiliates are family-owned, private corporations.[31]

Icdas is the sole manufacturing company of the subject rebar and the only sales company for the export of rebar to the United States.[32] Icdas produces rebar at its facilities in Karabiga, Canakkale Turkey.[33] Icdas' corporate headquarters and sales offices are located in Istanbul.[34] Icdas Elektrik, established in 2006, is an electricity producer, whose power plant is located near Icdas' manufacturing facilities in Karabiga, Canakkale.[35] Icdas and Icdas Elektrik have a common ownership, board of directors, and managers.[36] We determine that Icdas and Icdas Elektrik are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) through common family ownership and control. Though there is cross-ownership, we find no record evidence indicating that Icdas Elektrik benefitted from countervailable subsidies during the POI.

[26] *See Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).
[27] *See* Habas Initial Questionnaire Response (IQR) (January 2, 2014), at 1-6.
[28] *Id.*, at 2 and Exhibit 1.
[29] *Id.*, at 3-4.
[30] *See* Icdas IQR (January 2, 2014), at 2 and 6.
[31] *Id.*, at 7.
[32] *Id*., at 2 and 6.
[33] *Id*.
[34] *Id*.
[35] *Id*., at 5-7.
[36] *Id*., at 3.

Concerning the other Icdas-affiliated companies, which are involved in port loading and handling services,[37] domestic market sales, insurance, transportation, freight brokerage, and electricity trading, we find that these companies do not meet any of the conditions of 19 CFR 351.525(b)(6)(ii)-(v). Therefore, these companies are not included in our subsidy analysis.

C. 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 denominator used to calculate the countervailable subsidy rates for each subsidy program.

In its case brief, Habas argued that sales it made to certain affiliates during the POI should be included in the sales denominators used in the final calculations. We considered Habas' arguments. However, for the reasons discussed below at Comment 3, we have not included those sales in the denominators.

D. Short-Term Benchmark Interest Rate

We are examining export financing provided by the GOT.[38] To determine whether government-provided loans confer a benefit, we use, where possible, company-specific interest rates for comparable commercial loans.[39] When loans are denominated in a foreign currency, 19 CFR 351.505(a)(2)(i) directs us to use a benchmark denominated in the same foreign currency as the loan. As discussed below at "Rediscount Program," Icdas reported that it paid interest against export loans denominated in U.S. dollars (USD), which were outstanding during the POI. Icdas submitted the weighted-average interest rate that it paid on comparable short-term, USD commercial loans during the POI.[40] We verified Icdas' short-term, USD commercial loans and the weighted-average interest rate calculation for the POI.[41] We found no errors or discrepancies.[42] As such, consistent with the *Preliminary Determination*, we continue to use the weighted-average interest rate that Icdas provided for comparable short-term USD loans as the benchmark to calculate the benefit under the Rediscount Program, in accordance with 19 CFR 351.505(a)(2)(ii).[43]

[37] *Id*., at 2-3.
[38] *See* Initiation Checklist at 12-15.
[39] *See* 19 CFR 351.505(a)(2)(ii).
[40] *See* Icdas IQR (January 2, 2014), at Exhibit 25.
[41] *See* Icdas Verification Report at "Short-Term, US$ Commercial Loans."
[42] *Id*.
[43] *See* Department Memorandum regarding "Icdas Final Calculations" (September 8, 2014).

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. Provision of Natural Gas for LTAR

We initiated an investigation of whether, during the POI, Turkish rebar producers received countervailable subsidies by purchasing natural gas from Boru Hatlari Ile Petrol Tasima A.S. (BOTAS) for less than adequate remuneration.[44] For the reasons explained in the Initiation Checklist, we did not initiate an investigation of whether Turkish rebar producers received countervailable subsidies by purchasing natural gas from private suppliers in Turkey.[45]

Habas reported it produces rebar at its plant in Aliaga, Turkey, and that Aliaga is located near Ismir.[46] Habas reported that, during the POI, the company made direct purchases of natural gas from BOTAS and provided a copy of the purchase agreement.[47] We determine that Habas used this program during the POI.

We verified that the Icdas Companies did not purchase natural gas from BOTAS during the POI, but from a private supplier.[48] There is no information on the record indicating that the supplier from which the Icdas Companies purchased natural gas was owned or controlled by BOTAS or the GOT during the POI. Therefore, consistent with the *Preliminary Determination*, we continue to determine that the Icdas Companies did not use this program during the POI.

With regard to whether the GOT provides a financial contribution through the sale of natural gas by BOTAS, the GOT reported that, according to Article 3, Paragraph 1, of BOTAS' Articles of Association (AOA), BOTAS is a state-economic enterprise[49] and that, according to Article 3 (titled "Legal Nature"), Paragraph 6, of BOTAS' AOA, BOTAS is affiliated with Turkey's Ministry of Energy and Natural Resources.[50] The GOT also reported that, according to Article 6 of Decree Law No. 233, all members of BOTAS' board of directors are appointed by approval of the Turkish President and the Turkish Prime Minister. For these reasons, we find BOTAS to be a government authority that provides a financial contribution within the meaning section 771(5)(D)(iii) of the Act.

With regard to specificity, Petitioner alleged that the "predominant user" of natural gas in Turkey (*i.e.*, the sector or group which receives "a disproportionally large amount of the subsidy") is the power industry. The GOT reported that the total consumption of natural gas in Turkey in 2012,

[44] *See* Initiation Checklist at 6-9.
[45] *Id.*
[46] See Habas IQR (January 2, 2014), at 5-6 and Exhibit 11.
[47] *Id.*
[48] *See* Icdas Verification Report at "Provision of Natural Gas for LTAR."
[49] *See* GOT IQR (January 2, 2014), at 13 and Exhibit 5.
[50] *Id.*, at Exhibit 5.

was 45,190,143.008 Sm^3.[51] The GOT reported that 632 million Sm^3 was produced by domestic producers in Turkey during 2012, and that the percentage of domestic consumption accounted for by natural gas from domestic producers was 1.36 percent.[52] The GOT provided a breakdown of the industries that purchased natural gas in 2012.[53] This information indicates that that power producers accounted for 21,635,709.530 Sm^3, which is approximately 47.88 percent of all natural gas purchases in 2012, and that the next largest sector of the six sectors that use natural gas (the "Industry Sector") accounted for 10,032,203.033 Sm^3, which is only 22.20 percent of the total.[54]

The GOT also reported that the volume of natural gas imported by BOTAS during 2012, was 42.362 million Sm^3 (which is 93.74 percent of total volume of natural gas consumed) and that the volume sold by BOTAS in Turkey during 2012, was 40.734 million Sm^3 or 91.39 percent of the total volume consumed in Turkey in 2012.[55] Evidence on the record indicates that, during 2012, BOTAS sold a large percentage of the natural gas it imported directly to power producers.[56]

Because BOTAS' imports account for such a large percentage of overall natural gas consumption in Turkey and power producers purchased a large proportion of the natural gas sold by BOTAS, we determine that the provision of natural gas by BOTAS is predominantly used by, and specific to, the power production sector under section 771 (5A)(D)(iii)(II) of the Act. We also determine that pursuant to section 771(5A)(D)(iii)(III) of the Act that power producers receive a disproportionately large amount of the subsidy and the subsidy is therefore specific on that basis as well.

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions of the good within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in the regulations, the preferred benchmark in the hierarchy is an observed market price for the good at issue from actual transactions within the country under investigation.[57] This is because such prices generally would be expected to reflect

[51] *Id.*, at 17.
[52] *Id.*
[53] *Id.*, at 18 and 20-21.
[54] *Id.*
[55] See GOT Third SQR (February 10, 2014), at 1.
[56] *Id.*, at 3. The breakdown of BOTAS' sales of natural gas is proprietary data. For a calculation of the percentage of natural gas that BOTAS sold to power producers, *see* Department Memorandum regarding "Final Calculations for Habas" (September 8, 2014) (Habas Final Calculations).
[57] *See also Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying IDM at "Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark" ("Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier").

most closely the prevailing market conditions and commercial environment for the purchaser under investigation.

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions that can be used to determine whether BOTAS sold natural gas to Habas for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or a substantial portion, of the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.[58]

As explained above, the GOT provided information on the total volume of natural gas sales in Turkey that is accounted for by BOTAS. The GOT reported the volume of natural gas that was imported by BOTAS during 2012, was 42.362 million Sm^3 and that the volume of natural gas sold by BOTAS inside Turkey was 40.734 million Sm^3, which is approximately 90.14 percent of the total volume of natural gas consumption in Turkey in 2012.[59] Based on this large share of the natural gas market, we determine that BOTAS dominates the natural gas market. Consequently, because of the government's overwhelming involvement in the natural gas market, the use of private producer prices in the Turkey would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government presence).[60] 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.[61]

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

Because the GOT reported that other companies in Turkey imported natural gas during the POI, we also analyzed whether the import prices from such transactions could provide a viable "tier one" benchmark.[62] The GOT reported that domestic consumption accounted for by imports by companies other than BOTAS was 3,552,259.598 Sm^3, which was approximately 7.86 percent of total natural gas consumption.[63] Such an amount is insufficient in light of the over 90 percent

[58] *See Preamble*, 63 FR at 65377.
[59] *See* GOT Third SQR (February 10, 2013), at 1.
[60] *See Softwood Lumber from Canada*, and accompanying IDM at "Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark Analysis."
[61] *Id*., at 38-39.
[62] *See* GOT Third SQR (February 10, 2014), at 2.
[63] *Id*.

share accounted for by the government through BOTAS, and does not surmount the market distortion stemming from the government's predominance in the market. Therefore, we determine that there is no viable "tier one" benchmark for natural gas in Turkey for 2012. Because there is no viable "tier one" benchmark prices for the good for our analysis, we next examined whether there are any prices on the record for the good that are suitable for use under "tier two" of the hierarchy. Under 19 CFR 351.511(a)(2)(ii), if there is no useable market-determined price to make the comparison under "tier one," then the government price is compared to a world market price where it is reasonable to conclude that such price is available to purchasers in the country in question.

Habas placed prices for natural gas in the United States on the record.[64] Petitioner placed on the record a set of "border" monthly prices for natural gas sales between various European countries, sourced from Global Trade Information Services (GTIS).[65] Petitioner also submitted monthly prices for natural gas sales from Russia to Germany, sourced from the International Monetary Fund (IMF).[66] In addition, Petitioner derived quarterly natural gas prices charged by Gazprom, a large Russian gas company, using data from the company's financial statements.[67]

Unlike the prices for natural gas transported via the European and Russian pipeline networks, we determine that the U.S. prices are not useable for benchmark purposes under tier two of the hierarchy as they represent prices for natural gas that would not be available to purchasers in Turkey. The pipelines in Europe and Russia however are interconnected. The GTIS data set, like the IMF pricing, includes natural gas sales from Russia to various European countries. We, therefore, find that data sets of the European and Russian prices placed on the record by Petitioner represent prices of natural gas that would be potentially available to purchasers in Turkey. However, because the natural gas prices charged by Gazprom were derived on a quarterly basis and not a monthly basis, we determine that those prices are not useable for the construction of monthly benchmark prices. As such, we determine that only the GTIS and IMF pricing are useable for benchmark purposes under 19 CFR 351.511(a)(2)(ii), "tier two" of the hierarchy.

19 CFR 351.511(a)(2)(ii) stipulates "averaging" when there is more than one commercially available world market price. At the *Preliminary Determination*, to construct the monthly benchmark prices, we weight-averaged the various monthly exporter/importer prices included in the GTIS data to arrive at one monthly price. This was possible because the GTIS data contains volume information. We then simple-averaged those GTIS monthly prices with the IMF data, which contains a single row of monthly prices for sales of natural gas from Russia-to-Germany. The IMF data does not contain corresponding total value and quantity data and, therefore, cannot be weight-averaged.

Petitioner submitted a comment on the Department's averaging methodology of the world prices to derive the natural gas benchmark. *See* Comment 1. Based on Petitioner's arguments and

[64] *See* Habas IQR (January 2, 2014), at 12-13.
[65] *See* Letter from Petitioner regarding "Factual Submission" (January 22, 2014), at 1 and Exhibit 2A.
[66] *Id.*, at 1 and Exhibit 2B.
[67] *Id.*, at 1 and Exhibit 2E.

Habas' rebuttal comments, we changed the approach for constructing the benchmark prices for the final determination.

Based on our examination of the GTIS data, we find that a simple averaging of prices by country, per month, as argued by Petitioner, creates skewed results in which minor gas supplier countries such as the Spain, Serbia, and Italy, have the same weight as Norway and Russia, Europe's dominant natural gas suppliers. In some past cases,[68] the Department calculated LTAR benchmarks using a simple average when the world market prices were not reported in a uniform manner, or the Department lacked the information to consistently weight-average the prices.[69] However, in those cases, the Department was dealing with datasets that contained a significant number of "unweightable" data points and, thus, calculating a weighted-average benchmark would have resulted in the Department discarding numerous "unweightable" data points and datasets.[70] In contrast, for the instant case, the GTIS data, which has hundreds of data points, is "weightable," whereas the single row of IMF pricing data for sales from Russia to Germany are not. We further note that the "weightable" GTIS dataset contains Russian gas prices that closely track those in the IMF dataset. Thus, we find that the inclusion of the single row of data from the IMF data set may be duplicative and detract from the Department's ability to derive a robust natural gas benchmark. Therefore, on the basis of these facts, we modified the calculation of the natural gas benchmark as discussed in Comment 1 below. Specifically, for the final benefit calculations, we calculated the natural gas benchmark based solely on the GTIS dataset, which data permits the Department to derive a weighted-average benchmark.[71]

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

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[68] *See, e.g., 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) (*Citric Acid from the PRC 2011 Review*), and accompanying IDM at Comment 13.

[69] We have also simple-averaged for certain inputs subject to complex pricing factors, such as land, where there is reason to believe the available data set may not reflect the broader market's distribution of those pricing factors and, thus, weight-averaging (by area in the case of land) could significantly over-weight the pricing of anomalous or exceptional samples. *See, e.g., 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) (*Pipes and Tubes from Turkey Review 2011*), and accompanying IDM at Comment 4 (*Pipes and Tubes 2011 Review Final*).

[70] *See Citric Acid from the PRC 2011 Review*, and accompanying IDM at Comment 13.E., where the Department stated: "We have consistently utilized a simple average of world market prices when the world market prices are not reported in a uniform manner, the Department lacks the information to consistently weight-average the prices, and in order to create a robust world market price," and "Absent record evidence justifying the exclusion of a data set, the Department considers it reasonable to average all available data in order to determine a robust benchmark price" (emphasis added).

[71] *See* Habas Final Calculations.

The purchase agreement between Habas and BOTAS indicates that Habas paid delivered prices for its purchases of natural gas from BOTAS.[72] Habas also reported that it paid domestic VAT.[73] The GOT reported that prices charged by BOTAS consist of a per-unit charge for the natural gas and some per-unit transmission and capacity fees. However, the benchmark prices provided by Petitioner are the prices for natural gas to the borders of the importing countries and, therefore, do not include transmission fees within the borders of the purchasing countries. In order to ensure that the monthly benchmark prices reflect delivery charges in Turkey, we added the per-unit transmission and capacity fees charged by BOTAS to each monthly average world market price.

The GOT reported that there are no import duties on imports of natural gas, but there is an 18 percent VAT.[74] As such, we included VAT in the monthly benchmark prices to construct a delivered price. Habas submitted a comment arguing that VAT should be excluded from the benchmark price. We considered that comment; however, pursuant to the regulations, we continue to include VAT in the benchmark. *See* Comment 2, below.

To calculate the program benefit, we compared the corresponding monthly benchmark unit prices to the unit prices that Habas paid BOTAS, including taxes and delivery charges, during the POI. We used Habas' natural gas purchase worksheets, obtained at verification, to perform the benefit calculations. *See* Comment 4, below. Where the benchmark unit price was greater than the price paid to BOTAS, we multiplied the difference by the quantity of natural gas purchased from BOTAS to arrive at the benefit. We next summed the benefits and divided that amount by Habas' total sales for the POI. On this basis, we calculate a net countervailable subsidy rate of 0.67 percent *ad valorem* for Habas.

2. Provision of Lignite for LTAR[75]

We initiated an investigation into whether Turkish steel producers which operate thermal power plants with coal receive subsidies from the GOT in the form of reduced coal prices.[76] In the allegation, Petitioner claimed that the GOT controls the steam coal market in Turkey, including both the hard coal and lignite sub-sectors through state-owned enterprises Turkish Hard Coal Enterprises (TTK) and Turkish Coal Enterprises (TKI), respectively.

At verification, we learned that TTK does not mine hard coal used to generate energy to operate coal-fired power plants (*i.e.*, steam coal), but extracts hard coal that is converted to coking coal used in the production of iron and steel.[77] We verified that TKI mines only lignite, which is classified as a "brown coal."[78] We also learned that steam coal is not mined in Turkey and must

[72] *See* Habas IQR (January 2, 2014), at 13 and Exhibit 11.
[73] *Id.*, at Exhibit 11.
[74] *See* GOT IQR (January 2, 2014), at 19.
[75] This program was previously known as "Provision of Steam Coal for LTAR." *See Preliminary Determination*.
[76] *See* Initiation Checklist at 9-11.
[77] *See* GOT Verification Report at "Meeting with TTK." Further, we verified that neither respondent purchase coal from TTK. *See* Habas Verification Report at "Provision of Steam Coal/Lignite for LTAR," and Icdas Verification Report at "Accounting System."
[78] *See* GOT Verification Report at "Meeting with TKI."

be imported.[79] We verified that all purchases of steam coal by the Icdas Companies' during the POI were imports.[80] Hence, the only input being provided by the government is the lignite supplied by TKI. Based on these verification findings, we determine that the name of this subsidy program should be the "Provision of Lignite for LTAR" and focus solely on the provision of lignite by TKI to companies in the Turkish market. We verified that Icdas purchased lignite from TKI, as well as from private domestic suppliers,[81] and that Habas did not purchase any lignite from TKI.[82]

TKI is a state-economic enterprise, established in 1957, whose board members and senior managers are government officials, and is responsible for selling lignite in Turkey.[83] Because TKI is a government-owned enterprise, we find TKI to be a government authority that provides a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.

At verification, we examined the listing of sectors that purchased lignite in 2011 and 2012. We confirmed that thermal power plants accounted for 81.6 percent of lignite purchases for 2011, and 77 percent of lignite purchases for 2012.[84] As such, consistent with the *Preliminary Determination*, we continue to find that the provision of lignite is specific within the meaning of 771(5A)(D)(iii)(II) of the Act because the lignite supplied by TKI is predominantly used by thermal power plants for energy generation, including such plants belonging to and operated by steel enterprises for generating power for use in their production.[85]

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in the regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.[86] This is because such prices generally would be expected to reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions that can be used to determine whether TKI sold lignite for LTAR to Icdas. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the

[79] *Id. See also* Icdas Verification Report at "Provision of Steam Coal for LTAR – *Import Purchases of Steam Coal*."
[80] *Id.*
[81] *Id.*, at "Provision of Steam Coal for LTAR – *Domestic Purchases of Lignite*."
[82] *See* Habas Verification Report at "Provision of Steam Coal/Lignite for LTAR."
[83] *See* GOT First SQR (January 27, 2014), at "Provision of Steam Coal for LTAR;" *see also* GOT Verification Report at "Meeting with TKI."
[84] *See* GOT Verification Report at "Meeting with TKI – *Lignite-Statistical Data*."
[85] *See Preliminary Determination*, and accompanying IDM at "Provision of Steam Coal for LTAR."
[86] *See also Softwood Lumber from Canada*, and accompanying IDM at "Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark."

majority, or a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.[87]

At our meeting with TKI, we verified the total volume of domestic production of lignite and volume of domestic production by TKI for the years 2010, 2011, and 2012.[88] We learned that the total volume of domestic production is composed of private production volume, TKI production volume, and the production volume of Elektrik Uretim A.S. (EUAS), a government-owned electricity generation company that mines lignite for its own power production.[89] Because EUAS does not sell the lignite that it mines on the domestic market,[90] we excluded its production volume from the total production volume amount.[91] We then used the adjusted total production volume of lignite to calculate TKI's share of the total for 2010, 2011, and 2012, which is 78.78 percent, 81.46 percent, and 85 percent, respectively.[92] Additionally, we verified that imports of lignite into Turkey are negligible.[93]

Based on TKI's share of domestic production of lignite and the fact that the vast majority of lignite consumed by firms in Turkey during the POI was produced by TKI, consistent with the *Preliminary Determination*, we continue to find that TKI dominates the lignite market. Consequently, because of the government's significant involvement in the lignite market, the use of private producer prices in the Turkey would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government's presence).

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

In this regard, we are making a change from the approach taken in the *Preliminary Determination*, in which we turned to Icdas's steam coal import purchases to preliminarily derive our benchmark for the lignite. In the final determination, we find that steam coal import prices are not appropriate sources for benchmarking lignite. Instead, we are turning to world market prices for lignite itself; specifically, we are using the GTIS pricing data on the record submitted by Petitioner in its January 22, 2014, submission.[94] We are making this change for a number of reasons.

As noted above, it is now clear that lignite is the only coal product the government is providing and, accordingly, we have narrowed the investigated program to the provision of lignite,

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[87] *See Preamble*, 63 FR at 65377.
[88] *See* GOT Verification Report at "Meeting with TKI – *Lignite-Statistical Data*."
[89] *Id*.
[90] *Id*.
[91] *See* Department Memorandum regarding "TKI's Share of Domestic Production of Lignite" (September 8, 2014).
[92] *Id*.
[93] *See* GOT Verification Report at "Meeting with TKI – *Lignite-Statistical Data*."
[94] *See* Letter from Petitioner regarding "Factual Submission" (January 22, 2014), at Exhibit 1A.

excluding steam coal from consideration. Having found that the domestic lignite market is distorted by the predominance of the government supplier and, thus, that domestic lignite prices are not appropriate sources for a benchmark, we are required under our regulations at 19 CFR 351.511 to turn next to "tier two" in our benchmarking hierarchy, *i.e.*, to derive our benchmark from available world market prices. Specifically, where we have found that market-determined prices are unavailable in the domestic market, the regulation states that we "*will* seek to measure the adequacy of remuneration by comparing the government price to a world market price …" *See* 19 CFR 351.511(a)(2)(ii). (Emphasis added.) The relevant part of the *Preamble* to the Department's regulations further reinforces this instruction by clearly elaborating that,

> 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* . . . we *will turn to world market prices* that would be available to the purchaser.[95]

Our use of steam coal import prices in the *Preliminary Determination* was informed in part by the fact that at that stage of the investigation our analysis encompassed both lignite and steam coal. Since it is now clear that lignite is the only government-provided good under this program and, thus, the only good relevant to our subsidization analysis, we find it would be inconsistent with our regulations to continue using import prices for steam coal to derive a benchmark for lignite. The GTIS data, comprising world market prices that are specific to lignite, provide us with benchmarking information within the same class of the good at issue and comports with the regulatory requirements of our benchmarking methodology, as noted above.

With regard to caloric value as a factor in lignite pricing, while the GTIS data lack such information, the data nonetheless represent published commercial pricing for lignite relied upon by buyers and sellers on the world market in making pricing decisions for lignite. While lignite world market benchmark prices differentiated by caloric value might be more preferable, none of the interested parties, including the respondent, provided this information on the record, nor was the Department able to find such information for world market prices of lignite. Moreover, the GTIS pricing data represent a broad array of world market lignite sources reflecting a diverse range of caloric levels that, on average, allows for reasonable comparability between Turkish and foreign lignite without adjusting for caloric value. For these reasons, we find that pursuant to 19 CFR 351.511 it is necessary to use a "tier two" benchmark derived from the prices of the same class of product as the government-provided good, even without caloric value adjustments, rather than relying on such adjustments to construct a benchmark from a product that is not interchangeable with lignite and that we are now finding to be irrelevant to our analysis of subsidization under the program.

We have on the record "tier two" lignite price data from two sources: GTIS and IMF. The GTIS prices contain monthly quantity and value lignite pricing data for several countries and, thus these data are "weightable." The IMF data are limited to monthly unit prices for sales of lignite from Australia and are not "weightable." Consistent with our natural gas benchmark calculation, we have limited our derivation of the "tier two" lignite coal benchmark to the GTIS data thereby enabling us to calculate a monthly weighted-average benchmark price. Under 19 CFR

[95] *See Preamble*, 63 FR at 65377. (Emphasis added.)

351.511(a)(2)(iv), when measuring the adequacy of remuneration, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties, *i.e.*, a "delivered" price to the factory. Therefore, in order to ensure that the monthly benchmark prices reflect what Icdas would have paid if it had imported lignite, the regulation stipulates that the monthly average prices be adjusted by adding the delivery charges for the shipment of lignite to Turkey and any import duties. Accordingly, we have added ocean freight and VAT to the benchmark price.[96]

To calculate the program benefit, we compared the benchmark unit prices to the unit prices that Icdas paid to TKI, including taxes and delivery charges, during the POI.[97] In instances where the benchmark unit price was greater than the price paid to TKI, we multiplied the difference by the quantity of lignite purchased from TKI to arrive at the benefit. We next summed the benefits and divided that amount by Icdas' total sales for the POI. On this basis, we calculate a net countervailable subsidy rate of 1.08 percent *ad valorem* for Icdas.

3. Rediscount Program

Icdas received financing under the Rediscount Program, which was previously known as the Short-Term Pre-Shipment Rediscount Program.[98] This financing program, established in 1999, is administered by the Export Credit Bank of Turkey (Turk Eximbank) and provides financial support to Turkish exporters, manufacturer-exporters, and manufacturers supplying exporters.[99] Under this program the Turk Eximbank provides pre-shipment financing through intermediary commercial banks in foreign currency or Turkish Lira (TL), and requires collateral from the borrower in the form of promissory notes/bonds payable to Turk Eximbank.[100] Financing provided under this program is contingent upon an export commitment and has a minimum loan amount of USD 200,000.[101] A borrower pays the interest when the loan is received; principal can be paid during the credit period or at maturity in either the foreign currency in which the loan was obtained or in the TL equivalent.[102] Icdas reported that it paid interest against Rediscount Loans, denominated in USD, during the POI.[103] We verified Icdas' use of this program during the POI and found no discrepancies.[104] We also verified that Habas did not use this program during the POI.[105]

Consistent with the *Preliminary Determination*, we continue to find that this export financing confers a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT under

[96] For additional details concerning the calculation of the benchmark used to determine the benefit under this program, *see* Icdas Final Calculations.
[97] At verification, Icdas presented revised purchase worksheets for lignite because of minor corrections identified while preparing for verification. *See* Icdas Verification Report at "Minor Corrections." For the final calculations, we used the revised purchase worksheets.
[98] *See* Icdas IQR (January 2, 2014), at 26.
[99] *See* GOT IQR (January 2, 2014), at 72-78.
[100] *Id*. *See also* Icdas IQR (January 2, 2014), at 29-30.
[101] *See* GOT IQR (January 2, 2014), at 76.
[102] *See* Icdas IQR (January 2, 2014), at 29, *see also* GOT IQR (January 2, 2014), at 77.
[103] *See* Icdas IQR (January 2, 2014), at 26 and 29.
[104] *See* Icdas Verification Report at "Rediscount Loans and 'Non-Use' Verification of other Turk Eximbank Loans."
[105] *See* Habas Verification Report at "Programs Preliminarily Determined Not Used."

771(5)(D)(i) of the Act. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance. A benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amount of interest the company would have paid on comparable commercial loans and the amount of interest the company paid on the rediscount loans during the POI. Because a borrower pays the interest due upfront when the loan is received, to compute the benefit, we applied a discounted benchmark interest rate calculated using Icdas' short-term weighted-average commercial USD interest rate, as discussed above at "Short-Term Benchmark Interest Rate."[106] We summed the benefits from the loans and from that amount, in accordance with section 771(6)(A) of the Act, subtracted the fees that Icdas paid for guarantees required for receipt of the loans. We then divided the adjusted benefit amount by Icdas' total export sales for 2012. On this basis, we calculate a net countervailable subsidy rate of 0.07 percent *ad valorem* for Icdas.

4. Deductions from Taxable Income for Export Revenue

The GOT reported that under Article 40 of Income Tax Law 193, of January 6, 1961, as amended by Law 4108 of June 1995, taxpayers may claim a deduction of a lump sum amount from their gross income resulting from exporting, construction, maintenance, assembly and transportation activities abroad.[107] The amount of the deduction may not exceed 0.5 percent of the proceeds earned in foreign exchange from such activities.[108] The deduction is presumed to cover undocumented expenditures, which are expenses that are not supported by invoices such as lodging, food, and gas expenses incurred on overseas travel.[109]

Consistent with our practice, we determine that this tax deduction is a countervailable subsidy.[110] The deduction from taxable income provides a financial contribution within the meaning of section 771 (5)(D)(ii) of the Act, because it constitutes revenue forgone by the GOT. The deduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. The deduction is also specific under section 771(5A)(B) of the Act, because its receipt is contingent upon export earnings. In this investigation, no new information or evidence of changed circumstances was submitted to warrant reconsideration of the Department's prior finding of countervailability for this program.

During 2012, Habas claimed deductions from taxable income under this program. The Department typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1). To calculate Habas' countervailable subsidy rate for this program, we first calculated the tax savings realized by Habas in 2012, as a result of claiming the deduction in the annual tax return filed during the POI by multiplying the amount of the deduction by the Turkish corporate tax rate. We then divided the amount of tax savings realized by Habas, (*i.e.*, the amount of benefit received, as reflected in the annual tax return filed during the POI) by the total

[106] For more information on the construction of the discounted benchmark interest rate, *see* Icdas Final Calculations.
[107] *See* GOT IQR (January 2, 2014), at 38-44.
[108] *Id.*
[109] *Id.*
[110] *See, e.g., Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 6, 2012), and accompanying IDM at "Deduction from Taxable Income for Export Revenue."

value of the company's exports during 2012. On this basis, we calculate a net countervailable subsidy rate of 0.07 percent *ad valorem* for Habas.

Concerning Icdas, at verification, we discovered that, contrary to the company's non-use statement in its initial questionnaire response,[111] Icdas in fact used this program to reduce its 2011 taxable income.[112] Icdas filed its 2011 tax return with the tax authorities during the POI.

Section 776(a)(2)(A) and (B) of the Act states that if an interested party withholds information that has been requested by the Department or fails to provide requested information to the Department , the use of facts otherwise available is warranted. Because Icdas did not report use of this program, we do not have the necessary information to determine the net subsidy received by Icdas. Therefore, we must base our determination on the facts otherwise available in accordance with section 776(a)(2)(A) and (B) of the Act with respect to this program.

Section 776(b) of the Act provides that that the Department may use an adverse inference in applying the facts otherwise available when a party failed to cooperate by not acting to the best of its ability to comply with a request for information. Because Icdas did not provide the requested information on this program as it applies to the tax return filed during the POI, we find that Icdas did not act to the best of its ability and, therefore, pursuant to section 776(b) of the Act, we are applying an adverse inference in selecting from among the facts otherwise available. Section 776(b) of the Act also authorizes the Department to use, as adverse facts available (AFA), information derived from the petition, the original determination, the previous administrative review, or other information placed on the record.

Icdas provided comments on how the Department could calculate the benefit under the program using the facts on the record. *See* Comment 6. Petitioner provided comments on the rates to apply as AFA to this program for Icdas. *Id*. We considered those comments and, as AFA, we determine that Icdas received the maximum amount of deduction possible under the program. Under this approach, which is consistent with the Department's practice,[113] we assume that Icdas used the program in a manner that resulted in a deduction in taxable income equal to 0.5 percent of its export earnings for 2011. To calculate Icdas' countervailable subsidy rate for this program, we first calculated the tax savings by multiplying the amount of the deduction by the Turkish corporate tax rate. We then divided the tax savings by Icdas' total exports for 2012. On this basis, we calculate a net countervailable subsidy rate of 0.10 percent *ad valorem* for Icdas.

[111] *See* Icdas IQR (January 2, 2014), at 34.
[112] *See* Icdas Verification Report at "Deductions from Taxable Income for Export Revenue."
[113] *See 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) (*Pipes and Tubes from Turkey*), and accompanying IDM at "Deduction from Taxable Income for Export Revenue."

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

1. Research and Development Grant Program

In response to our inquiry about a tax deduction that Habas claimed on the income tax return filed during the POI,[114] the company reported that it claimed a deduction for research and development expenditures under Corporate Tax Law Article 10/1-a and provided a copy of Article 10/1/-a of the tax law.[115]

The copy of Corporate Tax Law Article 10/1-a provided by Habas does not contain language indicating that tax deductions under this provision of the tax law are contingent upon export performance. However, assuming *arguendo,* that the benefit Habas received under this program during the POI is specific under section 771(5A)(B) of the Act (*i.e.*, is contingent upon export performance) and constitutes a financial contribution under 771(5A)(D) of the Act, the benefit received by Habas would amount to less than 0.005 percent of the value of Habas' exports during the POI. Therefore, consistent with the Department's practice, we determine that this program did not confer a benefit to Habas during the POI.[116]

We verified that the Icdas Companies did not use this program.[117]

C. Programs Found Not To Be Used

We verified that neither Habas nor the Icdas Companies applied for or received benefits under the following programs either during the POI or over the AUL for non-recurring subsidies.[118]

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

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

[114] *See* Habas IQR (January 2, 2014), at Exhibit 6.
[115] *See* Habas First SQR (January 29, 2014), at 9-11 and Exhibit 4.
[116] *See, e.g., Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013), and accompanying IDM at "Grants Under the Guangdong Province Coast Region Fisherman's Job Transferring Bill Fishery Industry Development Project Fund."
[117] *See* Icdas Verification Report at "Other Programs."
[118] *See* Habas Verification Report at "Programs Preliminarily Determined Not Used," and Icdas Verification Report at "Location and 'Non-Use' Verification of Certain Programs," "Rediscount Loans and 'Non-Use' Verification of other Turk Eximbank Loans," and "Other Programs."

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

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

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

6. Provision of Land for LTAR
7. Provision of Electricity for LTAR
8. Withholding of Income Tax on Wages and Salaries
9. Exemption from Property Tax
10. Employers' Share in Insurance Premiums Program
11. Preferential Tax Benefits for Turkish Rebar Producers Located in Free Zones
12. Preferential Lending to Turkish Rebar Producers Located in Free Zones
13. Exemptions from Foreign Exchange Restrictions to Turkish Rebar Producers Located in Free Zones
14. Preferential Rates for Land Rent and Purchase to Turkish Rebar Producers Located in Free Zones

VIII. ANALYSIS OF COMMENTS

Comment 1: Whether the Department Used an Improper Methodology for Deriving the Benchmark for Purchases of Natural Gas for LTAR

Petitioner's Affirmative Arguments:

- In the *Preliminary Determination*, when calculating the benefit to Habas under the Natural Gas for LTAR program, the Department improperly used a mixed methodology of weight-averaging and simple-averaging to calculate the benchmark. Petitioner states that when computing a tier-two benchmark, the Department prefers to collect information from as many sources as possible in order to capture a broad range of values, and then typically simple-averages those values. The rationale for this methodology is that more, rather than fewer, data points from multiple sources will provide a more accurate measure

of what the commercial value in the country under investigation would be without distortions in the market caused by the government presence.

- Petitioner notes the regulations state that the Department "will average" world prices "{w}here there is more than one commercially available world market price."[119] Petitioner adds that since data from multiple sources may not have a common weighting variable, the Department generally simple-averages all of the useable information provided by parties to derive the benchmark.[120]
- However, rather than apply its standard practice of simple-averaging all data points from multiple sources, the Department first weight-averaged the various monthly exporter/importer data points included in the GTIS information, and then simple-averaged the GTIS weighted-average values and the IMF Russia-to-Germany data. The Department, thus, used an unprecedented "weighted/simple average" hybrid methodology to calculate the benchmark. Petitioner argues that this calculation method resulted in an impermissible "apples-to-oranges" comparison.
- For the final, Petitioner asserts that the Department should just simple-average the benchmark data, in accordance with its standard methodology.

Habas' Rebuttal Arguments:

- Habas argues that Petitioner's methodology allows outliers to distort the calculations and thus leads to an inaccurate result. Petitioner's simple-averaging methodology results in nearly a doubled benchmark price because of the presence in the GTIS data set of six outliers. Habas asserts that the presence of the outliers distorts the arithmetic-average result and Petitioner's methodology must be rejected.
- In contrast, Habas states that the Department's weight-averaging methodology avoids allowing outliers to drive the results and is therefore statistically reasonable and accurate. Specifically, by weight-averaging the GTIS data, the Department utilized the full database of prices, but gave appropriate weight to each data point such that the impact of the outliers was proportional to their share of the total data.
- Moreover, Habas states that, contrary to Petitioner's assertion, the Department has a preference for use of weighted averages in benchmark calculations when the underlying data are homogeneous, as they are in this case.[121]
- Habas asserts that because the GTIS data are homogenous, the Department was correct to weight-average them, which is consistent with its practice. Habas adds that the Department was also correct to calculate a simple average between the GTIS and IMF data since it lacked sufficient information to determine whether these two data sets were homogenous with each other.

[119] *See* 19 CFR 351.511(a)(2)(ii).
[120] *See, e.g., Citric Acid from the PRC 2011 Review*, and accompanying IDM at Comment 13.
[121] *See, e.g., Oil Country Tubular Goods from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014), and accompanying IDM at "Provision of Hot-Rolled Steel by the Steel Authority of India, Ltd. at LTAR." Additionally, Habas refers to *Citric Acid from the PRC 2011 Review* for support that the Department has a preference for the use of weighted-average benchmarks whenever the source data are sufficiently homogeneous to allow for weight-averaging. *See Citric Acid from the PRC 2011 Review*, and accompanying IDM at Comment 13.E.

Department's Position: The regulations at 19 CFR 351.511(a)(2)(ii) state that where there is more than one commercially available world market price, the Department will "average" such prices to the extent practicable. At the *Preliminary Determination*, to construct the monthly benchmark prices, we weight-averaged the various monthly exporter/importer prices included in the GTIS data to arrive at one monthly price, because the GTIS data contains volume information. We then simple-averaged those GTIS monthly prices with the IMF data, which contain a single row of monthly prices for sales of natural gas from Russia-to-Germany. The IMF data do not contain corresponding total value and quantity data, and therefore cannot be weight-averaged.

In some past cases,[122] the Department calculated LTAR benchmarks using a simple average when the world market prices were not reported in a uniform manner, or the Department lacked the information to consistently weight-average the prices. However, in those cases, the Department was dealing with datasets that contained a significant number of "unweightable" data points and, thus, calculating a weighted-average benchmark would have resulted in the Department discarding numerous "unweightable" data points and datasets.[123] In contrast, in the instant case, the GTIS data has hundreds of data points, whereas the IMF pricing data consists solely of a single row of data concerning sales from Russia to Germany. We note that the GTIS data also contain Russian gas prices that closely track those in the IMF dataset. Thus, unlike such proceedings as *Citric Acid from the PRC 2011 Review*, in the instant case it cannot be said that the Department's ability to derive a "robust" LTAR benchmark hinges on the inclusion of the IMF data. Further, limiting our derivation of the benchmark to the GTIS data set enables the Department to derive a purely weight-averaged benchmark and, thus, avoids the distortive impact of simple averaging the natural gas prices on the record across countries. For example, based on our examination of the GTIS data, we find that simple averaging the prices by country, per month, as argued by Petitioner, creates skewed results in which countries such as the Czech Republic, Serbia, and Croatia have the same weight as Russia, one of Europe's dominant natural gas suppliers.[124] On the basis of these facts, we modified the calculation of the natural gas benchmark. For the final, we calculated a monthly natural gas benchmark based solely on the GTIS dataset, whose data permit the Department to derive a weighted-average benchmark.[125]

[122] *See, e.g., Citric Acid from the PRC 2011 Review*, and accompanying IDM at Comment 13.
[123] *See Citric Acid from the PRC 2011 Review*, and accompanying IDM at Comment 13.E., where the Department stated: "We have consistently utilized a simple average of world market prices when the world market prices are not reported in a uniform manner, the Department lacks the information to consistently weight-average the prices, *and in order to create a robust world market price*," and "Absent record evidence justifying the exclusion of a data set, the Department *considers it reasonable to average all available data in order to determine a robust benchmark price*" (emphasis added). Moreover, as earlier noted, the Department has also simple-averaged where an input, such as land, is subject to complex heterogeneous pricing factors and the available data set may not reflect the broader market's distribution of the pricing factors, in which case weight-averaging would exacerbate the distorting effect of anomalous or exceptional samples. *See, e.g., Pipes and Tubes from Turkey Review 2011*.
[124] *See* Letter from Petitioner regarding "Submission of Factual Information" (January 22, 2014), at Exhibit 2A.
[125] *See* Habas Final Calculations.

Comment 2: Whether VAT Should Be Included in the Natural Gas Benchmark

Habas' Affirmative Arguments:

- By comparing benchmark prices that include VAT to Habas' VAT-inclusive purchase prices, the benefit includes an amount that arises solely because of the difference in the amount of VAT that would be paid on a purchase at the benchmark price and the amount of VAT paid on the actual purchase.
- Habas argues that the Department should exclude VAT from the benchmark because VAT is not included in the sales denominator used in the benefit calculation. The numerator and the denominator should be homogenous. Alternatively, if the Department includes VAT in the benchmark, it should add VAT to the sales denominator to ensure an apples-to-apples comparison.
- Habas also argues that VAT should be excluded from the benchmark because it is not a cost; Habas is consistently in a VAT-neutral position. Habas never pays VAT in a given accounting period because Habas' VAT debits are consistently in balance with its VAT credits.
- If the Department does not exclude VAT entirely from the benchmark, it should reduce the VAT by the ratio of export sales to total sales, since exports are free of VAT. In *Racks from the PRC 2011 Review*, the Department stated if "the VAT paid on imported inputs used to produce exported goods is refunded," then the VAT on the benchmark in an LTAR calculation would be reduced *pro tanto*.[126] Habas does not pay VAT on exports, and the electricity which the Department deems to be subsidized, as a result of the provision of natural gas for LTAR, is used to produce products that are exported as well as sold to the domestic market. The VAT in the benefit calculation should therefore be reduced *pro tanto*.

Petitioner's Rebuttal Arguments:

- The Department's regulations make clear that Habas' arguments are without merit. Under 19 CFR 351.512(a)(2)(iv) "the Secretary *will* adjust the comparison price to reflect the price that *a firm* actually paid or would pay if it imported the product. The adjustment *will* include delivery charges and import duties" (emphasis added).
- The Department has a history of rejecting similar arguments[127] and just recently in *OCTG from Turkey* rejected the exclusion of VAT from the benchmark calculation.[128]
- Further, Petitioner states that, contrary to Habas' claim, the Department did not reduce the VAT in the benchmark prices applied in *Racks from the PRC 2011 Review*.[129]

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[126] *See Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 14668 (March 17, 2014) (*Racks from the PRC 2011 Review*), and accompanying IDM at Comment 2.

[127] *See Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 78 FR 49475 (August 14, 2013), and accompanying IDM at Comment 13.D*; see also High Pressure Steel Cylinders from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 26738 (May 7, 2012), and accompanying IDM at Comment 9.

[128] *See Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey*), and accompanying IDM at Comment 3.

Department's Position: We agree with Petitioner. The Department's regulations, at 19 CFR 351.511(a)(2)(iv), direct the Department to adjust the benchmark price "to reflect the price a firm actually paid or would pay if it imported the product," including VAT. As long as VAT is reflective of what an importer – and not necessarily the respondent specifically – would have paid, then VAT is appropriate to include in the benchmark. In performing the benefit calculations, we compare the monthly benchmark prices to Habas' actual purchase prices for natural gas, including taxes and delivery charges, pursuant to the regulations. The calculation accounts for VAT in both the benchmark and Habas' purchase prices and, therefore, the calculation is not distortive. We then compare any benefit that results from this calculation to the respondent's FOB sales.

As for Habas' assertion that the benchmark should exclude VAT because VAT is not a part of the sales that constitute the denominator of the benefit calculations, the Department has previously considered this argument and has repeatedly rejected it. As stated in past cases, the Department does not include taxes such as VAT in the FOB sales value, which is the denominator of the subsidy calculation, because these taxes are not part of a company's sales revenue.[130] 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).

Habas further argues that the benchmark should not include VAT because it is not a cost. However, this argument goes counter to the direction of 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 price at the rate reported on the record.

Lastly, contrary to Habas' claim that the amount of VAT applied to the benchmark should be reduced *pro tanto*, the Department did not rule in *Racks from the PRC 2011 Review*, as Habas alleges, that "if 'the VAT paid on imported inputs used to produce goods for export is refunded,' then the VAT on the benchmark in an LTAR calculation would be reduced *pro tanto*."[131] In the final results of that review, the Department clearly stated that it will make no adjustments for VAT in CVD proceedings.[132] We explained that when measuring the adequacy of remuneration under "tier one" or "tier two" benchmarks, 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

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[129] *See Racks from the PRC 2011 Review*, and accompanying IDM at Comment 2.
[130] *See OCTG from Turkey*, and accompanying IDM at Comment 3; and *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 IDM at Comment 3, citing *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 IDM at Comment 14.
[131] *See* Habas Case Brief at 6.
[132] *See Racks from the PRC 2011 Review*, and accompanying IDM at Comment 2.

delivery charges and import duties. As such, we included the full VAT in the calculation of dutiable value when deriving the benchmark in the final results of that administrative review.[133]

Comment 3: Whether Sales by Habas to Affiliates Should Be Included in the Sales Denominators

Habas' Affirmative Arguments:

- The Department should include resales of Habas products by affiliates in the total sales denominator and export sales denominator. In the *Preliminary Determination*, the Department excluded Habas' sales to its affiliates, but did not add back the sales by the affiliates. Any subsidies benefit all products sold, and the denominators should reflect the totality of the sales.
- Specifically, Habas states the total sales denominator and export sales denominator should include sales Habas made to affiliates Asgaz and Mertas, which were then exported by the companies. Habas argues that sales made through affiliates are not purged of subsidies when they are sold to or by the affiliate, and so they should be included in total sales.
- Under 19 CFR 351.525(b)(6)(i), the Department "will attribute a subsidy to the products produced by the corporation that received the subsidy." In the instant case, the subsidies benefitted the billets, wire rod, and rebar produced by Habas. When those goods are sold via an affiliated trading company, they are still benefitted by those subsidies, and so the value of the sales by the affiliated traders must be added to the value of the sales by Habas net of Habas sales to the affiliated traders.
- Additionally, the Department should include in the total sales denominator the domestic sales that Habas made to its affiliate Habas Endustri, because Habas Endustri did not resell the purchased products but used the products for its own consumption. Habas asserts that including Habas' sales to Habas Endustri ensures that the subsidy inherent in the material sold to Habas Endustri is properly attributed "to the products produced by the corporation that received the subsidy," pursuant to 19 CFR 351.525(b)(6)(i).

Petitioner's Rebuttal Arguments:

- Habas' claim that the Department should include affiliated trading company profit mark-ups in the sales denominator because those sales still benefit from the subsidy provided to the original producer/seller should be rejected.
- The attribution regulations state that the Department "will attribute a subsidy to the products produced by the corporation that received the subsidy"[134] (*i.e.*, Habas' manufacturing unit). With regard to trading companies, the regulations further state that the benefits "shall be cumulated with the benefits from subsidies provided to the firm which is producing the subject merchandise that is sold through the trading company."[135]

[133] *Id*., and *Kitchen Appliance Shelving and Racks from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review; 2011*, 78 FR 63166 (October 23, 2013), and accompanying IDM at "Provision of Wire Rod for LTAR," unchanged in the final results.
[134] *See* 19 CFR 351.525(b)(6)(i).
[135] *See* 19 CFR 351.525(c).

- Habas did not report a complete questionnaire response for the trading companies. Any subsidies provided to those companies cannot be cumulated in the numerator of the subsidy calculation. Petitioner argues that to include the trading company re-sales in the subsidy rate calculation denominator would result in an inappropriate "apples-to-oranges" comparison.
- The Department rejected a similar argument in *Tires from the PRC*[136] and should do so again.

Department's Position: We disagree that export sales made through Habas' affiliated trading companies, Asgaz and Mertas, should be included in the denominators used in the final calculations. Under 19 CFR 351.525(c), "benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm which is producing subject merchandise that is sold through the trading company, regardless of whether the trading company and the producing firm are affiliated." Because we do not have information on the benefits which Asgaz and Mertas might have received under subsidy programs during the POI, it is not appropriate to include sales made by those trading companies in the sales denominator.

Lastly, to Habas' argument that Department should include in the total sales denominator the domestic sales that Habas made to its affiliate Habas Endustri, we also disagree. The transactions between Habas and Habas Endustri are sales between affiliates and, thus, simply sales from one company of the group to another company of the group. Habas' sales to Habas Endustri do not increase the sales revenue of the group and therefore should not be included in the sales denominator.

Comment 4: Whether Corrections to Habas' Natural Gas Purchase Data Collected at Verification Should Be Used for the Final Calculations

Habas' Affirmative Arguments:

- In the verification outline, the Department instructed Habas to prepare a spreadsheet containing all details of each natural gas invoice.
- Habas provided the requested spreadsheet and the data were verified.
- The Department should use the verified purchase data for the final calculations.

Department's Position: We agree and are using Habas' verified natural gas purchase data in the final subsidy calculations for the Provision of Natural Gas for LTAR.

[136] *See Certain 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) (*Tires from the PRC*), and accompanying IDM at 66, footnote 31.

Comment 5: Whether the Department Should Use a Lignite Price to Calculate the Benefit for the Provision of Lignite for LTAR

Petitioner's Affirmative Arguments:

- Petitioner states that the Department's preliminary analysis of a separate lignite and hard coal market in Turkey and preliminary finding that the hard coal market was not distorted and, therefore, able to serve as a benchmark price to measure the benefit received on purchases of lignite was incorrect.
- Petitioner discusses that, in the *Preliminary Determination*, the Department found lignite and hard coal to be interchangeable and, thus, Icdas' hard coal imports could be used to measure the subsidy received on purchases of lignite from TKI. However, the lumping together of the lignite and hard coal market for purposes of determining the usability of hard coal import prices as the benchmark is inappropriate with the Department's separate analyses of government involvement in the lignite and hard coal markets in Turkey.
- Petitioner argues that if hard coal and lignite are interchangeable, then the market for both products should be found to be distorted by government influence. The GOT's dominant position in lignite production would affect and distort hard coal domestic and import prices[137] and, therefore, it would be improper to use Icdas' hard coal import prices as a tier-one benchmark.
- In the alternative, Petitioner argues that the Department should not use hard coal prices as the benchmark because lignite and hard coal are not, in fact, interchangeable.
- Petitioner discusses that the Department's benchmark calculations show that the unadjusted value of imported coal is twice the value of lignite.[138] Petitioner states that while using the price of one product as a proxy for another could be reasonable if the required adjustment to equate the two products is relatively minor, its accuracy however is diminished when the adjustment required is very large.
- Further, Petitioner discusses that the Department's adjustment methodology is based on an assumption that there is a constant linear relationship between the market value of lignite and hard coal and that the relationship is based on calorific values.
- Petitioner claims that evidence presented by GOT officials at the TTK verification undercuts the validity of using a calorific value *pro rata* adjustment to equalize hard coal and lignite values. Petitioner notes that the GOT verification report states that hard coal derives its commercial value not from its calorific value, but from a characteristic important in steel manufacturing – free swelling index (FSI) value.[139]
- Petitioner discusses that FSI is a measurement of the endurance/energy of coal. Therefore, Petitioner claims that it is not simply a measure of the calorific content, but the rate at which the fuel is consumed and the energy is released.
- Petitioner notes the Department learned at verification that the hard coal produced by TTK is sold into the steel market and converted to coking coal.[140] Lignite, in contrast, is not used to make coking coal and thus is not a direct input used in steel production. Because price is a function not only of physical characteristics, but also supply and

[137] *See Preamble*.
[138] *See* Department Memorandum regarding "Icdas Preliminary Calculations" (February 19, 2014).
[139] *See* GOT Verification Report at "Meeting with TTK."
[140] *Id*.

demand, and because lignite and hard coal are subject to different market dynamics, it is inaccurate to use one as a benchmark to measure the price of the other.

- In constructing a tier-one benchmark, as the Department preliminarily did, the regulations state that the Department "will consider product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability." Thus, while the regulations contemplate making some allowances for "comparability," the regulations do not contemplate adjustments to equalize major, fundamental differences in physical characteristics, such as the case here. Petitioner asserts that it is not practicable to adjust hard coal and lignite values so that they are comparable.
- Information placed on the record by Petitioner, and by Icdas, demonstrates that it is appropriate to use a tier-two benchmark. First, Icdas reported that its purchases of steam coal are negotiated based on a 6000 kcal, and most of its purchases of lignite from TKI have a value ranging from 2600 to 3500 kcal.[141] Second, Petitioner placed information on the record that demonstrates that the standard classification of the calorific content of lignite coal is 2700.[142] As such, Petitioner's lignite benchmark, based on export prices from multiple countries for lignite with 2700 kcal, is the appropriate benchmark to match to Icdas' lignite purchases, and not Icdas' steam coal import prices.
- For the final, the Department should use a simple average of the lignite prices submitted by Petitioner to construct the benchmark price and include international freight, which was also provided by Petitioner.

Icdas' Rebuttal Arguments:

- Petitioner is arbitrarily intermixing the terms "lignite," "steam coal," and "hard coal," in attempt to confuse coking coal with steam coal.
- Icdas provided on the record Platt's "Methodology and Specifications Guide" (October 2013),[143] which is an authoritative source for coal pricing. Icdas discusses that the Platts Guide indicates the primary "specification" for all thermal/steam coal is calorific value.[144] Icdas notes that in a completely separate section of the Platts Guide, metallurgical coal, which is used as coking coal, is covered.[145] The guide, Icdas asserts, demonstrates that the specification for coking coal does not include calorific value, because coking coal is not burned as fuel, but is used to produce steel.
- Steam coal and coking coal are two entirely different products with different uses. Lignite and steam coal are used in power generation. Icdas imports steam coal for its power plants, not coking coal.
- Regarding FSI, Icdas states that FSI matters for coking coal because this test is used to determine the suitability of the coal for use as coking coal and provides the definition of FSI (*see* Icdas Rebuttal Brief at 2). Icdas notes that the definition of FSI makes it clear

[141] *See* Icdas IQR (January 2, 2014) at 23, and Icdas First SQR (January 29, 2014) at 7.
[142] *See* Letter from Petitioner regarding "Comments on the GOT's Supplemental Questionnaire Responses" (February 18, 2014) (Petitioner's February 18, 2014, Submission), at Exhibit 1 ("Coal: Research and Development to Support National Energy Policy," by the National Research Council).
[143] *See* Icdas Second SQR (February 7, 2014), at Exhibit 2SE-2a.
[144] *Id.*, at 1-3, and Exhibits 2SE-1, 2SE-2b, 2SE-3, and 2SE-4.
[145] *Id.*, at 18-19.

that this measurement has nothing to do with steam coal or lignite; it is only relevant for coking coal.

- Icdas states that it submitted data on the record to demonstrate that calorific value is the key to pricing both steam and lignite coal.[146] For example, the "Argus/McCloskey Coal Price Index Report" and "Argus Coal Daily International" use kcal/kg as the baseline for pricing such coal.[147]
- Further, Icdas states its entire coal purchase pricing methodology, as verified by the Department, is based on relative calorific value of coal purchased.[148]
- Concerning, Petitioner's claim that the world market price for steam coal is distorted by Turkey, Icdas asserts that the Turkish economy is not large enough to affect world coal prices and Petitioner failed to proffer any evidence to support the assertion.
- Icdas independently negotiates pricing for steam coal in private transactions based on world market prices. Those import prices, Icdas argues, are a reasonable tier-one benchmark.
- Lastly, Icdas explains that it purchases all lignite domestically, some of which from TKI, because it is not worth the shipping costs to import lignite.[149] For steam coal/hard coal, however, both Icdas and Turkey, as a whole, import over 90 percent of their domestic needs.[150] As such, it is simply not possible that the steam coal/hard coal markets in Turkey are dominated or in any way controlled by the GOT.

Department's Position: We agree with the Petitioner that the Department should use "tier two" lignite prices for the benchmark; specifically, we are using the GTIS pricing data submitted by Petitioner in its January 22, 2014, submission.[151] For all the reasons explained above under the program analysis section for this program, we find that in the final analysis, the adjusted steam coal import prices we used in the *Preliminary Determination* are not appropriate sources for benchmarking the government-provided lignite within the meaning of 19 CFR 351.511(a)(2)(ii). Accordingly, the various points raised by the parties regarding the relative uses and characteristics of steam coal and coking coal are moot. With regard to Icdas's comment regarding caloric value as a pricing factor, as we also explained above, none of the parties, including respondent, placed world market lignite prices with such information on the record, nor was the Department able to find such information. Further, as already mentioned, now that we are staying within the same class of product as the government-provided good and given that the GTIS data reflect a broad array of lignite sources that represent a diverse range of caloric levels, we find that, on average, the world market lignite prices available on the record allow for reasonable comparability between Turkish and foreign lignite without adjusting for caloric value. Therefore, we find that the GTIS data are a reasonable and appropriate source for deriving the benchmarks with which to measure the adequacy of remuneration for the government-provided lignite under this program.

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[146] *See* Icdas IQR (January 2, 2014), at 23-34 and Exhibits 19A, 19-B, and 20; Icdas First SQR (January 29, 2014), at 5 and Exhibit SE-10; Icdas Second SQR (February 7, 2014), at 1-3 and Exhibits 2SE-1, 2SE-2a, 2SE-2b, 2SE-3, and 2SE-4.
[147] *See* Icdas First SQR (January 29, 2014), at Exhibit SE-10A and SE-10B.
[148] *See* Icdas Verification Report at 10.
[149] *Id.*, at 12.
[150] *See Preliminary Determination*, and accompanying IDM at "Provision of Steam Coal for LTAR."
[151] *See* Letter from Petitioner regarding "Factual Submission" (January 22, 2014), at Exhibit 1A.

Comment 6: Calculation of the Export Revenue Tax Deduction for Icdas

Icdas' Affirmative Arguments:

- Icdas recognizes that the Department views this deduction program, which was discovered to be used by the company at verification, as a form of export subsidy.
- Icdas acknowledges that it used the deduction to reduce its taxable income in 2011, and states that there is information on the record to permit the Department to calculate the benefit for the POI. First, Article 40 of Income Tax Law 193 (as amended by Law 4108 of June 1995) states the amount of the deduction for undocumented expenses cannot be more than 0.5 percent of export revenue.[152] Second, a copy of Icdas' 2011 income tax return, filed with the tax authorities during the POI, is also on the record along with the corporate income tax rate.[153]
- Icdas states that the Department could apply one of two formulas to calculate the benefit under this program: (1) all 2011 export sales could be treated as foreign exchange receipts and the Department could multiply that number by the program deduction cap of 0.5 percent and then multiply that result by the 20 percent corporate tax rate; or (2) the total amount of nondeductible expenses could be multiplied by the corporate tax rate of 20 percent to derive the total amount of the potential deduction.
- Icdas asserts that either formula results in the maximum possible deduction that could be received as a benefit.

Petitioner's Rebuttal Arguments:

- Because Icdas failed to cooperate to the best of its ability to comply with the Department's request for information and thereby impeded the investigation, the Department should apply AFA to measure the benefit received by Icdas under the Deductions for Taxable Income for Export Revenue program.
- The Department should reject the program calculations suggested by Icdas and apply its longstanding practice of applying AFA for information missing from the record.
- Petitioner states that the Department has a developed policy for the calculation of AFA in CVD cases.[154] Following that policy, because the Department preliminarily calculated a *de minimis* rate for Habas for this deduction program, the Department cannot use Habas' rate as Icdas' AFA rate. In fact, Petitioner states that there has not yet been a higher-than-*de minimis* rate calculated in a Turkish CVD case for Deductions for Taxable Income for Export Revenue.

[152] *See* GOC IQR (January 2, 2014), at 38 and Exhibit 11.
[153] *See* Icdas First SQR (January 29, 2014), at Exhibit SE-6, and Icdas IQR (January 2, 2014) ,at Exhibit 4-A (page 16 and 43), respectively.
[154] Petitioner references *Certain Frozen Warmwater Shrimp from Ecuador: Final Affirmative Countervailing Duty Determination*, 78 FR 50389 (August 19, 2013), and accompanying IDM at 9-30, *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 77 FR 63788 (October 17, 2012), and accompanying IDM at 64; and *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 IDM at 4-5.

- As such, Petitioner argues that the Department should use, as AFA, the 15.58 percent rate calculated for Hot-Rolled Steel for LTAR in *OCTG from Turkey*.[155] Petitioner states that the OCTG respondent, like Icdas, is a Turkish steel producer.
- In the alternative, Petitioner proposes that the Department could apply as AFA the calculated rate of 1.81 percent for the Resource Utilization Support Fund (KKDF) Tax Exemption on Export-Related Loans (KKDF program), sourced from *Pasta from Turkey*.[156] Petitioner states that the KKDF program is a tax exemption program contingent upon exports similar to the Deductions for Taxable Income for Export Revenue program.

Department's Position: We agree with Petitioner that Icdas failed verification with regard to the Deductions for Taxable Income for Export Revenue program. At verification we discovered that, contrary to the company's non-use statement in its initial questionnaire response,[157] Icdas in fact used this program to reduce its 2011 taxable income.[158] Icdas filed its 2011 tax return with the tax authorities during the POI.

Section 776(a)(2)(A) and (B) of the Act states that if an interested party withholds information that has been requested by the Department or fails to provide requested information to the Department , the use of facts otherwise available is warranted. Because Icdas did not report use of this program, we do not have the necessary information to determine the net subsidy received by Icdas. Therefore, we must base our determination on the facts otherwise available in accordance with section 776(a)(2)(A) and (B) of the Act with respect to this program

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party failed to cooperate by not acting to the best of its ability to comply with a request for information. Because Icdas did not provide the requested information on this program as it applies to the tax return filed during the POI, we find that Icdas did not act to the best of its ability and, therefore, pursuant to section 776(b) of the Act, we are applying an adverse inference in selecting from among the facts otherwise available. Section 776(b) of the Act also authorizes the Department to use, as AFA, information derived from the petition, the original determination, the previous administrative review, or other information placed on the record.

For the benefit which Icdas received under this program, Petitioner argues that the AFA rate should be either the calculated rate of 15.58 percent for Hot-Rolled Steel for LTAR in *OCTG from Turkey*, or the calculated rate of 1.81 percent for the KKDF program from *Pasta from Turkey*. We disagree. The Deductions for Taxable Income for Export Revenue program is well known to the Department, having examined, verified, and countervailed it in numerous Turkey CVD cases.[159] Record evidence indicates that under Article 40 of Income Tax Law, the amount

[155] *See OCTG from Turkey*, and accompanying IDM at "Hot-Rolled Steel for LTAR."
[156] *See Certain Pasta from Turkey: Final Results of Countervailing Duty Administrative Review*, 66 FR 64398 (December 13, 2001) (*Pasta from Turkey*), and accompanying IDM at "Resource Utilization Support Fund (KKDF) Tax Exemption on Export-Related Loans."
[157] *See* Icdas IQR (January 2, 2014), at 34.
[158] *See* Icdas Verification Report at "Deductions from Taxable Income for Export Revenue."
[159] *See, e.g.*, *OCTG from Turkey*, and accompanying IDM at "Deductions from Taxable Income for Export Revenue;" *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty*

of the deduction for undocumented expenses cannot exceed 0.5 percent of export revenue.[160] There is a cap to the amount of benefit that a company can receive under the program.

As such, we determine, as AFA, that Icdas received the maximum amount of deduction possible under the program. Under this approach, which is consistent with the Department's practice,[161] we assume that Icdas used the program in a manner that resulted in a deduction in taxable income equal to 0.5 percent of its export earnings for 2011. To calculate Icdas' AFA rate, we calculated the tax savings by multiplying the maximum amount of the deduction by the Turkish corporate tax rate. We then divided the tax savings by Icdas' total export value for 2012. On this basis, we calculated an AFA rate of 0.10 percent *ad valorem* for Icdas.

Comment 7: Whether the Department Unjustly Rejected Petitioner's New Subsidy Allegation

Petitioner's Affirmative Arguments:

- On October 22, 2013, Petitioner filed an additional subsidy allegation on the GOT's purchases of electricity from integrated Turkish electricity/rebar producers at MTAR.[162]
- Petitioner states that, as required under the statute, the allegation was based on information reasonably available to it, including publicly available information demonstrating that the GOT paid above-market prices for purchases of electricity from independent power generators, such as the respondents. The Department, however, rejected the allegation, due to its objections to certain evidence attached to the allegation.[163]
- Petitioner argues that the Department's rejection of the new subsidy allegation, due to certain supporting evidence, was improper and based on questionable legal authority.
- Petitioner argues that the objectionable information, obtained from an online, public source, was the only information reasonably available to support the allegation that a benefit was received by the Turkish rebar producers from the GOT's purchases of electricity for MTAR.
- It was detrimental to Petitioner's interests when the Department rejected the public information, which contained evidence demonstrating that a financial benefit was provided through the subsidy alleged.

Administrative Review, 77 FR 46713 (August 6, 2012), and accompanying IDM at "Deduction from Taxable Income for Export Revenue;" *Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey*, 71 FR 43111 (July 31, 2006), and accompanying IDM at "Deduction from Taxable Income for Export Revenue;" *Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel from Turkey*, 67 FR 55815 (August 30, 2002), and accompanying IDM at "Deduction from Taxable Income for Export Revenue;" and *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Reviews*, 63 FR 18885, 18886 (April 16, 1998).

[160] *See* GOC IQR (January 2, 2014), at 38 and Exhibit 11.

[161] *See Pipes and Tubes from Turkey*, and accompanying IDM at "Deduction from Taxable Income for Export Revenue."

[162] *See* Department Memorandum regarding "RTAC's October 22, 2013, New Subsidy Allegation" (October 25, 2013).

[163] *Id*.

- To preserve its rights to appeal, Petitioner requests that the Department maintain a copy of Petitioner's rejected filings so they can become part of any court record on appeal.

Department's Position: The Petitioner attempted to submit to the Department, as exhibits to its new subsidy allegation, U.S. Government cables from the U.S. Embassy in a foreign country which were marked as either classified national security information or sensitive but unclassified (SBU) information. We explained in great detail on January 24, 2014, in a letter to the Petitioner, that such documents cannot be included on the administrative record or considered for purposes of an AD or countervailing duty proceeding.[164] The Petitioner's claims that the documents are no longer classified or treated as SBU by the State Department is supported by no evidence on the record, and reflects a misunderstanding of the U.S. State Department's classification system.

On October 23, 2013, Petitioner manually filed with the Department the new subsidy allegation submission, because the document included two exhibits containing cables from the U.S. Embassy in a foreign country, which were obtained through the WikiLeaks website. The Department explained to Petitioner that the classified and SBU information sourced from WikiLeaks, contained within the submission, could not be electronically filed in IA ACCESS.[165]

On October 24, 2013, Petitioner withdrew the manually filed submission and filed a new subsidy allegation in IA ACCESS that omitted the two cables and references to those cables and WikiLeaks on October 25, 2013.[166] The Department did not reject the October 25, 2013, new subsidy filing, but evaluated the allegation and subsequently determined that the information provided to support the allegation was insufficient to initiate a new subsidy investigation (*see* Comment 8, below).

On December 2, 2013, despite the Department's previous explanation that information obtained from WikiLeaks, that is classified or SBU must not be electronically filed in IA ACCESS, Petitioner filed in IA ACCESS a "Revised New Subsidy Allegation" that contained the same exact cables, with all references to the term "WikiLeaks" intentionally removed from the submission. On December 9, 2013, the Department rejected and deleted from the record the December 2, 2013, submission on the basis that it contained classified and SBU information.[167] On January 8, 2014, Petitioner manually re-filed the revised new subsidy allegation with the references to WikiLeaks omitted from the submission. On January 24, 2014, the Department again rejected the submission.[168]

[164] *See* Department Memorandum regarding "RTAC's October 22, 2013, New Subsidy Allegation" (October 25, 2013) (October 25th Rejection Memorandum), and Department Letter to Petitioner regarding "Rejection of January 8, 2014, Revised New Subsidy Allegation" (January 24, 2014) (January 24th Rejection Letter).
[165] *See* October 25th Rejection Memorandum.
[166] *See* Letter from Petitioner regarding "Additional Subsidy Allegation" (October 25, 2013) (New Subsidy Allegation).
[167] *See* Department Memorandum regarding "Reject and Delete Document from the Record" (December 9, 2013) (December 9th Reject and Delete Memorandum).
[168] *See* January 24th Rejection Letter.

As a preliminary matter, we understand that in this case there may have been some miscommunication between the Petitioner and a Department official as to the requirements of IA ACCESS that resulted in the actions taken by the Petitioner on December 2, 2013 and January 8, 2014. However, it is worth emphasizing that if a party files a document with the Department containing classified, confidential, or SBU information without acknowledging the source of such information, or it if attempts to refile a "redacted" document that merely removes reference to WikiLeaks or similar sources, such a submission could be considered a material omission or misstatement to the government, in violation of the False Claims Act.[169] The United States Government takes material omissions and misstatements in filings with all federal agencies very seriously and will not tolerate such behavior in the future.

As explained to Petitioner in the Department's January 24, 2014, letter, Executive Order 13526[170] addresses U.S. Government treatment of "Classified National Security Information" and provides that "classified information shall not be declassified automatically as a result of any unauthorized disclosure of identical or similar information."[171] Although a classified document contains a proposed date of declassification, there is a specific process for declassifying national security information contained in section 3 of the Executive Order. Until such time as the appropriately designated authority has officially declassified a document, the document remains classified.[172]

In addition, the Information Security Oversight Office's regulations, which provide guidance to agencies in implementing Executive Order 13526, specify that standard markings must be "applied to leave no doubt about the declassified status of the information and who authorized the declassification."[173] Such markings include the word "declassified," the identity of the declassification authority, the date of declassification and an "X" or straight line (strikeout) across the overall classification markings.[174] None of these markings was on the cable marked "classified" submitted by the Petitioner.

For the second cable submitted by the Petitioner, in a October 29, 2013, letter to the Department, Petitioner stated that the cable was identified as "unclassified" and "sensitive but unclassified" or "SBU."[175] Petitioner asserted that the SBU designation appears primarily designed to exempt information from disclosure under the Freedom of Information Act (FOIA), although, the SBU designation alone is not sufficient to exempt the information from FOIA disclosure.[176] In that letter, as support, Petitioner submitted an excerpt of the U.S. Department of State's Foreign Affairs Manual.[177]

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[170] http://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information
[170] http://www.whitehouse.gov/the-press-office/executive-order-classified-national-security-information
[171] *See* EO 1.1(c).
[172] *See* EO 3.1 and EO 3.5.
[173] *See* 32 CFR 2001.25(a).
[174] *See* 32 CFR 2001.25(b).
[175] *See* Letter from Petitioner regarding "Response to Memorandum to the File regarding RTAC's October 22, 2013 New Subsidy Allegation" (October 29, 2013) (Petitioner's October 29th Letter) at 3, footnote 4.
[176] *Id*.
[177] *Id.*, at Exhibit 4.

We note that the Foreign Affairs Manual provides guidelines that require SBU information to be secured from unauthorized disclosure. It defines SBU information as "information that is not classified for national security reasons, but that warrants/requires administrative control and protection from public or other unauthorized disclosure for other reasons."[178] "SBU information must not be posted on any public Internet website, discussed in a publicly available chat room or any other public forum on the Internet."[179] As such, we explained to the Petitioner that the Department will not accept on its record any SBU information that was disclosed on WikiLeaks or any other such public Internet website without accompanying evidence that disclosure of that information has been officially authorized.

Both of the cables appeared to have originated with the U.S. Department of State. We explained to Petitioner in the January 24, 2014, letter that if the documents were subsequently declassified and properly disseminated, as applicable, and Petitioner wanted the Department to treat those documents as declassified and authorized for public disclosure, then additional documentation must accompany those documents reflecting that they were officially declassified in accordance with Executive Order 13526 and authorized by the U.S. Department of State for public disclosure.[180] Without such official documentation, the Department will not maintain those documents on the record or consider the substance of those documents in our administrative proceedings.[181]

We acknowledge that section 777(c)(1)(A) of the Act, which addresses the release of business proprietary information under Administrative Protective Order, contemplates that in rare situations, the Department may accept "privileged information, classified information, and specific information of a type for which there is a clear and compelling need to withhold from disclosure." Further, the Department's regulations state that the "official record" will contain information, which includes "classified" information, and that classified information "is exempt from disclosure to the public or to representatives of interested parties."[182]

While the Department has the statutory authority to accept certain classified information on the administrative record, that authority is limited only to classified information which has been provided through appropriate U.S. Government procedures. That is, the Department will only accept classified information submitted by a person or persons who are legally authorized to retain such information and to share such information with the Department. The documents submitted by Petitioner appear to have originated with the U.S. Department of State and, absent other information on the record, appear to have been obtained through WikiLeaks and not in accordance with U.S. Government and U.S. Department of State policies and procedures. Accordingly, the Department's rejection of Petitioner's submission was not only proper, but lawful.

[178] *See* U.S. Department of State Foreign Affairs Manual at Volume 12, 12 FAM 541(a) (March 5, 2013).
[179] *See* 12 FAM 544.3(e).
[180] See January 24th Rejection Letter.
[181] *Id*.
[182] *See* 19 CFR 351.104(a) and 351.105(e).

Lastly, to Petitioner's request that a copy of the rejected new subsidy allegation submissions be maintained for any court record, as indicated in the Department's letter to Petitioner and memoranda to the file, those submissions were rejected from the record of this investigation and destroyed.[183] For the same reasons that the Department cannot accept such documents on the administrative record of its proceedings, the Department will not "maintain" a copy for any other reason as well.

Comment 8: Whether the Department Failed to Initiate on the GOT's Purchase of Electricity for MTAR

Petitioner's Affirmative Arguments:

- Petitioner states that the new subsidy allegation was refiled on October 25, 2013, omitting the information deemed objectionable by the Department.[184] However, the Department declined to initiate an investigation, on the basis that Petitioner did not provide sufficient evidence "demonstrating that autoproducers are selling surplus electricity to the GOT" and because there was "no evidence to indicate that the GOT purchases electricity from autoproducers at higher than market prices."[185]
- Petitioner asserts that the purportedly missing evidence is exactly the information included in Petitioner's original allegation, to which the Department objected.
- Petitioner asserts that without the "objectionable" information, the remaining evidence as presented in the revised new subsidy allegation met the "information reasonably available to petitioner" standard[186] and provided sufficient justification for initiating a subsidy investigation.[187]
- Petitioner contends that even if the Department found the allegation to be insufficient, it should have self-initiated an investigation, as required by the statute and regulations.[188] The allegation provided the Department with sufficient notice that a practice appearing to constitute a countervailable subsidy exists.

Icdas' Rebuttal Arguments:

- The Department correctly dismissed the Petitioners' new subsidy allegation.
- There are no facts on the record to support the allegation. No party was asked to respond to any questions regarding the allegation.

Department's Position: For all the reasons explained in Comment 7, above, the Department could not maintain on the record and publicly disclose the alleged U.S. Government cables submitted by the Petitioner that are either classified or SBU national security information.

[183] *See* January 24th Rejection Letter, October 25th Rejection Memorandum, and December 9th Reject and Delete Memorandum.
[184] *See* Letter from Petitioner regarding "Additional Subsidy Allegation" (October 25, 2013) (New Subsidy Allegation).
[185] *See* Department Memorandum regarding "Decision Memorandum on Additional Subsidy Allegation" (November 25, 2013) (Memorandum on New Subsidy Allegation) at 3.
[186] *See* section 702(b)(1) of the Act, and 19 CFR 351.202(b).
[187] *See* New Subsidy Allegation at Exhibits 1, 2, 5, and 6.
[188] *See* section 775 of the Act, and 19 CFR 351.311.

Therefore, when evaluating the alleged subsidy, "Purchase of Electricity for MTAR," we could consider only the evidence contained within Petitioner's October 25, 2013, new subsidy allegation submission, which did not include the two cables from the U.S. Embassy in a foreign country.

We thoroughly evaluated the information provided on the alleged program and concluded that there were significant deficiencies with the subsidy allegation.[189] Specifically, we determined there was no evidence demonstrating that autoproducers are selling surplus electricity to the GOT and no evidence to indicate that the GOT purchases electricity from autoproducers[190] at higher than market prices.[191]

Petitioner claims that the classified and SBU cables, which the Department could not allow on the record, contained the very evidence that we determined was missing in support of the allegation, *i.e.*, evidence that autoproducers are selling surplus electricity to the GOT and that the GOT purchases electricity from autoproducers at higher than market prices. Such a claim, however, is speculative. The Department never reviewed the substance of the classified and SBU cables. As such, the Department will not address information contained within those cables and, thus, cannot comment on the Petitioner's assertions in this regard.

If the cables were essential to the allegation and they were declassified and properly disseminated, as Petitioner indicates in the October 29, 2013, letter,[192] then Petitioner could have submitted additional documentation to the cables reflecting that they were officially declassified in accordance with Executive Order 13526 and authorized by the U.S. Department of State for public disclosure.[193] Petitioner however did not submit such official documentation, when it filed the revised new subsidy allegation submissions on December 2, 2013, and January 8, 2014. Petitioner also did not attempt to cure the deficiencies, which the Department identified in the October 25, 2013, new subsidy allegation submission, with other types of supporting evidence. In accordance with section 702(b) of the Act, the burden is on petitioners to allege the elements necessary for the imposition of the duty imposed by section 701(a) of the Act, with information reasonably available to support those allegations. With regard to the "Purchase of Electricity for MTAR," Petitioner failed to provide the requisite evidence to support the initiation of subsidy investigation.

Concerning self-initiation, we agree with Petitioner that the Department has the authority to self-initiate on potential subsidies during the course of a countervailing duty investigation or administrative review, as stated in section 775 of the Act and 19 CFR 351.311(b). Specifically, the Department has the right to examine a practice that appears to provide a countervailable subsidy with respect to the subject merchandise and the practice was not alleged or examined in the proceeding.[194] In this investigation, not only did Petitioner allege the subsidy "Purchase of

[189] *See* Department Memorandum regarding "Decision Memorandum on Additional Subsidy Allegation" (November 25, 2013) (NSA Decision Memorandum).
[190] An autoproducer is a company which generates power primarily for its own consumption. *See* NSA Decision Memorandum at 4.
[191] *See* NSA Decision Memorandum.
[192] *See* Petitioner's October 29th Letter.
[193] *See* January 24th Rejection Letter.
[194] *See* section 775 of the Act and 19 CFR 351.311(b).

Electricity for MTAR," but the Department determined to not initiate because of insufficient evidence of the existence of a subsidy. As such, there was no basis for the Department to self-initiate an investigation of alleged purchases of electricity for MTAR by the GOT.

IX. CONCLUSION

We recommend approving all 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 ITC of our determination.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

8 SEPTEMBER 2014
(Date)