



C-489-823

Investigation


**Public Document**

POI: 01/01/2013 – 12/31/2013

AD/CVD/Office II: SM

**DATE:** March 16, 2015

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

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

**SUBJECT:** Decision Memorandum for the Affirmative Preliminary  
Determination in the Countervailing Duty Investigation of Welded  
Line Pipe from the Republic of Turkey

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## I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of welded line pipe in the Republic of Turkey (Turkey), as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

## II. BACKGROUND

### A. Case History

On October 16, 2014, the Department received a countervailing duty (CVD) petition concerning imports of welded line pipe from Turkey, filed on behalf of American Cast Iron Pipe Company (American), Energex Tube (Energex) (a division of JMC Steel Group), Maverick Tube Corporation (Maverick), Northwest Pipe Company (Northwest), Stupp Corporation (Stupp) (a division of Stupp Bros., Inc.), Tex-Tube Company (Tex-Tube), TMK IPSCO, and Welspun Tubular LLC USA (Welspun) (collectively, the petitioners).<sup>1</sup> We describe the supplements to the petition and our consultations with the Government of the Republic of Turkey (GOT) in the Initiation Checklist.<sup>2</sup> On November 13, 2014, we published the initiation of a CVD investigation on welded line pipe from Turkey.<sup>3</sup>

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<sup>1</sup> See Petitions for the Imposition of Antidumping and Countervailing Duties: Welded API Line Pipe from South Korea and Turkey, dated October 16, 2014 (Petition).

<sup>2</sup> See “Countervailing Duty Initiation Checklist: Welded Line Pipe from the Republic of Turkey,” (November 5, 2014) (Initiation Checklist).

<sup>3</sup> See Welded Line Pipe From the Republic of Korea and the Republic of Turkey: Initiation of Countervailing Duty Investigations, 79 FR 67419 (November 13, 2014) (Initiation Notice).



We stated in the Initiation Notice that we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.<sup>4</sup> On November 7, 2014, we released the CBP entry data under administrative protective order (APO), and requested comments regarding the data and respondent selection.

On November 25, 2014, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB) and Borsuan Istikbal Ticaret (Istikbal) (collectively, “Borusan”) and Hyundai HYSCO (HYSCO), a respondent in the companion AD and CVD investigations on welded line pipe from the Republic of Korea (Korea), submitted comments regarding the scope of these investigations.

On November 26, 2014, pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2), we selected BMB and Tosal Dis Ticaret A.S. (Tosal Dis) as mandatory respondents.<sup>5</sup> On December 1, 2014, we issued the CVD questionnaire to the GOT.

On December 2, 2014, the petitioners American, Energex, Northwest, Stupp, Tex-Tube, TMK IPSCO, and Welspun, submitted rebuttal scope comments in response to Borusan and HYSCO. On December 5, 2014, Maverick also submitted rebuttal scope comments. On December 11, 2014, the petitioners requested that the Department postpone the deadline for the preliminary determination.

On December 15, 2014, we received timely responses to the “affiliated companies” section of the CVD questionnaire from Borusan and Toscelik Profil ve Sac Endustrisi A.S. (Toscelik Profil) and Tosal Dis (collectively, “Toscelik”).<sup>6</sup> On December 17 and December 18, 2014, respectively, we issued supplemental questionnaires to Toscelik and Borusan. On December 24, 2014, the Department fully postponed the date of the preliminary determination to March 16, 2015.<sup>7</sup>

On January 14, 2015, the GOT submitted a timely response to the initial CVD questionnaire. For the reasons stated in a letter to the GOT on January 16, 2015, the Department rejected the

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<sup>4</sup> Id., 79 FR at 67421.

<sup>5</sup> See Memorandum from Elizabeth Eastwood, Dennis McClure, and Shannon Morrison, International Trade Compliance Analysts, to Gary Taverman, Associate Deputy Assistant Secretary, “Respondent Selection for the Countervailing Duty Investigation of Welded Line Pipe from the Republic of Turkey,” dated November 26, 2014 (Respondent Selection Memo). As explained in that memorandum, when faced with a large number of producers/exporters, the Department may determine that it is not practicable to examine all companies. In these circumstances, section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise.

<sup>6</sup> See Letter from Borusan, Re: Welded API Line Pipe from Turkey, Case No. C-489-823: Response to Section Identifying Affiliated Companies of Initial Countervailing Duty Questionnaire, dated December 15, 2014 (Borusan Affiliation Questionnaire Response). See also Letter from Toscelik, Re: Welded Line Pipe from Turkey; Toscelik Questionnaire Response, dated December 15, 2014 (Toscelik Affiliation Questionnaire Response).

<sup>7</sup> See Welded Line Pipe from Republic of Korea and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations, 79 FR 77454 (December 24, 2014).<sup>8</sup> See Letter from the GOT, Response of the Government of Turkey in CVD Investigation on Welded Line Pipe from Turkey, dated January 21, 2015 (GOT Initial Questionnaire Response).

GOT's January 14 initial questionnaire response, but we permitted the GOT to refile this response after addressing the concerns identified by the Department in our rejection letter. On January 21, 2015, the GOT resubmitted its initial questionnaire response, in compliance with the Department's requirements.<sup>8</sup> In addition, on January 21, 2015, both Borusan and Toscelik submitted timely responses to the initial CVD questionnaire and the Department's December 2014 supplemental questionnaires.<sup>9</sup>

On January 22, 2015, we issued a supplemental questionnaire to the GOT. On January 28, 2015, we also issued supplemental questionnaires to Borusan and Toscelik. On February 5, 2015, we issued additional supplemental questionnaires to Toscelik and the GOT.

On February 11, 2015, Borusan submitted a timely response to its second supplemental questionnaire.<sup>10</sup> Although Toscelik submitted its second and third supplemental response on the same date, it did so after the established 5:00 pm deadline.<sup>11</sup> Therefore, on February 12, 2015, we rejected Toscelik's submission because it was untimely. On the same date, Toscelik requested that the Department reconsider this decision.

On February 17, 2015, the GOT submitted timely responses to its supplemental questionnaires.<sup>12</sup> On February 19, 2015, we issued an additional supplemental questionnaire to Borusan, and we received from Toscelik a second request in which it explained the circumstances under which it missed the filing deadline noted above. Because Toscelik's request explained to the Department's satisfaction the extraordinary circumstances surrounding its missed deadline, we reconsidered our rejection of Toscelik's February 11, 2015, untimely-filed supplemental questionnaire responses and accepted the documents on February 23, 2015.

On February 24, 2015, Borusan submitted a timely response to its third supplemental questionnaire.<sup>13</sup> On February 26, 2015, we issued a third supplemental questionnaire to the GOT. On February 27, 2015, the petitioners filed a request that the Department align the final

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<sup>8</sup> See Letter from the GOT, Response of the Government of Turkey in CVD Investigation on Welded Line Pipe from Turkey, dated January 21, 2015 (GOT Initial Questionnaire Response).

<sup>9</sup> See Letter from Borusan, Re: Welded API Line Pipe from Turkey, Case No. C-489-823: Response to Initial Countervailing Duty Questionnaire, dated January 21, 2015 (Borusan Initial Questionnaire Response); and Letter from Borusan, Re: Welded API Line Pipe from Turkey, Case No. C-489-823: Response to Supplemental Questionnaire, dated January 21, 2015 (Borusan Affiliation Supplemental Response). See also Letter from Toscelik, Re: Welded Line Pipe from Turkey: Toscelik Questionnaire Response, dated January 21, 2015 (Toscelik Initial Questionnaire Response).

<sup>10</sup> See Letter from Borusan, Re: Welded API Line Pipe from Turkey, Case No. C-489-823: Response to Second Supplemental Questionnaire, dated February 11, 2015 (Borusan Second Supplemental Response).

<sup>11</sup> See Letter from Toscelik, "Welded Line Pipe from Turkey: Toscelik Second and Third Supplemental Questionnaire Response," dated February 12, 2015 (Toscelik Second and Third Supplemental Response).

<sup>12</sup> See Letter from the GOT, "First Supplemental Questionnaire Response of GOT in CVD Investigation on Welded Line Pipe," dated February 17, 2015 (GOT First Supplemental Response). See also Letter from the GOT, "Second Supplemental Questionnaire Response of GOT in CVD Investigation on Welded Line Pipe," dated February 17, 2015 (GOT Second Supplemental Response).

<sup>13</sup> See Letter from Borusan, Re: Welded API Line Pipe from Turkey, Case No. C-489-823: Response to Third Supplemental Questionnaire, dated February 24, 2015 (Borusan Third Supplemental Response).

determination of this CVD investigation with the companion antidumping duty (AD) investigation of welded line pipe from Turkey. On March 5, 2015, the GOT submitted a timely response to its third supplemental questionnaire.<sup>14</sup>

#### B. Period of Investigation

The period of investigation (POI) is January 1, 2013, through December 31, 2013.

### III. SCOPE COMMENTS

As noted in the Initiation Notice, we set aside a period of time for parties to raise issues regarding product coverage, and we stated that all such comments must be filed within 20 calendar days of publication of the Initiation Notice.<sup>15</sup> On November 25, 2014, we received comments from Borusan and HYSCO, asking the Department to clarify whether the scope of this and the companion AD investigations includes longitudinally submerged arc welded (LSAW) and helically submerged arc welded (HSAW) steel pipe.<sup>16</sup> Both Borusan and HYSCO argue that LSAW and HSAW pipe differ from electric resistance welded (ERW) line pipe in raw materials, production process, and end uses. Borusan further argues that LSAW and HSAW pipe are a distinct class or kind of merchandise from ERW pipe, and it claims that: 1) the AD petition makes clear that these investigations are not directed at LSAW and HSAW pipe; and 2) the petitioners have testified before the U.S. International Trade Commission (ITC) that there is no U.S. production of LSAW/HSAW pipe of 24 inches or less in outside diameter.

On December 2, 2014, the petitioners submitted rebuttal comments, stating that the scope as currently written covers all welded line pipe of not more than 24 inches nominal outside diameter, without regard to the process by which the line pipe was welded.<sup>17</sup> The petitioners assert that they did not intend to limit the scope to line pipe produced by the ERW process, and they note that the scope language adopted by the Department includes HTSUS headings for line pipe produced by submerged arc welding. The petitioners assert further that, to the extent that any clarification is needed, the Department should clarify that the scope includes welded line pipe not exceeding 24 inches nominal outer diameter produced by the submerged arc welding process, whether the pipe is longitudinally or helically welded. On December 5, 2014, Maverick also submitted rebuttal comments in which it further disagrees that LSAW and HSAW line pipe less than or equal to 24 inches in nominal outside diameter are a separate class or kind of merchandise from ERW line pipe, as it is made from similar raw materials (often by the same

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<sup>14</sup> See Letter from the GOT, “Third Supplemental Questionnaire Response of GOT in CVD Investigation on Welded Line Pipe,” dated March 5, 2015 (GOT Third Supplemental Response).

<sup>15</sup> See Antidumping Duties; Countervailing Duties; Final rule, 62 FR 27296, 27323 (May 19, 1997); see also Initiation Notice.

<sup>16</sup> See Letter from Borusan, “Welded Line Pipe from Korea and Turkey, Case Nos. A-580-876, C-580-877, A-489-822, and C-489-823: Comments on Scope of Investigations,” dated November 25, 2014; and Letter from HYSCO, “Welded Line Pipe From the Republic of Korea and the Republic of Turkey: Scope Clarification Request,” dated November 25, 2014.

<sup>17</sup> See Letter from American, Energex, Northwest, Stupp, Tex-Tube, TMK IPSCO, and Welspun, “Welded Line Pipe from the Republic of Korea and Turkey: Rebuttal Comments on Scope,” dated December 2, 2014; and Letter from Maverick, “Welded Line Pipe from Korea and Turkey: Rebuttal Scope Comments,” dated December 5, 2014.

companies) via similar production processes, and are used for the same end-use of transporting oil and gas.

We have considered the requests noted above, as well as the petitioners' responsive comments. While the Department does have the authority to define or clarify the scope of an investigation, the Department must exercise this authority in a manner which reflects the intent of the petition and the Department generally should not use its authority to define the scope of an investigation in a manner that would thwart the statutory mandate to provide the relief requested in the petition.<sup>18</sup> Thus, absent an overarching reason to modify the scope in the petition, the Department accepts the scope as it is currently written.<sup>19</sup> Consequently, we have made no change to the scope with respect to LSAW and HSAW pipe because: 1) these products are clearly within the scope; and 2) the petitioners intended that these products be covered. We further note that this determination is consistent with the definition of the domestic like product for the welded line pipe industry, which includes ERW, HSAW, and LSAW line pipe.<sup>20</sup>

#### **IV. SCOPE OF THE INVESTIGATION**

The merchandise covered by this investigation is circular welded carbon and alloy steel (other than stainless steel) pipe of a kind used for oil or gas pipelines (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable foreign specifications, to proprietary grades, or can be non-graded material. All pipe meeting the physical description set forth above, including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of this investigation.

The welded line pipe that is subject to this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.5000, 7305.12.1030, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. The subject merchandise may also enter in HTSUS 7305.11.1060 and 7305.12.1060. While the HTSUS subheadings are provided for

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<sup>18</sup> See Notice of Final Determination of Sales at Less Than Fair Value: Certain Softwood Lumber Products From Canada, 67 FR 15539 (April 2, 2002), and accompanying Issues and Decision Memorandum under Scope Issues (after Comment 49).

<sup>19</sup> Id. See also Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 73 FR 51788, 51789 (September 5 2008), unchanged in Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 4913 (January 28, 2009); Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation, 66 FR 49347 (September 27, 2001), and accompanying Issues and Decision Memorandum at Comment 12; and Mitsubishi Heavy Industries, Ltd. v. U.S., 986 F. Supp. 1428 (CIT 1997).

<sup>20</sup> See Certain Welded Line Pipe from Korea and Turkey: Inv. No. 701-TA-524-525 and 731-TA-1260-1261 (Preliminary) (December 2014) (ITC Preliminary Report) at 7 (finding a single domestic like product for welded line pipe) and I-13 (discussing the manufacturing process for welded line pipe, which includes ERW, HSAW, and LSAW).

convenience and customs purposes, the written description of the scope of this investigation is dispositive.

## **V. INJURY TEST**

Because Turkey is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a U.S. industry. On December 5, 2014, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of line pipe from Korea and Turkey.<sup>21</sup>

## **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.<sup>22</sup> 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, as revised.<sup>23</sup> The Department notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding has disputed this allocation period.

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

### **B. Attribution of Subsidies**

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

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<sup>21</sup> See ITC Preliminary Report; and Certain Welded Line Pipe from Korea and Turkey: Determinations, 79 FR 72202 (December 5, 2014).

<sup>22</sup> See 19 CFR 351.524(b).

<sup>23</sup> See U.S. Internal Revenue Service Publication 946 (2008), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

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:

{T}he 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.<sup>24</sup>

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

The U.S. Court of International Trade has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>25</sup>

### Borusan

Borusan responded to the Department's questionnaire on behalf of BMB and one cross-owned affiliate, Istikbal. Borusan reported that Istikbal, an export sales company, exported subject merchandise produced by BMB to the United States during the POI.<sup>26</sup> Borusan reported that a holding company, Borusan Mannesmann Boru Yatirim Holding A.S. (BMBYH), owns the majority of BMB's equity share capital.<sup>27</sup> Borusan also reported that BMBYH and Istikbal are majority owned by Borusan Holding A.S. (Borusan Holding).<sup>28</sup>

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

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<sup>24</sup> See Countervailing Duties; Final Rule 63 FR 65347, 65401 (November 25, 1998) (CVD Preamble).

<sup>25</sup> See Fabrique de Fer de Charleroi, SA v. United States, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>26</sup> See Borusan Affiliation Questionnaire Response at 3.

<sup>27</sup> Id., at 3 and Exhibit 2.

<sup>28</sup> Id., at 2-3 and Exhibit 2.

351.525(c), we are preliminarily cumulating the benefit from subsidies to Istikbal with the benefit from subsidies to BMB.

In its affiliation questionnaire response, Borusan did not respond on behalf of BMBYH or Borusan Holding.<sup>29</sup> Noting that BMBYH owned a majority of BMB's outstanding shares and that Borusan Holding owned a majority of BMBYH's outstanding shares, we requested questionnaire responses from BMBYH and Borusan Holding. In its supplemental questionnaire response, Borusan stated that it did not specifically respond to the questionnaires with respect to BMBYH or Borusan Holding because neither entity is engaged in production or sales activities that would make them eligible for any of the alleged subsidies in this investigation.<sup>30</sup> Borusan stated BMBYH and Borusan Holding did not receive any subsidies from the programs listed in the Department's original questionnaire, specifically addressing each program in turn.<sup>31</sup> In particular, Borusan explained that neither company met the basic conditions for using the programs in question because neither: 1) had its own production or sales operations; 2) was engaged in exports; or 3) was located in a zone or province where companies would be eligible for the subsidies under investigation.<sup>32</sup> Moreover, Borusan claimed that neither company received any other subsidies.<sup>33</sup> Therefore, while we preliminarily find that BMBYH and Borusan Holding are cross-owned with BMB and Istikbal within the meaning of 19 CFR 351.525(b)(6)(vi), we find no evidence that Borusan Holding or BMBYH received any countervailable subsidies attributable to BMB during the POI.

Finally, Borusan identified numerous additional companies with which it was affiliated during the POI based on cross-ownership with Borusan Holding.<sup>34</sup> However, Borusan reported that none of these affiliates was involved in the production or sale of subject merchandise.<sup>35</sup> Therefore, we preliminarily determine that these affiliated companies do not meet any of the conditions set forth in 19 CFR 351.525(b)(6)(ii)-(v); as a result, we have not included them in our subsidy analysis.

### Toscelik

Toscelik responded to the Department's questionnaire on behalf of: 1) Toscelik Profil, the producer of subject merchandise; 2) Tosiya Dis, the foreign trading company that is responsible for export sales of products produced by the entire Toscelik group (including steel pipes produced by Toscelik Profil); 3) Tosiya Elektrik Enerjisi Tiptan Satis Ith. Ihr. A.S. (Tosiya Elektrik), an electricity wholesaler that supplied electricity to Toscelik Profil during the POI; 4) Tosiya Demir Celik Sanayi A.S. (Tosiya Demir), a producer of long steel products, which sells steel scrap to Toscelik Profil; 5) Tosiya Metal Ambalaj Sanayi A.S. (Tosiya Metal), a company

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<sup>29</sup> Id., at 8.

<sup>30</sup> See Borusan Affiliation Supplemental Response at 1.

<sup>31</sup> Id., at 1-4.

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Id., at Exhibit 2.

<sup>35</sup> Id., at 6.



which merged with Toscelik Profil in December 2013; and 6) Tosyali Holding A.S. (Tosyali Holding), the holding company for the entire Toscelik group of companies (including Toscelik Profil, Tosyali Demir, Tosyali Dis, Tosyali Elektrik, and Tosyali Metal). Toscelik reported that three brothers, Mr. Fuat Tosyali, Mr. E. Ayhan Tosyali, and Mr. M. Fatih Tosyali, owned or controlled these six companies.

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

In accordance with 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Toscelik Profil to its own sales. In addition, as noted above, Tosyali Metal merged with Toscelik Profil in December 2013,<sup>36</sup> and Toscelik stated that it included Tosyali Metal's POI sales with those of Toscelik Profil.<sup>37</sup> As a result, we are preliminarily attributing the benefit from subsidies received by Tosyali Metal to the sales of Toscelik Profil.

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

Toscelik Profil purchased steel scrap from Tosyali Demir during the POI which it used to produce subject merchandise and other downstream steel products. Accordingly, we are preliminarily attributing the benefit from subsidies that Tosyali Demir received to the sales of Tosyali Demir plus the sales of Toscelik Profil (net of intercompany sales), in accordance with 19 CFR 351.525(b)(6)(iv).

Tosyali Elektrik supplied electricity to Toscelik Profil during the POI.<sup>38</sup> Regardless of whether subsidies to Tosyali Elektrik are attributable to Toscelik Profil under 19 CFR 351.525(b)(6)(ii)-(v), we preliminarily find no record evidence indicating that Tosyali Elektrik benefited from countervailable subsidies during the POI.

Tosyali Holding is the holding company for the Toscelik group of companies. Under 19 CFR 351.525(b)(6)(iii), subsidies to a parent or holding company are attributable to the consolidated sales of the parent or holding company and its subsidiaries. Accordingly, we are preliminarily attributing the benefit from subsidies that Tosyali Holding received to the total sales of all six cross-owned affiliates (net of intercompany sales).

Finally, Toscelik identified numerous additional companies with which it was affiliated during the POI based on cross-ownership with Tosyali Holding.<sup>39</sup> However, Toscelik reported that

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<sup>36</sup> See Toscelik Affiliate Questionnaire Response at 4.

<sup>37</sup> See Toscelik Second and Third Supplemental Response at 2.

<sup>38</sup> See Toscelik Affiliation Questionnaire Response at 3.

<sup>39</sup> *Id.*, at 3-4.

none of these affiliates either: 1) supplied inputs into its production process; or 2) received any subsidy which it transferred to any of the cross-owned companies listed above.<sup>40</sup> Therefore, we preliminarily determine that these affiliated companies do not meet any of the conditions set forth in 19 CFR 351.525(b)(6)(ii)-(v); as a result, we have not included them in our subsidy analysis.

### C. Denominators

In accordance with 19 CFR 351.525(b), when selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). Similarly, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator (or the total export sales of the cross-owned affiliates, as described above). In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.<sup>41</sup>

### D. Benchmark Interest Rates

We are investigating export loans and non-recurring, allocable subsidies that the respondents received.<sup>42</sup> In the section below, we discuss the derivation of the benchmarks and discount rates for the POI and previous years.

#### Short-Term Benchmarks

To determine whether government-provided loans under investigation conferred a benefit, the Department uses, where possible, company-specific interest rates for comparable commercial loans.<sup>43</sup> When loans are denominated in a foreign currency, 19 CFR 351.505(a)(2)(i) directs us to use a benchmark denominated in the same foreign currency as the loan. Borusan and Toscelik submitted weighted-average interest rates, along with the underlying data, that they paid on comparable short-term commercial loans.<sup>44</sup> Consistent with 19 CFR 351.505(a)(2)(ii), we are preliminarily using the interest rates that Borusan and Toscelik submitted on comparable short-term loans as benchmarks.

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<sup>40</sup> See Toscelik Affiliation Questionnaire Response at 6.

<sup>41</sup> See Memorandum to the File from Dennis McClure, "Welded Line Pipe from the Republic of Turkey: Preliminary Determination, Calculation Memorandum for Borusan," dated March 16, 2015 (Borusan Prelim Calc Memo); and Memorandum to the File from Elizabeth Eastwood, "Welded Line Pipe from the Republic of Turkey: Preliminary Determination, Calculation Memorandum for Toscelik," dated March 16, 2015 (Toscelik Prelim Calc Memo).

<sup>42</sup> See 19 CFR 351.524(b)(1).

<sup>43</sup> See 19 CFR 351.505(a)(2)(ii).

<sup>44</sup> See Borusan Initial Questionnaire Response at Exhibit 30; see also Toscelik Initial Questionnaire Response at Exhibit 21.

## Long-Term Benchmark

As discussed above, to determine whether government-provided loans under investigation conferred a benefit, the Department uses, where possible, company-specific interest rates for comparable commercial loans.<sup>45</sup> Where such benchmark rates are unavailable, consistent with 19 CFR 351.505(a)(3)(ii), we use lending rate data from the International Monetary Fund's International Financial Statistics as our national average benchmark.<sup>46</sup>

## Discount Rates

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

## **VII. ANALYSIS OF PROGRAMS**

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

### A. Programs Preliminarily Determined To Be Countervailable

#### 1. Provision of Hot-Rolled Steel (HRS) for Less than Adequate Remuneration (LTAR)

We initiated an investigation into whether Eregli Demir ve Celik Fabrikalari T.A.S. (Erdemir) and its subsidiary, Iskenderun Iron & Steel Works Co (Isdemir) provided respondents with HRS for LTAR.<sup>47</sup> Borusan and Toscelik reported purchasing HRS from Erdemir and Isdemir during the POI.<sup>48</sup> In the GOT's initial questionnaire response, the GOT provided information on Erdemir, Isdemir, and OYAK, the Turkish military pension fund that is the majority shareholder of Erdemir and Isdemir.<sup>49</sup>

In its initial questionnaire response, the GOT responded to the Input Producer Appendix for Erdemir, Isdemir, and OYAK.<sup>50</sup> In addition, we asked the GOT twice to submit certain documents relevant to the Turkish flat steel industry.<sup>51</sup> The GOT claimed it could not submit

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<sup>45</sup> See 19 CFR 351.505(a)(2)(ii).

<sup>46</sup> 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) (CWP Turkey 2011 AR), and accompanying Issues and Decision Memorandum at "Benchmarks and Interest Rates."

<sup>47</sup> See Initiation Checklist at 8.

<sup>48</sup> See Borusan Initial Questionnaire Response at 12; see also Toscelik Initial Questionnaire Response at 9-11.

<sup>49</sup> See GOT Initial Questionnaire Response at III-20 and Exhibit 7.

<sup>50</sup> Id., at Exhibit 7.

<sup>51</sup> Specifically, we requested that the GOT provide: 1) Advanced assessment of Turkish state aids to the steel industry (the WYG Report); 2) The Turkish authorities' observations on the WYG Report; 3) the National Restructuring Plan for the Turkish Steel Industry (National Restructuring Plan) and its annexes; and 4) two reports drafted by the Commission in 2008 (Point 2: State aid of May 7, 2008, and Point 3: Capacity Changes of May 7,

these documents under its confidentiality agreements with the European Union.<sup>52</sup> However, the GOT did provide limited public summaries of the contents of these documents.<sup>53</sup>

According to the GOT's response, Erdemir owns 95 percent of Isdemir.<sup>54</sup> Further, OYAK, the Turkish military pension fund, holds 49 percent of the outstanding shares of Erdemir through a wholly-owned holding company, Ataer Holding A.S.<sup>55</sup> The law establishing OYAK in 1961 states that the GOT created OYAK "as an institution related to the Ministry of National Defense."<sup>56</sup> Information in the GOT's responses, the Petition, and other submissions on the record shows extensive GOT involvement in OYAK. For example, OYAK's Representative Assembly comprises 50 to 100 members of the Turkish Armed Forces "designated by their respective commanders or superiors."<sup>57</sup> The Representative Assembly, in turn, elects 20 of the 40 members of OYAK's General Assembly.<sup>58</sup> Of the General Assembly's other 20 members, 17 are by statute government officials (e.g., Ministers of Finance and Defense).<sup>59</sup> Members of the General Assembly elect the eight-person Board of Directors.<sup>60</sup> Also, OYAK's property has by law the "same rights and privileges of state property," OYAK is exempt from corporate and other taxes, and members of the armed forces must by law contribute part of their salaries to OYAK.<sup>61</sup>

Record evidence shows that the government's significant involvement in OYAK extends to Erdemir and Isdemir. For example, Erdemir's 2013 Annual Report states, "Through...flat steel sales to exporting industries," Erdemir "made a major contribution to the 4.6% increase in Turkey's manufacturing exports in 2013"... and "continues to create value added for Turkish industry through its initiatives to increase the use of domestic sources of raw materials."<sup>62</sup> These policies are in line with the GOT's stated policy in its 2012-2014 Medium Term Programme to

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2008). See Letter from the Department to the GOT, "Countervailing Duty Investigation: Welded Line Pipe from Turkey," dated February 5, 2015. See also Letter from the Department to the GOT, "Countervailing Duty Investigation: Welded Line Pipe from Turkey," dated February 25, 2015.

<sup>52</sup> See GOT Second Supplemental Response at 4 and GOT Third Supplemental Response at 1.

<sup>53</sup> See GOT Third Supplemental Response at 2-4.

<sup>54</sup> See GOT Initial Questionnaire Response at Exhibit 7, page 3-4.

<sup>55</sup> The GOT sold its 49.93 percent stake in Erdemir to OYAK in 2006. See GOT Initial Questionnaire Response at Exhibit 7, pages 4 and 16; see also Initiation Checklist at 8.

<sup>56</sup> See GOT Initial Questionnaire Response at Exhibit 7 page 7, and Exhibit 7-G.

<sup>57</sup> See Petition at Exhibit X-18 of Exhibit III-1 (Military Personnel Assistance {And Pension} Fund Law (translation), Law No. 205).

<sup>58</sup> Id.

<sup>59</sup> Id.

<sup>60</sup> Id.

<sup>61</sup> See GOT Initial Questionnaire Response at Exhibit 7-G (Articles 18, 35, and 37).

<sup>62</sup> See GOT Initial Questionnaire Response at Exhibit 7-C (Erdemir 2013 Annual Report at 35 and 18).

improve Turkey's balance of payments.<sup>63</sup> Also, the GOT explained that the Turkish Privatization Administration (TPA) holds veto power over any decisions related to the closedown, sale, merger, or liquidation of both Erdemir and Isdemir.<sup>64</sup> Further, Erdemir's 2013 Annual Report shows that OYAK and the TPA both have members on Erdemir's Board of Directors.<sup>65</sup>

The record evidence cited above shows that the GOT exercises meaningful control over Erdemir and Isdemir through its control of OYAK. Therefore, consistent with the final CVD determination in OCTG Turkey CVD Final,<sup>66</sup> we preliminarily determine that Erdemir and Isdemir are public bodies, and hence "authorities," pursuant to section 771(5)(B) of the Act. Consequently, we preliminarily find that the HRS Erdemir and Isdemir supplied to Borusan and Toscelik is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act.

Regarding the specificity of HRS for LTAR, the GOT provided a list of nine industries that purchased HRS in Turkey during the POI: steel pipe and profile, rerolling producers, machinery, construction, domestic appliances, automotive, shipbuilding, agricultural equipment, and pressure purposes.<sup>67</sup> Therefore, consistent with past determinations, we preliminarily find that the provision of HRS is specific pursuant to section 771(5A)(D)(iii)(I) of the Act because the number of industries or enterprises using the program is limited.<sup>68</sup>

Finally, regarding benefit, the Department identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services in accordance with 19 CFR 351.511(a)(2). This section of the Department's regulations specifies potential benchmarks in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided at 19 CFR 351.511(a)(2), the preferred benchmark in the hierarchy is an observed market price from

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<sup>63</sup> See GOT Third Supplemental Response at Exhibit 1; see also Letter from Maverick, "Welded Line Pipe from the Republic of Turkey: Comments on the Government of Turkey's Third Supplemental Questionnaire Response," dated March 10, 2015, at Exhibit 6.

<sup>64</sup> See GOT Initial Questionnaire Response at Exhibit 7 at pages 5-6, Exhibit 7-A (Erdemir's Articles of Association), Articles 21, 22, and 37.

<sup>65</sup> *Id.*, at Exhibit 7-C (Erdemir 2013 Annual Report), pages 65-66.

<sup>66</sup> See Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination in the Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 79 FR 41964 (July 18, 2014) (OCTG Turkey CVD Final), and accompanying Issues and Decision Memorandum at Comment 1.

<sup>67</sup> See GOT First Supplemental Response at page 6 and Exhibit 8.

<sup>68</sup> See, e.g., OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at "Provision of HRS for LTAR"; and Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, 73 FR 31966 (June 5, 2008), and accompanying Issues and Decision Memorandum at 62.

actual transactions within the country under investigation.<sup>69</sup> This is because such prices generally reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving Turkish buyers and sellers that can be used to determine whether Erdemir and Isdemir sold HRS to the respondents for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government owns or controls the majority or a substantial portion of the market for the good or service, the Department will consider such prices to be significantly distorted and not an appropriate basis of comparison for determining whether there is a benefit.<sup>70</sup>

We obtained production and consumption data for HRS during the POI and the previous two years from the GOT.<sup>71</sup> The GOT's information showed that Erdemir's and Isdemir's collective share of the domestic supply of HRS during 2011, 2012, and 2013 accounted for 49.7 percent, 47.2 percent, and 46.5 percent, respectively, of the total domestic supply of HRS (inclusive of imports and internally-consumed production) in Turkey.<sup>72</sup> Based on this information, we preliminarily find that Erdemir's and Isdemir's production accounted for a substantial portion of the domestic supply during the POI and previous years.<sup>73</sup>

Therefore, Erdemir and Isdemir, the producers we are finding to be "authorities" pursuant to section 771(5)(B) of the Act, account for a substantial portion of the market of HRS production in Turkey. Given these facts, we preliminarily find that the level of government involvement in the market was such that prices would be significantly distorted.<sup>74</sup> Accordingly, we preliminarily find that actual transaction prices in Turkey are not appropriate to use as a benchmark for the HRS purchased by respondents during the POI because they reflect significant distortion resulting from the government's involvement in the market.<sup>75</sup> As we explained in Softwood Lumber from Canada:

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<sup>69</sup> See, e.g., Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada, 67 FR 15545, (April 2, 2002) (Softwood Lumber from Canada), and accompanying Issues and Decision Memorandum at "Market-Based Benchmark."

<sup>70</sup> See CVD Preamble, 63 FR at 65377.

<sup>71</sup> See GOT Second Supplemental Response at 1-3.

<sup>72</sup> See Memorandum to the File from Shannon Morrison, "Countervailing Duty Investigation of Welded Line Pipe from the Republic of Turkey: Recalculation of Percentage of Domestic Supply of Hot-Rolled Steel Accounted for by Eregli Demir ve Celik Fabrikalari T.A.S. and Iskenderun Iron & Steel Works Co.," dated March 16, 2015.

<sup>73</sup> Id.

<sup>74</sup> The facts available on the record indicate that Erdemir and Isdemir accounted for a substantial portion of the domestic production of HRS during the POI, and domestic production accounted for a majority of the total supply (inclusive of imports) of HRS during the POI. Therefore, a reasonable conclusion to draw from these facts is that, at a minimum, Erdemir and Isdemir account for "a substantial portion of the market." See CVD Preamble, 63 FR at 65377.

<sup>75</sup> See Softwood Lumber from Canada, and accompanying Issues and Decision Memorandum at "There are no market-based internal Canadian benchmarks" section.

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.<sup>76</sup>

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

Because we preliminarily find that tier one prices for HRS cannot serve as appropriate benchmarks, we next evaluated information on the record to determine whether tier two, or world market, prices were available to producers of subject merchandise in Turkey. The petitioners and Borusan submitted prices that they suggest are appropriate. Specifically, in February 2015, the petitioners submitted POI monthly export prices for various countries from Global Trade Information Services (GTIS) and POI price series from Steel Business Briefing (SBB) and Steel Orbis,<sup>77</sup> and Borusan submitted additional POI monthly export prices from GTIS, as well as price series from American Metal Market (AMM) (SteelBenchmarker), Metal Bulletin, MEPS (International) Ltd., SBB, and Steel Orbis.<sup>78</sup>

Consistent with our practice, we have not relied on certain of the SBB pricing series submitted by the petitioners because record information indicates that these prices are domestic prices (not export prices) in specific countries.<sup>79</sup> Therefore, they are not prices of HRS that would be available to purchasers in Turkey.<sup>80</sup> Furthermore, we have not relied on the remaining SBB pricing series submitted by the petitioners because record information indicates that these prices either: 1) include freight and other costs; or 2) are futures market prices.<sup>81</sup>

With respect to the information submitted by Borusan, we have not relied on: 1) the MEPS (International) Ltd. prices because record information indicates that these prices are domestic

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<sup>76</sup> Id., and accompanying Issues and Decision Memorandum at 38-39.

<sup>77</sup> See Letter from the Petitioners, “Welded Line Pipe from the Republic of Turkey: Submission of Factual Information- Benchmark Data,” dated February 13, 2015 (Petitioners’ Benchmark Submission).

<sup>78</sup> See Borusan Benchmark Submission.

<sup>79</sup> These SBB prices are domestic prices for Argentina, Brazil, Europe, India, Japan, Mexico, and the United States. See Petitioners’ Benchmark Submission at Exhibit 6A.

<sup>80</sup> See, e.g., OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at “Provision of HRS for LTAR.”

<sup>81</sup> These SBB prices are cost, insurance, and freight (or “CIF”) import prices for Europe and the United States or “CME Nymex HRC Futures” prices. See Petitioners’ Benchmark Submission at Exhibit 6A.

prices in specific countries and not export “free, on board” prices<sup>82</sup>; 2) the Steel Orbis “ex-Romania CFR” price series because these prices include freight and other costs<sup>83</sup>; or 3) the AMM and Metal Bulletin “World Export Market” price series because, based on the titles of these price series (*i.e.*, “World Export Market”), they appear to include prices for imports into Turkey. For example, Turkey is part of the “World” export market. As we explained above, we find that HRS prices stemming from transactions within Turkey—either from domestic purchases or from imports into the country (*i.e.*, tier one prices)—do not meet the requirement for the use of market-determined prices to measure the adequacy of remuneration. Therefore, we have not included the World Export Market price series in the benchmark because they may include prices for imports into Turkey.

Instead, for this preliminary determination, we are relying on the following 2013 data sources: GTIS POI monthly export prices, Metal Bulletin Latin America, Metal Bulletin CIS, Metal Bulletin India, Steel Orbis Russia, Steel Orbis Ukraine, Steel Orbis ex-works Europe, SBB Brazil, and SBB Russia. Section 351.511(a)(2)(ii) of the Department’s regulations states that where there is more than one commercially-available world market price, the Department will average the prices to the extent practicable. Therefore, we are weight averaging the GTIS data on the record while continuing to utilize the data from the list of non-GTIS sources discussed above.<sup>84</sup> Specifically, we first calculated simple averages across data sources per country or region (*e.g.*, Latin America) to determine an average unit value for each country. Then, we weight averaged those country- and region-specific unit prices to create single monthly weighted-average benchmark prices for HRS.

By weight averaging the GTIS unit prices in this instance, and furthermore, by continuing to include the other, non-GTIS data on the record, we maintain the most robust world market price possible that reflects the spectrum of conceivable prices available under market principles.<sup>85</sup>

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Regarding delivery charges, we added to the monthly benchmark prices ocean freight and inland freight charges that would be incurred to deliver HRS from a Turkish port to the companies’ facilities. For ocean freight, the petitioners placed on the record ocean freight pricing data from Maersk for the POI pertaining to shipments of HRS from various world ports to Turkey.<sup>86</sup> We averaged the international freight rates to derive the amount that we included in

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<sup>82</sup> The MEPS (International) Ltd. prices are domestic prices for India and the Commonwealth of Independent States (CIS). See Borusan Benchmark Submission at Exhibit 47.

<sup>83</sup> See Borusan Benchmark Submission at Exhibit 47. We have also not relied on the SBB “CbnStl HRC FOB Blk Sea” export price series submitted by Borusan because we do not have information on the record specifying the countries in this series that use the Black sea ports. See Borusan Initial Questionnaire Response at Exhibit 22. Such country information is necessary in order to construct a specific unit price for the weighted-average benchmark methodology used here.

<sup>84</sup> In addition, we removed exports from and imports to Turkey from the GTIS data.

<sup>85</sup> See Borusan Prelim Calc Memo; see also Toscelik Prelim Calc Memo.

<sup>86</sup> See Petitioners’ Benchmark Submission at Exhibit 2A.



our benchmark. For Borusan's inland freight rates, we used the rates that Borusan reported for shipments of HRS in Turkey.<sup>87</sup> For Toscelik's inland freight rates, we used the rates that Toscelik reported for port-to-plant inland freight on imported coils.<sup>88</sup> For both companies' calculations, we also added the applicable value added tax (VAT) and import duties, at the rates reported by the GOT.<sup>89</sup>

We then compared the monthly benchmark prices to each company's actual purchase prices for HRS, including taxes and delivery charges, as appropriate. For instances in which Borusan or Toscelik paid to Erdemir and Isdemir a lower unit price than the benchmark unit price, we multiplied the difference by the quantity of HRS that the company purchased to calculate the benefit.<sup>90</sup> Under this methodology, we preliminarily find that Borusan and Toscelik received a benefit to the extent that the prices they paid for HRS produced by Erdemir and Isdemir were for LTAR.<sup>91</sup>

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

On this basis, we preliminarily find that Borusan received a countervailable subsidy of 8.40 percent ad valorem. We preliminarily find that Toscelik received a countervailable subsidy of 2.55 percent ad valorem.<sup>92</sup>

## 2. Provision of Land for LTAR

According to the GOT, all enterprises or industries established in the 49 provinces which have a gross domestic product (GDP) per capita equal to or less than 1,500 U.S. dollars (as determined by the State Institute of Statistics as of 2001) or which have a negative socio-economic development index value (as determined by the State Planning Organization as of 2003) that are also located in Organized Industrial Zones (OIZs) can benefit from free land allocation support pursuant to Provisional Article 1 of Law 5084.<sup>93</sup> Further, the GOT states that this program is used to promote development and to increase employment in selected provinces.<sup>94</sup>

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<sup>87</sup> See Borsuan Initial Questionnaire Response at Exhibit 19.

<sup>88</sup> See Toscelik Initial Questionnaire Response at Exhibit 12.

<sup>89</sup> See GOT Initial Questionnaire Response at Exhibit 3. Because the GOT reported that duties on HRS range between zero and 15 percent depending on the subheading of the Harmonized Tariff System classification for HRS, we are using the average of these numbers (i.e., 7.5 percent) as the import duty rate in the benchmark.

<sup>90</sup> See Borusan Prelim Calc Memo; see also Toscelik Prelim Calc Memo.

<sup>91</sup> See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

<sup>92</sup> See the Borusan Prelim Calc Memo and the Toscelik Prelim Calc Memo for our calculations.

<sup>93</sup> See GOT Initial Questionnaire Response at III-33 through III-44 and Exhibits 8-9.

<sup>94</sup> Id., at Exhibit 8, Article 1.

Toscelik reported receiving free land in the Osmaniye OIZ pursuant to Law 5084 in 2008.<sup>95</sup> With respect to companies in the OIZs, the GOT states that pursuant to Provisional Article 1, non-allocated parcels in the OIZs located in the provinces subject to clause (b) of Article 2 of Law 5084 can be allocated to real or legal entities free of charge.<sup>96</sup> According to the GOT, for an investor to receive free land in the OIZs, the OIZ administration must approve the application, the investor must start production within two years, and the investor must employ at least ten people.<sup>97</sup>

The Department found this program to be countervailable in the OCTG Turkey CVD Final.<sup>98</sup> Specifically, the Department found that this program constitutes a financial contribution in the form of land provided for LTAR within the meaning of section 771(5)(D)(iii) of the Act.<sup>99</sup> Further, the Department determined that OIZs constituted a government authority.<sup>100</sup> Consistent with the OCTG Turkey CVD Final, information on the record of this investigation indicates that the OIZs themselves were established pursuant to Turkish law.<sup>101</sup> In addition, the text of Law 5084 states that its purpose is to:

Increase the investment and employment opportunities through implementing incentives for tax and insurance premiums in various provinces to provide . . . lands and plots free of charge for investments.<sup>102</sup>

Additionally, Article 7e of Law 5084 states that transactions that do not result in “additional capacity or employment increase” but are undertaken merely for “purposes of benefiting from incentives . . . shall not be entitled to incentives granted by this law.”<sup>103</sup> Further, Article 7i of Law 5084 states that the Ministries of Finance, Labor and Social Security, Industry and Commerce, and the Undersecretariat of Treasury are jointly authorized “to define the procedures and principles related with starting and completing any investment” subject to Law 5084.<sup>104</sup> Based on this record evidence, and consistent with the OCTG Turkey CVD Final, we preliminarily find that the OIZ is a GOT authority because it was created by the GOT and

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<sup>95</sup> See Toscelik Initial Questionnaire Response at 16-18.

<sup>96</sup> See GOT Initial Questionnaire Response at III-33.

<sup>97</sup> See GOT First Supplemental Response at 13.

<sup>98</sup> See OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at page 17; see also CWP Turkey 2011 AR, and accompanying Issues and Decision Memorandum at “Law 5084: Allocation of Free Land and Purchase of Land for LTAR.”

<sup>99</sup> See OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at page 17.

<sup>100</sup> Id.

<sup>101</sup> See GOT Initial Questionnaire Response at Exhibit 8; OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at page 17; and CWP Turkey 2011 AR, and accompanying Issues and Decision Memorandum at “Law 5084: Allocation of Free Land and Purchase of Land for LTAR.”

<sup>102</sup> See GOT Initial Questionnaire Response at Exhibit 8.

<sup>103</sup> Id.

<sup>104</sup> Id.

implements GOT guidelines and goals.<sup>105</sup> Thus, we preliminarily find that the allocation of free land to Toscelik by the OIZ authority constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

In OCTG Turkey CVD Final, the Department also found that the program was regionally-specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in the 49 eligible provinces.<sup>106</sup> In addition, the Department determined that Toscelik benefitted from the provision of free land under this OIZ program pursuant to section 771(5)(E)(iv) of the Act in that it was able to obtain goods (i.e., land) for less than it would otherwise pay in the absence of this subsidy.<sup>107</sup> Information on the record of this proceeding, as described above, is consistent with the information cited in the OCTG Turkey CVD Final. Therefore, consistent with the OCTG Turkey CVD Final, we preliminarily find that the allocation of free land to Toscelik is specific under section 771(5A)(D)(iv) of the Act and confers a benefit under section 771(5)(E)(iv) of the Act.

For the preliminary determination, we are relying upon the land benchmark data used in OCTG Turkey CVD Final. Specifically, we have used as our benchmark publicly available information concerning industrial land prices in Turkey for purposes of calculating a comparable commercial benchmark price for land available in Turkey.<sup>108</sup> We preliminarily find that this land price serves as a comparable commercial benchmark under 19 CFR 351.511(a)(2)(i).

To calculate the benefit, we multiplied the area of land Toscelik obtained free of charge from the GOT by the unit benchmark land price discussed above. Next, we performed the 0.5 percent test by dividing the benefit by Toscelik's total sales in 2008. Because the resulting ratio exceeded 0.5 percent of Toscelik's total sales, we allocated a portion of the benefit to the POI using the Department's standard grant allocation formula.<sup>109</sup> Toscelik did not report any long-term, Turkish lira-denominated debt which originated in 2008. We also lack information from the GOT concerning long-term interest rates in Turkey for 2008. Therefore, in accordance with 19 CFR 351.505(a)(3)(ii), we used the national average discount rate in Turkey for 2008 as the long-term discount rate utilized in the grant allocation formula. See the "Benchmark Interest Rates" section above for a description of the source of this rate.

We used the standard 15-year AUL described above in the "Allocation Period" section when conducting the grant allocation calculation. Our approach in this regard is consistent with the Department's approach in other land for LTAR programs involving the outright sale of land.<sup>110</sup>

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<sup>105</sup> See OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at "Provision of Land for LTAR."

<sup>106</sup> Id.

<sup>107</sup> Id.

<sup>108</sup> See Toscelik Prelim Calc Memo for the benchmark data from OCTG Turkey CVD Final.

<sup>109</sup> See 19 CFR 351.524(d).

<sup>110</sup> See, e.g., Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea, 67 FR 62102 (October 3, 2002), and accompanying Issues and Decision Memorandum at "Provision of Land at Asan Bay," in which the Department used the standard AUL for the steel

The Department is also examining a plot of land that Toscelik obtained in 2010 from the entity that operates the OIZ, the same entity that allocated free land to Toscelik in 2008. Because we find for purposes of this preliminary determination that the entity that operates the OIZ is a GOT authority, the land that it sold to Toscelik in 2010 constitutes a financial contribution within the meaning of section 771(5)(E)(iv) of the Act because it is limited to companies located in the 49 eligible provinces. We further preliminarily determine that the program confers a benefit to the extent that the land in question was sold to Toscelik for LTAR as described under section 771(5)(E)(iv) of the Act. The Department's findings in this regard are consistent with its prior determinations.<sup>111</sup>

To determine whether Toscelik's acquisition of land from the OIZ authority constitutes the provision of land for LTAR, we compared the price that Toscelik paid for the land in 2010 with a land benchmark that was derived using the same land benchmark information and methodology as described above. We divided the benefit amount received in 2010 by Toscelik's total sales for 2010 and found that the resulting ratio was greater than 0.5 percent. Therefore, we allocated a portion of the benefit to the POI using the Department's standard grant allocation formula.<sup>112</sup> We lack either: 1) company-specific information concerning interest rates charged to Toscelik on long-term, Turkish lira-denominated debt which originated in 2010; or 2) information from the GOT concerning long-term interest rates in Turkey for 2010. Therefore, in accordance with 19 CFR 351.505(a)(3)(ii), we used the national average discount rate in Turkey for 2010 as the long-term discount rate utilized in the grant allocation formula. See the "Benchmark Interest Rates" section above for a description of the source of this rate.

To calculate the net subsidy rate, we divided the amount of the subsidy allocated to the POI by Toscelik's POI sales value. On this basis, we preliminarily determine Toscelik's net subsidy rate under this program to be 0.32 percent ad valorem.

### 3. Law 5084: Energy Support<sup>113</sup>

The Ministry of Economy, General Directorate of Incentives and Implementation and Foreign Investments, administers the energy support program pursuant to Articles 2 and 6 of Law 5084.<sup>114</sup> According to the GOT, the main objective of this program is to reduce inter-regional

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industry, as indicated by the Internal Revenue Service tables, to allocate benefits received under a land for LTAR program to the POI.

<sup>111</sup> See CWP Turkey 2011 AR, and accompanying Issues and Decision Memorandum at "Law 5084: Allocation of Free Land and Purchase of Land for LTAR." See also OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at "Provision of Land for LTAR."

<sup>112</sup> See 19 CFR 351.524(d).

<sup>113</sup> In our initiation checklist, we referred to this program as "Provision of Electricity for LTAR," but noted that we found this subsidy to be a grant in OCTG Turkey CVD Final. See Initiation Checklist at 8. Toscelik reported receiving this subsidy in the form of a grant. See Toscelik Initial Questionnaire Response at 14. Therefore, we are now referring to this program as "Law 5084: Energy Support."

<sup>114</sup> See GOT Initial Questionnaire Response at III-25 and Exhibit 8.

disparities and to increase employment.<sup>115</sup> Specifically, all enterprises or industries established in the 49 provinces which have a GDP per capita equal to or less than 1,500 U.S. dollars (as determined by the State Institute of Statistics as of 2001) or which have a negative socio-economic development index value (as determined by the State Planning Organization as of 2003) can benefit from this program.<sup>116</sup> The GOT states that enterprises operating or investing in the designated provinces are eligible for support at rates ranging from 20 percent to 50 percent of the cost of electricity consumption depending on their existing employment levels and the number of new hires (not to exceed 50 percent support).<sup>117</sup>

Toscelik reported that it received a benefit under this program in the form of a grant.<sup>118</sup>

We preliminarily determine that this program provides a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. We further preliminarily determine that the energy subsidies provided under the program confer a benefit with the meaning of section 771(5)(E) of the Act in that Toscelik received a grant from the GOT to offset its electricity costs. We also preliminarily determine that this program is regionally-specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in the 49 eligible provinces. The Department's findings in this regard are consistent with its prior determinations.<sup>119</sup>

To calculate the benefit from the energy subsidies that Toscelik received under the energy support program, we summed the total amount of energy subsidies reported by Toscelik during the POI and treated it as a non-recurring grant. Next, in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate the non-recurring benefit from the grant over the AUL by dividing the approved amount by Toscelik's total sales during the POI. Because the resulting ratio was less than 0.5 percent of Toscelik's total sales, we allocated the benefit to the POI. On this basis, we preliminarily determine Toscelik's net countervailable subsidy rate under this program to be 0.02 percent ad valorem.

#### 4. Deductions from Taxable Income for Export Revenue

Addendum 4108 of Article 40 of the Income Tax Law Number 193, effective June 2, 1995, allows taxpayers engaged in export activities to claim a lump sum deduction from gross income resulting from exports, construction, maintenance, assembly, and transportation activities abroad in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings from such activities.<sup>120</sup> This deduction is to cover the expenditures without documentation incurred from

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<sup>115</sup> Id.

<sup>116</sup> Id., at III-25 –III-26.

<sup>117</sup> Id., at III-30.

<sup>118</sup> See Toscelik Initial Questionnaire Response at 11, 13 and 14.

<sup>119</sup> See CWP Turkey 2011 AR, and accompanying Issues and Decision Memorandum at “Law 5084: Energy Support.” See also OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at “Provision of Electricity for LTAR / Law 5084: Energy Support Program.”

<sup>120</sup> See GOT Initial Questionnaire Response at 38.

exports, construction, maintenance, assembly, and transportation activities abroad.<sup>121</sup> The deduction for export earnings may either be taken as a lump sum on a company's annual income tax return or be shown within the company's marketing, selling and distribution expense account of the income statement.<sup>122</sup> Under this program, marketing, selling, and distribution expenses are deductible expenditures for tax purposes. The Ministry of Finance is responsible for administering the program.<sup>123</sup>

Consistent with prior determinations, we preliminarily find that this tax deduction is a countervailable subsidy.<sup>124</sup> The income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, because it represents revenue forgone by the GOT. The deduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. It is also specific under section 771(5A)(B) of the Act because its receipt is contingent upon export earnings. During the POI, BMB, Istikbal, and Tosyali Dis reported receiving the deduction for export earnings with respect to their 2012 tax returns filed during the POI.<sup>125</sup>

The Department typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1). The amount of the benefit is equal to the amount of tax that would have been paid absent the program.

To calculate the countervailable subsidy rate for Borusan, we divided BMB's and Istikbal's combined tax savings by Borusan's total export sales value for the POI. For Tosyali Dis, we divided its tax savings by Toscelik's total export sales value for the POI. On this basis, we preliminarily determine the net countervailable subsidy for this program to be 0.20 percent ad valorem for Borusan and 0.03 percent ad valorem for Toscelik.

## 5. Export Financing

The respondents reported receiving benefits from two export financing programs: 1) Rediscount Program; and 2) Post-Shipment Rediscount Credit Program.

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<sup>121</sup> Id.

<sup>122</sup> Id., at Exhibit 10.

<sup>123</sup> Id., at III-40 and Exhibit 10.

<sup>124</sup> See, e.g., Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review, 77 FR 46713 (August 16, 2012), and accompanying Issues and Decision Memorandum at "Deduction from Taxable Income for Export Revenue"; and OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at "Deduction from Taxable Income for Export Revenue."

<sup>125</sup> See Borusan Initial Questionnaire Response at 21; see also Toscelik Initial Questionnaire Response at 21.

## Rediscount Program<sup>126</sup>

The Rediscount Program was established in 1999 and is administered by the Export Credit Bank of Turkey (Turk Eximbank).<sup>127</sup> The Rediscount Program was designed to provide financial support to Turkish exporters, manufacturer-exporters, and manufacturers supplying exporters.<sup>128</sup> This program is contingent upon an export commitment.<sup>129</sup> Under the Rediscount Program, there is a minimum loan amount of 200,000 U.S. dollars per company.<sup>130</sup> Loan payments shall be made within the credit period or at maturity to the Turk Eximbank.<sup>131</sup> Companies can repay either in the foreign currency in which the loan was obtained or in a Turkish-lira equivalent of the principal and interest based on exchange rates determined by the Turk Eximbank.<sup>132</sup> Borusan and Toscelik reported that they had loans outstanding under this program during the POI.<sup>133</sup>

We preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT under 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amount paid by the company for the loans during the POI and the amount the company would have paid on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance. The Department's finding in this regard is consistent with its practice.<sup>134</sup>

In calculating the benefit pursuant to section 771(6)(A) of the Act and 19 CFR 351.505(a)(1), we applied a discounted benchmark interest rate because a borrower pays the interest due upfront when the loan is received. Further, for Borusan, in accordance with section 771(6)(A) of the Act, we subtracted the fees that Borusan paid for guarantees required for receipt of the loans from the benefit calculation. For Toscelik, we did not subtract such fees from the benefit calculation because we have no information that Toscelik paid such fees. To calculate the countervailable subsidy rates, we divided each company's benefit amount by its respective total export sales value for the POI. On this basis, we preliminarily determine that the net countervailable subsidy rates for this program are 0.22 percent ad valorem for Borusan and 0.78 percent ad valorem for Toscelik.

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<sup>126</sup> In our initiation checklist, we referred to this program as the "Short-Term Pre-Shipment Rediscount Program." See Initiation Checklist at 12. However, according to the GOT, this was the previous name of the program now called "Rediscount Program." See GOT Initial Questionnaire Response at III-83.

<sup>127</sup> See GOT Initial Questionnaire Response at III-83.

<sup>128</sup> Id.

<sup>129</sup> Id., at III-87 – 88 and Exhibit 15.

<sup>130</sup> Id., at III-86.

<sup>131</sup> Id., at III-87.

<sup>132</sup> Id.

<sup>133</sup> See Toscelik Initial Questionnaire Response at 23-27; see also Borusan Initial Questionnaire Response at 28-33.

<sup>134</sup> See, e.g., CWP Turkey 2011 AR, and accompanying Issues and Decision Memorandum at 6-7; and OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at 11-12.

### Post-Shipment Rediscount Credit Program

This program was not alleged by the petitioners, but Toscelik reported receiving loans under this program in response to our initial questionnaire.<sup>135</sup> The GOT also provided a response with respect to this program.<sup>136</sup>

The Post-Shipment Rediscount Credit Program was established in 1996.<sup>137</sup> This program is administered by the Turk Eximbank. This program is designed to provide financial support to exporters, manufacturer-exporters and manufacturers supplying exporters.<sup>138</sup> This program is contingent upon an export commitment.<sup>139</sup> Loan payments are made within the credit period or at maturity to the Turk Eximbank.<sup>140</sup>

Tosyali Dis reported that it had loans outstanding under this program during the POI.<sup>141</sup>

We preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT under 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amount paid by the company for the loans during the POI and the amount the company would have paid on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

In calculating the benefit pursuant to section 771(6)(A) of the Act and 19 CFR 351.505(a)(1), we applied a discounted benchmark interest rate because a borrower pays the interest due upfront when the loan is received. We did not subtract such fees from the benefit calculation because we have no information that Toscelik paid such fees. To calculate the countervailable subsidy rates, we divided Toscelik's benefit amount by its respective total export sales value for the POI. On this basis, we preliminarily determine that the net countervailable subsidy rate for this program is 0.01 percent ad valorem for Toscelik.

### 6. Investment Encouragement Program (IEP): Customs Duty and VAT Exemptions

The GOT provides certificates through the IEP that qualified recipients use to import items duty free. The Council of Ministers' Decision No. 2009/15199, which was replaced with Decree No. 2012/3305 in June 2012, provides producers Investment Encouragement Certificates to receive customs duty and VAT exemptions on equipment imported for use.<sup>142</sup> Under Article 3.2 of

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<sup>135</sup> See Toscelik Initial Questionnaire Response at 24-27 and Exhibit 21.

<sup>136</sup> See GOT Initial Questionnaire Response at III-91 through III-100.

<sup>137</sup> *Id.*, at III-91.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*, at III-98.

<sup>140</sup> *Id.*, at III-87.

<sup>141</sup> See Toscelik Initial Questionnaire Response at 24-27.

<sup>142</sup> See GOT Initial Questionnaire Response at III-59 and Exhibits 12 and 13.



Decree No. 2009/15199, the customs duty and VAT exemption program is limited to firms that make an investment in excess of 50 million Turkish lira.<sup>143</sup> Additionally, the decree limits such exemptions for iron and steel investments to certain regions.<sup>144</sup> The Ministry of Economy and the Ministry of Customs and Trade administers this program.<sup>145</sup> Borusan and Toscelik reported receiving certificates under this program after 2009; however, only Borusan reported receiving exemptions on imports of equipment under the program during the POI.<sup>146, 147</sup>

Consistent with previous determinations,<sup>148</sup> we preliminarily find that benefits received under exemption licenses granted after January 1, 2009, constitute a financial contribution in the form of revenue forgone within the meaning of section 771(5)(E) of the Act in the amount of the tax savings. Further, we preliminarily find that this program is limited to firms making investments in excess of 50 million Turkish lira. Thus, the program is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we derived the amount of customs duties and VAT that Borusan would have paid absent the program. We first analyzed whether the exemptions on imports of capital equipment during the POI were allocable as non-recurring subsidies.<sup>149</sup> Borusan's exemptions during the POI were less than 0.5 percent of its POI sales. Therefore, we expensed the benefit to the year of receipt (i.e., the POI).<sup>150</sup>

To calculate the countervailable subsidy rate, we divided the benefit amount by Borusan's total sales value during the POI. On this basis, we preliminarily determine that the net countervailable subsidy rate for this program is 0.03 percent ad valorem for Borusan.

## 7. Exemption from Property Tax

The Turkish Ministry of Finance administers this program pursuant to Article 4 of Law No. 3365, which came into force on January 1, 1987.<sup>151</sup> The program's objective is to increase the

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<sup>143</sup> See GOT First Supplemental Response at Exhibit 19.

<sup>144</sup> Id.

<sup>145</sup> See GOT Initial Questionnaire Response at III-60 and III-62.

<sup>146</sup> See Borusan Initial Questionnaire Response at 33-36 and Exhibits 31, 32, 33, and 34.

<sup>147</sup> Toscelik reported that the benefits it received under this program in the form of exemptions on imports of equipment were expensed prior to the POI. See Toscelik Initial Questionnaire Response at 28-29.

<sup>148</sup> See CWP Turkey 2011 AR, and accompanying Issues and Decision Memorandum at "Investment Encouragement Program (IEP): Customs Duty Exemptions"; see also OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at "Investment Encouragement Program (IEP): Customs Duty Exemptions."

<sup>149</sup> See 19 CFR 351.524(c).

<sup>150</sup> See 19 CFR 351.524(b)(2).

<sup>151</sup> See GOT Initial Questionnaire Response at III-74.

investment opportunities in OIZs.<sup>152</sup> The GOT provides an exemption of property tax for the first five years following the completion date of the construction of buildings.<sup>153</sup>

Toscelik reported that it received an exemption from property tax during the POI with respect to its Osmaniye facilities because of its location in the OIZ.<sup>154</sup>

We preliminarily find that this program constitutes a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. We also determine that tax benefits under the program conferred a benefit under section 771(5)(E) of the Act. Further, we determine that this program is regionally-specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in the OIZ. Our findings in this regard are consistent with the Department's practice.<sup>155</sup>

To calculate the benefit from the tax relief that Toscelik received under the property tax exemption program, we summed the total amount of property tax savings reported by Toscelik during the POI and divided the amount of the benefit by Toscelik's total sales value during the POI. On this basis, we determine Toscelik's net subsidy rate under this program to be 0.01 percent ad valorem.

#### 8. Law 6486: Social Security Premium Incentive

This program was not alleged by the petitioners, but Toscelik reported receiving benefits under this program in its supplemental questionnaire response.<sup>156</sup> The GOT also provided a response with respect to this program.<sup>157</sup>

According to the GOT, this program was established in May 2013 under Law 6486 as a provision added to Law 5510; under Turkish law, the program took effect on January 1, 2013.<sup>158</sup> The Social Security Institution of the GOT administers this program.<sup>159</sup> The purpose of this program, as set forth in Article 1 of Decree No. 2013/4966, is to support production and employment levels in certain provinces by reducing the cost of the insurance premiums paid by employers to thereby reduce unregistered employment.<sup>160</sup> Companies employing at least 10 workers and operating in the provinces determined by the Council of Ministers are eligible for

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<sup>152</sup> Id.

<sup>153</sup> Id.

<sup>154</sup> See Toscelik Initial Questionnaire Response at 33-34.

<sup>155</sup> See, e.g., CWP Turkey 2011 AR Issues and Decision Memorandum at "Organized Industrial Zone (OIZ): Exemption from Property Tax"; see also OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at "Exemption from Property Tax."

<sup>156</sup> See Toscelik Second and Third Supplemental Response at 5-6.

<sup>157</sup> See GOT First Supplemental Response at 20-26.

<sup>158</sup> Id., at 21.

<sup>159</sup> Id., at 21 and 23.

<sup>160</sup> Id., at 21 and Exhibit 22.

this program.<sup>161</sup> Employers can benefit from this program by not paying the employers' share of long-term social security insurance premiums (11 percent in total).<sup>162</sup>

Toscelik reported that it received benefits under this program during the POI because of its locations in Osmaniye and Iskenderun, which are eligible provinces.<sup>163</sup>

We preliminarily find that Toscelik's exemption from paying its share of insurance premiums under this program during the POI constitutes a financial contribution in the form of revenue forgone to the GOT within the meaning of section 771(5)(D)(ii) of the Act. We further determine that Toscelik benefitted under this program pursuant to section 771(5)(E) of the Act in the amount of the insurance premiums that Toscelik did not pay. We also preliminarily find that this program is regionally-specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in the eligible provinces.

To calculate the benefit Toscelik received under the program, we summed the total amount of insurance premium savings reported by Toscelik during the POI. To calculate the net subsidy rate, we divided the benefit by Toscelik's total sales value during the POI. On this basis, we preliminarily determine Toscelik's net subsidy rate under this program to be 0.04 percent ad valorem.

## B. Programs Preliminarily Found Not To Be Countervailable

### 1. Export Insurance Provided By the Turk Eximbank

Through this program, exporters can obtain export credit insurance from the Turk Eximbank. This program consists of one-year blanket insurance policies for export shipments that cover up to 90 percent of losses incurred due to political risk and commercial risk.<sup>164</sup> The program was established in 1987.<sup>165</sup>

According to the GOT, shipments paid by irrevocable letter of credit issued by a commercial bank or finance institution are not subject to insurance coverage under this program.<sup>166</sup> Further, under the program, policyholders are required to make monthly declarations of shipments to the Turk Eximbank.<sup>167</sup>

Although Tosyali Dis had a short-term export credit insurance policy with the Turk Eximbank during the POI, both the GOT and Tosyali Dis reported that none of the covered shipments were

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<sup>161</sup> Id., at 21.

<sup>162</sup> Id., at 23.

<sup>163</sup> See Toscelik Second and Third Supplemental Response at 6 and Exhibit 10.

<sup>164</sup> See GOT Initial Questionnaire Response at III-48 and III-49.

<sup>165</sup> Id., at III-49.

<sup>166</sup> See GOT First Supplemental Response at 17.

<sup>167</sup> Id.

made to the United States.<sup>168</sup> In addition, the GOT reported that Toscelik neither submitted an insurance claim nor received a reimbursement under this program during the POI.<sup>169</sup> Further, according to the GOT, the premiums paid for the export credit insurance exceeded the operating costs of the program.<sup>170</sup> On this basis, consistent with Standard Pipe from Turkey,<sup>171</sup> and in accordance with 19 CFR 351.520(a)(1), we preliminarily find that the export insurance program did not confer countervailable benefits to Toscelik during the POI.

## 2. Export Financing: Export-Oriented Working Capital Program

This program was not alleged by the petitioners, but Toscelik reported receiving loans under this program in response to our initial questionnaire.<sup>172</sup> The GOT also provided a response with respect to this program.<sup>173</sup>

The Export-Oriented Working Capital Program was established in January 2012. This program is administered by the Turk Eximbank. This program is designed to provide financial support to manufacturer-exporters and manufacturers supplying exporters purchasing raw materials, intermediate goods, and machinery and equipment.<sup>174</sup> This program is contingent upon an export commitment.<sup>175</sup>

Toscelik reported that it had loans outstanding under this program during the POI.<sup>176</sup>

We preliminarily find that this loan confers a countervailable subsidy within the meaning of section 771(5) of the Act. The loan constitutes a financial contribution in the form of a direct transfer of funds from the GOT under 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amount paid by the company for the loan during the POI and the amount the company would have paid on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loan is contingent upon export performance.

In computing the benefit pursuant to section 771(6)(A) of the Act and 19 CFR 351.505(a)(1), we determined that the interest rate Toscelik paid on this loan is greater than the benchmark long-

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<sup>168</sup> See GOT Initial Questionnaire Response at III-49, and GOT First Supplemental Response at 16-18 and Exhibit 18; see also Toscelik Initial Questionnaire Response at 28.

<sup>169</sup> See GOT First Supplemental Response at 17.

<sup>170</sup> See GOT Initial Questionnaire Response at III-59.

<sup>171</sup> See Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 71 FR 43111 (July 31, 2006) (Standard Pipe from Turkey), and accompanying Issues and Decision Memorandum at “Export Credit Insurance.”

<sup>172</sup> See Toscelik Affiliation Questionnaire Response at 24-27 and Exhibit 21.

<sup>173</sup> See GOT Initial Questionnaire Response at III-100 through III-108.

<sup>174</sup> Id., at III-101.

<sup>175</sup> Id., at III-106.

<sup>176</sup> See Toscelik Initial Questionnaire Response at 24-27.

term U.S. dollar interest rate obtained from International Financial Statistics.<sup>177</sup> Therefore, on this basis, we preliminarily find that the export-oriented working capital program did not confer countervailable benefits to Toscelik during the POI.

### 3. Export Finance Intermediation Loan

This program was not alleged by the petitioners, but the GOT and Toscelik reported that Toscelik had loans outstanding under this program during the POI.<sup>178</sup>

The Export Finance Intermediation Loan–IV program was established by the Fourth Export Finance Intermediation Loan Agreement 7539-TU between the Turk Eximbank and the International Bank for Reconstruction and Development in 2008.<sup>179</sup> As this is a program funded by an international development institution, we preliminarily find that this program is not countervailable in accordance with 19 CFR 351.527(b).

### C. Programs Preliminarily Found Not To Be Used

1. Provision of Lignite for LTAR
2. Incentives for Research & Development (R&D) Activities
  - a. Tax Breaks
  - b. Product Development R&D Support-UFT
3. Pre-Export Credits Program
4. Large-Scale Investment Incentives
  - a. VAT and Customs Duty Exemptions
  - b. Tax Reductions
  - c. Income Tax Withholdings
  - d. Social Security and Interest Support
  - e. Land Allocation
5. 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
6. Law 5084: Withholding of Income Tax on Wages and Salaries
7. Law 5084: Incentive for Employer's Share in Insurance Premiums

## **VIII. ITC NOTIFICATION**

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information

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<sup>177</sup> See Toscelik Prelim Calc Memo at Attachment 14.

<sup>178</sup> See Toscelik Second and Third Supplemental Response at 14 and Exhibit 18; see also GOT Initial Questionnaire Response at III-109 - 117.

<sup>179</sup> See GOT Initial Questionnaire Response at III-109 and GOT First Supplemental Response at Exhibit 25.

relating to this investigation. We will allow the ITC access to all privileged and business proprietary information pertaining to this case, provided the ITC confirms that it will not disclose such information, either publicly or under an APO, without the written consent of the Assistant Secretary for Enforcement and Compliance.

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

## **IX. DISCLOSURE AND PUBLIC COMMENT**

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.<sup>180</sup> Case briefs may be submitted to Enforcement and Compliance's AD and CVD Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.<sup>181</sup>

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>182</sup> This summary should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must do so in writing within 30 days after the publication of this preliminary determination in the Federal Register.<sup>183</sup> Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, at a date, time, and location to be determined. Parties will be notified of the date, time, and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.<sup>184</sup> Electronically-filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time on the due dates established above.<sup>185</sup>

## **X. VERIFICATION**

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

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<sup>180</sup> See 19 CFR 351.224(b).

<sup>181</sup> See 19 CFR 351.309.

<sup>182</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>183</sup> See 19 CFR 351.310(c).

<sup>184</sup> See 19 CFR 351.303(b)(2)(i).

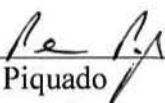
<sup>185</sup> See 19 CFR 351.03(b)(1).

## XI. CONCLUSION

We recommend that you approve the preliminary findings described above.

✓  
Agree

\_\_\_\_\_  
Disagree

  
Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

16 MARCH 2015  
(Date)