



C-489-823

Investigation

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DATE: October 5, 2015

MEMORANDUM TO: Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final 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) 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 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties:

### Issues

1. Application of Adverse Facts Available (AFA) to Borusan Istikbal Ticaret (Istikbal), Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB), Borusan Mannesmann Boru Yatirim Holding A.S. (BMBYH), and Borusan Holding A.S. (Borusan Holding) (collectively, Borusan)
2. Provision of Hot Rolled Steel (HRS) for Less than Adequate Remuneration (LTAR) - Whether Ereğli Demir ve Çelik Fabrikalari T.A.S. (Erdemir) and Iskenderun Iron & Steel Works Co. (Isdemir) Are "Authorities"
3. Provision of HRS for LTAR – Using a Tier One or Tier Two Benchmark
4. Other Arguments Related to the HRS for LTAR Program
5. Provision of Land for LTAR Program
6. The Sales Denominator Used for Toscelik Profil ve Sac Endustrisi A.S. (Toscelik Profil), Tosiye Demir Çelik Sanayi A.S. (Tosiye Demir), Tosiye Dis Ticaret A.S. (Tosiye Dis), Tosiye Elektrik Enerjisi Tiptan Satis Ith. Ihr. A.S. (Tosiye Elektrik), and Tosiye Holding A.S. (Tosiye Holding) (collectively, Toscelik)
7. Specificity and Countervailability of the Investment Encouragement Program (IEP): Customs Duty and Value Added Tax (VAT) Exemption



## II. BACKGROUND

### A. Case History

The mandatory respondents in this investigation are Borusan and Toscelik. On March 20, 2015, the Department published the Preliminary Determination in this investigation.<sup>1</sup> On the same date, Borusan timely filed an allegation of ministerial errors in the Preliminary Determination.<sup>2</sup> The Department responded to these allegations on April 10, 2015, finding that these items either were not errors within the meaning of 19 CFR 351.224(f), or did not meet the definition of a “significant” ministerial error pursuant to 19 CFR 351.224(g).<sup>3</sup> On April 14, 2015, Borusan notified the Department that it would not be participating in verification.

Between April 29, 2015 and May 5, 2015, we conducted verification at the offices of Toscelik and the Government of Turkey (GOT), in accordance with section 782(i) of the Act, as amended (the Act).

We invited parties to comment on the Preliminary Determination. In July 2015, we received case and rebuttal briefs from the GOT, Toscelik, the petitioners,<sup>4</sup> and Maverick. We also received a rebuttal brief from Borusan. No interested party requested a hearing.

### III. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply “facts otherwise available” if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the

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<sup>1</sup> See Welded Line Pipe From the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination, 80 FR 14943 (March 20, 2015) and accompanying Preliminary Decision Memorandum (Preliminary Determination).

<sup>2</sup> See letter from Borusan, Re: “Welded API Line Pipe from Turkey, Case No. C-489-823: Borusan’s Ministerial Error Comments on the Preliminary Determination,” dated March 20, 2015.

<sup>3</sup> See Memorandum to Christian Marsh, Re: “Countervailing Duty Investigation of Welded Line Pipe from Turkey: Ministerial Error Allegations in the Preliminary Determination,” dated April 10, 2015.

<sup>4</sup> The petitioners in this investigation are American Cast Iron Pipe Company, Energex Tube (a division of JMC Steel Group), Northwest Pipe Company, Stupp Corporation (a division of Stupp Bros., Inc.), Tex-Tube Company, TMK IPSCO, and Welspun Tubular LLC USA (collectively, the petitioners), as well as Maverick Tube Corporation (Maverick).

deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the antidumping and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.<sup>5</sup> The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.<sup>6</sup>

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.<sup>7</sup> Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.<sup>8</sup>

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of a review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>9</sup> Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.<sup>10</sup> Further, and under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.<sup>11</sup>

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a

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<sup>5</sup> See TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 FR 46793 (August 6, 2015) (Applicability Notice). The text of the TPEA may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

<sup>6</sup> See Applicability Notice, 80 FR at 46794-95.

<sup>7</sup> See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

<sup>8</sup> See also 19 CFR 351.308(c).

<sup>9</sup> See also 19 CFR 351.308(d).

<sup>10</sup> See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. No. 103-316, vol. 1 at 870 (1994).

<sup>11</sup> See section 776(c)(2) of the Act; TPEA, section 502(2).

countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.<sup>12</sup> The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.<sup>13</sup>

#### **A. Application of the AFA Rate: Borusan**

As noted in the “Summary” section above, Borusan notified the Department after the Preliminary Determination that it would not be participating in the statutorily mandated verification in this investigation. By refusing to participate in verification, Borusan significantly impeded the investigation and provided information that cannot be verified as provided by section 782(i) of the Act. Thus, for the final determination, pursuant to sections 776(a)(2)(C) and (D) of the Act, we are basing the CVD rate for Borusan on facts otherwise available.

We also determine that an adverse inference is warranted for Borusan, pursuant to section 776(b) of the Act. By failing to participate in verification, Borusan did not cooperate to the best of its ability in this investigation. Accordingly, we find that AFA is warranted to ensure that Borusan does not obtain a more favorable result by failing to cooperate than had it fully participated in this investigation.

#### **B. Selection of AFA Rates**

It is the Department’s practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for a cooperating respondent in the same investigation, or, if not available, rates calculated in prior CVD cases involving the same country.<sup>14</sup> Specifically, the Department applies the highest calculated rate for the identical program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-de minimis rate calculated for the identical program in another CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-de minimis rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-de minimis subsidy rate calculated for a similar program, the

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<sup>12</sup> See section 776(d)(1) of the Act; TPEA, section 502(3).

<sup>13</sup> See section 776(d)(3) of the Act; TPEA, section 502(3).

<sup>14</sup> See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 70971, 70975 (November 24, 2008) (unchanged in Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum at “Application of Facts Available, Including the Application of Adverse Inferences”); see also Aluminum Extrusions From the People’s Republic of China: Final Affirmative Countervailing Duty Determination, 76 FR 18521 (April 4, 2011) (Aluminum Extrusions from the PRC), and accompanying Issues and Decision Memorandum at “Application of Adverse Inferences: Non-Cooperative Companies.”

Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.<sup>15</sup>

In applying AFA to Borusan, we are guided by the Department's methodology detailed above. Because Borsuan failed to act to the best of its ability in this investigation, as discussed above, we made an adverse inference that it benefitted from the programs appearing below. To calculate the program rate for the seven income tax programs alleged in the petition which pertain to either the reduction of income tax paid or the payment of no income tax, we applied an adverse inference that Borusan paid no income tax during the POI. The standard income tax rate for corporations in Turkey in effect during the POI was 20 percent.<sup>16</sup> Thus, the highest possible benefit for these seven income tax programs is 20 percent. Accordingly, we are applying the 20 percent AFA rate on a combined basis (*i.e.*, the seven programs combine to provide a 20 percent benefit).<sup>17</sup> These programs include "Deductions from Taxable Income for Export Revenue," "Incentives for Research and Development (R&D) Activities – Tax Breaks," "Large Scale Investment Incentives – Tax Reductions," "Large Scale Investment Incentives – Income Tax Withholdings," "Strategic Investment Incentives – Tax Reductions," "Strategic Investment Incentives – Income Tax Withholdings," and "Law 5084: Withholding of Income Tax on Wage and Salaries."

Further, we are applying the above-zero rates calculated for Toscelik in this investigation for the following identical programs:

- Provision of HRS for LTAR
- Provision of Land for LTAR
- Law 5084: Energy Support
- Rediscount Program
- Post-Shipment Rediscount Credit Program
- Exemption from Property Tax
- Law 6486: Social Security Premium Incentive

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<sup>15</sup> *Id.*; see also Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008) (Thermal Paper from the PRC), and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available Rate."

<sup>16</sup> See 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) at Exhibit 15.

<sup>17</sup> Applying a separate AFA rate to each of these income tax programs would otherwise amount to a combined rate exceeding the standard corporate income tax rate in Turkey in effect during the POI.

For programs for which we did not calculate an above-zero rate for Toscelik in this proceeding, we are applying the highest subsidy rate calculated for the same or, if lacking such rate, for a similar program in a CVD investigation or administrative review involving Turkey. We are able to match based on program name, descriptions, and treatment of the benefit, the following program to the same program from other Turkish CVD proceedings:

- Provision of Lignite for LTAR<sup>18</sup>

We are able to match, based on program type and treatment of the benefit, the following programs to the highest rates for similar programs from other Turkish CVD proceedings:

- Export-Oriented Working Capital Program<sup>19</sup>
- Incentives for R&D Activities – Product Development R&D Support-UFT<sup>20</sup>
- Pre-Export Credits Program<sup>21</sup>
- Large Scale Investment Incentives – Social Security and Interest Support<sup>22</sup>
- Large Scale Investment Incentives – Land Allocation<sup>23</sup>
- Strategic Investment Incentives – Social Security and Interest Support<sup>24</sup>
- Strategic Investment Incentives – Land Allocation<sup>25</sup>
- Export Insurance Provided By the Turk Eximbank<sup>26</sup>
- Law 5084: Incentive for Employer’s Share in Insurance Premiums<sup>27</sup>

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<sup>18</sup> See Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination, 79 FR 54963 (September 15, 2014), and accompanying Issues and Decision Memorandum at 17.

<sup>19</sup> See Final Affirmative Countervailing Duty Determination: Certain Pasta (“Pasta”) from Turkey, 61 FR 30366, 30367 (July 14, 1996) (Pasta Investigation).

<sup>20</sup> Id. at 30368.

<sup>21</sup> Id. at 30367.

<sup>22</sup> Id. at 30368.

<sup>23</sup> See Final Results of Remand Redetermination, Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. and Borusan Istikbal Ticaret v. United States; Maverick Tube Corporation v. United States, Consol. Ct. No. 14-00229, 61 F. Supp. 3d 1306 and Slip Op. 15-59 (OCTG from Turkey Remand Redetermination), at 18.

<sup>24</sup> See Pasta Investigation, 61 FR at 30368.

<sup>25</sup> See OCTG from Turkey Remand Redetermination at 18.

<sup>26</sup> See Pasta Investigation, 61 FR at 30367.

<sup>27</sup> Id. at 30368.

Finally, for the programs listed below, because we are unable to find above-de minimis rates calculated for the same or similar programs, we are applying the highest calculated subsidy rate for any program identified in a Turkish CVD proceeding that could conceivably be used by Borusan:<sup>28</sup>

- IEP – Customs Duty Exemption<sup>29, 30</sup>
- IEP – VAT Exemption<sup>31</sup>
- Large-Scale Investment Incentives – VAT Exemption<sup>32</sup>
- Large-Scale Investment Incentives – Customs Duty Exemption<sup>33</sup>
- Strategic Investment Incentives – VAT Exemption<sup>34</sup>
- Strategic Investment Incentives – Customs Duty Exemption<sup>35</sup>

Accordingly, we determine the AFA countervailable subsidy rate for Borusan to be 152.20 percent ad valorem. Listed below are the AFA rates applicable to each program and whether these programs are export subsidies:

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<sup>28</sup> To this end, we excluded rates from any company-specific programs (e.g., any debt forgiveness granted under exceptional circumstances to a particular company), or from programs that would not conceivably benefit the industry to which Borusan belongs (e.g., free wheat for pasta exporters).

<sup>29</sup> Because the GOT reported that the IEP customs duty and VAT exemptions are two separate programs, we have treated them as such for purposes of calculating an AFA rate for Borusan. 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), at 19.

<sup>30</sup> See Final Affirmative Countervailing Duty Determinations; Certain Welded Carbon, 51 FR 1268, 1270 (January 10, 1986).

<sup>31</sup> Id.

<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> Id.

<sup>35</sup> Id.

Program	AFA Rate Borusan	Export Subsidy
Income Tax Programs a. Deduction from Taxable Income for Export Revenue b. Incentives for R&D Activities – Tax Breaks c. Large Scale Investment Incentives – Tax Reductions d. Large Scale Investment Incentives – Income Tax Withholdings e. Strategic Investment Incentives – Tax Reductions f. Strategic Investment Incentives – Income Tax Withholdings g. Law 5084: Withholding of Income Tax on Wage and Salaries	20.00%	No <sup>36</sup> (for all programs except a)
Provision of HRS for LTAR	0.06%	No
Provision of Land for LTAR	0.32%	No
Law 5084: Energy Support	0.02%	No
Rediscount Program	0.82%	Yes
Post-Shipment Rediscount Credit Program	0.01%	Yes
Exemption from Property Tax	0.01%	No
Law 6486: Social Security Premium Incentive	0.04%	No
Provision of Lignite for LTAR	1.08%	No
Export-Oriented Working Capital Program	8.82%	Yes
Incentives for R&D Activities – Product Development R&D Support UFT	3.79%	No
Pre-Export Credit Programs	8.82%	Yes
Export Insurance Provided by the Turk Eximbank	8.82%	Yes
Law 5084: Incentive for Employer's Share in Insurance Premiums	3.79%	No
IEP		
a. Customs Duty Exemptions	14.01%	No
b. VAT Exemptions	14.01%	No
Large Scale Investment Incentives		
a. Customs Duty Exemptions	14.01%	No
b. VAT Exemptions	14.01%	No
c. Social Security and Interest Support	3.79%	No
d. Land Allocation	2.08%	No

<sup>36</sup> As noted above, we applied an adverse inference that Borusan paid no income tax during the POI. Thus, the highest possible benefit for these seven tax programs is 20 percent. However, only one of these income tax programs (i.e., “Deduction from Taxable Income for Export Revenue”) is an export subsidy. Because the only information on the record specific to this program is the subsidy rate calculated for Toscelik, we are including the 0.03 percent rate calculated for Toscelik for this program as part of the export subsidy offsets for Borusan in the companion antidumping duty investigation.

Strategic Investment Incentives		
a. Customs Duty Exemptions	14.01%	No
b. VAT Exemptions	14.01%	No
c. Social Security and Interest Support	3.79%	No
d. Land Allocation	2.08%	No
	<b>152.20%</b>	

#### IV. SUBSIDIES VALUATION INFORMATION

##### A. Period of Investigation

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

##### B. 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>37</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>38</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 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.

##### C. Attribution of Subsidies

Cross Ownership: In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. 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.

<sup>37</sup> See 19 CFR 351.524(b).

<sup>38</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>39</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>40</sup>

### Toscelik

Toscelik responded to the Department's questionnaire on behalf of: 1) Toscelik Profil, the producer of subject merchandise; 2) Tosityali 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) Tosityali Elektrik, an electricity wholesaler that supplied electricity to Toscelik Profil during the POI; 4) Tosityali Demir, a producer of long steel products, which sells steel scrap to Toscelik Profil; 5) Tosityali Metal Ambalaj Sanayi A.S. (Tosityali Metal), a company which merged with Toscelik Profil in December 2013; and 6) Tosityali Holding, the holding company for the entire Toscelik group of companies (including Toscelik Profil, Tosityali Demir, Tosityali Dis, Tosityali Elektrik, and Tosityali Metal). Toscelik reported that three brothers, Mr. Fuat Tosityali, Mr. E. Ayhan Tosityali, and Mr. M. Fatih Tosityali, owned or controlled these six companies.

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

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<sup>39</sup> See Countervailing Duties: Final Rule 63 FR 65347, 65401 (November 25, 1998) (CVD Preamble).

<sup>40</sup> See Fabrique de Fer de Charleroi, SA v. United States, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

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, Tosityali Metal merged with Toscelik Profil in December 2013,<sup>41</sup> and Toscelik stated that it included Tosityali Metal's POI sales with those of Toscelik Profil.<sup>42</sup> As a result, we are attributing the benefit from subsidies received by Tosityali Metal to the sales of Toscelik Profil.

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

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

Tosityali Elektrik supplied electricity to Toscelik Profil during the POI.<sup>43</sup> Regardless of whether subsidies to Tosityali Elektrik are attributable to Toscelik Profil under 19 CFR 351.525(b)(6)(ii)-(v), we find no record evidence indicating that Tosityali Elektrik benefited from countervailable subsidies during the POI.

Tosityali 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 attributing the benefit from subsidies that Tosityali 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 Tosityali Holding.<sup>44</sup> However, Toscelik reported that 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>45</sup> Therefore, we 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.

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<sup>41</sup> See Letter from Toscelik, Re: Welded Line Pipe from Turkey; Toscelik Questionnaire Response, dated December 15, 2014 (Toscelik Affiliation Questionnaire Response) at 4.

<sup>42</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), at 2.

<sup>43</sup> See Toscelik Affiliation Questionnaire Response at 3.

<sup>44</sup> *Id.*, at 3-4.

<sup>45</sup> *Id.*, at 6.

## D. 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 "Analysis of Programs – Programs Determined to be Countervailable" section, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.<sup>46</sup>

## V. BENCHMARK INTEREST RATES

We are investigating export loans and non-recurring, allocable subsidies that the respondents received.<sup>47</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>48</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. Toscelik submitted weighted-average interest rates, along with the underlying data, that it paid on comparable short-term commercial loans.<sup>49</sup> Consistent with 19 CFR 351.505(a)(2)(ii), we are using the interest rates that Toscelik submitted on comparable short-term loans as benchmarks.

### 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>50</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 (IMF's) International Financial Statistics as our national average benchmark.<sup>51</sup>

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<sup>46</sup> See Memorandum to the File from Elizabeth Eastwood, "Welded Line Pipe from the Republic of Turkey: Final Determination, Calculation Memorandum for Toscelik," dated October 5, 2015 (Toscelik Final Calc Memo).

<sup>47</sup> See 19 CFR 351.524(b)(1).

<sup>48</sup> See 19 CFR 351.505(a)(2)(ii).

<sup>49</sup> See Letter from Toscelik, Re: Welded Line Pipe from Turkey: Toscelik Questionnaire Response, dated January 21, 2015 (Toscelik Initial Questionnaire Response), at Exhibit 21.

<sup>50</sup> See 19 CFR 351.505(a)(2)(ii).

<sup>51</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."

## Discount Rates

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

## **VI. ANALYSIS OF PROGRAMS**

### **A. Programs Determined To Be Countervailable**

#### **1. Provision of HRS for LTAR**

We initiated an investigation into whether Erdemir and its subsidiary, Isdemir, provided respondents with HRS for LTAR.<sup>52</sup> Toscelik reported purchasing HRS from Erdemir and Isdemir during the POI.<sup>53</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>54</sup>

In its initial questionnaire response, the GOT responded to the Input Producer Appendix for Erdemir, Isdemir, and OYAK.<sup>55</sup> In addition, we asked the GOT twice to submit certain documents relevant to the Turkish flat steel industry.<sup>56</sup> The GOT claimed it could not submit these documents under its confidentiality agreements with the European Union.<sup>57</sup> However, the GOT did provide limited public summaries of the contents of these documents.<sup>58</sup>

According to the GOT's response, Erdemir owns 95 percent of Isdemir.<sup>59</sup> Further, OYAK, the Turkish military pension fund, holds 49 percent of the outstanding shares of Erdemir through a

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<sup>52</sup> See "Countervailing Duty Initiation Checklist: Welded Line Pipe from the Republic of Turkey," (November 5, 2014) (Initiation Checklist), at 8.

<sup>53</sup> See Toscelik Initial Questionnaire Response at 9-11.

<sup>54</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), at III-20 and Exhibit 7.

<sup>55</sup> *Id.*, at Exhibit 7.

<sup>56</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, 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>57</sup> See 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), at 4; and 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), at 1.

<sup>58</sup> See GOT Third Supplemental Response at 2-4.

<sup>59</sup> See GOT Initial Questionnaire Response at Exhibit 7, page 3-4.

wholly-owned holding company, Ataer Holding A.S.<sup>60</sup> The law establishing OYAK in 1961 states that the GOT created OYAK “as an institution related to the Ministry of National Defense.”<sup>61</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>62</sup> The Representative Assembly, in turn, elects 20 of the 40 members of OYAK’s General Assembly.<sup>63</sup> Of the General Assembly’s other 20 members, 17 are by statute government officials (e.g., Ministers of Finance and Defense).<sup>64</sup> Members of the General Assembly elect the eight-person Board of Directors.<sup>65</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>66</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>67</sup> These policies are in line with the GOT’s stated policy in its 2012-2014 Medium Term Programme to improve Turkey’s balance of payments.<sup>68</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>69</sup> Further, Erdemir’s 2013 Annual Report shows that OYAK and the TPA both have members on Erdemir’s Board of Directors.<sup>70</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

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<sup>60</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>61</sup> See GOT Initial Questionnaire Response at Exhibit 7 page 7, and Exhibit 7-G.

<sup>62</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), at Exhibit X-18 of Exhibit III-1 (Military Personnel Assistance { And Pension } Fund Law (translation), Law No. 205).

<sup>63</sup> Id.

<sup>64</sup> Id.

<sup>65</sup> Id.

<sup>66</sup> See GOT Initial Questionnaire Response at Exhibit 7-G (Articles 18, 35, and 37).

<sup>67</sup> See GOT Initial Questionnaire Response at Exhibit 7-C (Erdemir 2013 Annual Report at pages 35 and 18).

<sup>68</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>69</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>70</sup> Id., at Exhibit 7-C (Erdemir 2013 Annual Report), pages 65-66.

determination in OCTG Turkey CVD Final,<sup>71</sup> we determine that Erdemir and Isdemir are public bodies, and hence “authorities,” pursuant to section 771(5)(B) of the Act. Consequently, we find that the HRS Erdemir and Isdemir supplied to 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>72</sup> Therefore, consistent with past determinations, we find that the provision of HRS is specific pursuant to section 771(5A)(D)(iii)(I) of the Act because the number of industries or enterprises using the program is limited.<sup>73</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 actual transactions within the country under investigation.<sup>74</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 Toscelik 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>75</sup>

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<sup>71</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>72</sup> See GOT First Supplemental Response, at 6 and Exhibit 8.

<sup>73</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.

<sup>74</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>75</sup> See CVD Preamble, 63 FR at 65377.

We obtained production and consumption data for HRS during the POI and the previous two years from the GOT.<sup>76</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>77</sup> Based on this information, we found in the Preliminary Determination that Erdemir's and Isdemir's production accounted for a substantial portion of the domestic supply during the POI and previous years.<sup>78</sup> As a result, we preliminarily found that tier one prices for HRS could not serve as appropriate benchmarks, and we instead based our benchmark on tier two, or world market prices.<sup>79</sup>

In light of the results of the Department's recent redetermination pursuant to a court remand regarding this program in OCTG from Turkey Investigation,<sup>80</sup> we reconsidered the benchmark we are using to measure the adequacy of remuneration for HRS. See Comment 3, below, for further discussion. For purposes of the final determination we determine that the record evidence does not support a finding that the Turkish HRS market is so distorted that it cannot serve as an appropriate benchmark. Thus, we determine that Toscelik's domestic and import prices for HRS can serve as a tier one benchmark. Therefore, pursuant to 19 CFR 351.511(a)(2)(i), we used Toscelik's actual domestic and import prices for HRS to calculate the benefit from Toscelik's purchases of HRS from Erdemir and Isdemir during the POI.

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. Because we are using actual import and domestic prices paid by Toscelik, the benchmark already includes the delivery charges and VAT paid. We included the import tariff rate in effect for those HRS imports from countries which were not exempt from duties, as reported by Toscelik.<sup>81</sup>

We then compared the monthly benchmark prices to Toscelik's actual purchase prices for HRS, including taxes and delivery charges, as appropriate. For instances in which 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>82</sup> Under

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<sup>76</sup> See GOT Second Supplemental Response at 1-3.

<sup>77</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 Ereğli Demir ve Çelik Fabrikaları T.A.Ş. and Iskenderun Iron & Steel Works Co.," dated March 16, 2015 (Domestic Supply Recalculation Memo).

<sup>78</sup> See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 14-15.

<sup>79</sup> Id.

<sup>80</sup> See OCTG from Turkey Remand Redetermination.

<sup>81</sup> See Toscelik Initial Questionnaire Response at Exhibit 12.

<sup>82</sup> See Toscelik Final Calc Memo.

this methodology, we find that Toscelik received a benefit to the extent that the prices it paid for HRS produced by Erdemir and Isdemir were for LTAR.<sup>83</sup>

To calculate the net subsidy rate attributable to Toscelik, we divided the benefit by its POI sales value, as described in the “Subsidies Valuation Information – Attribution of Subsidies” section above.

On this basis, we find that Toscelik received a countervailable subsidy of 0.06 percent ad valorem.<sup>84</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>85</sup> Further, the GOT states that this program is used to promote development and to increase employment in selected provinces.<sup>86</sup>

Toscelik reported receiving free land in the Osmaniye OIZ pursuant to Law 5084 in 2008.<sup>87</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>88</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>89</sup>

The Department found this program to be countervailable in the OCTG Turkey CVD Final.<sup>90</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>91</sup> Further, the Department determined that OIZs constituted a government authority.<sup>92</sup> Consistent

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<sup>83</sup> See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

<sup>84</sup> See Toscelik Final Calc Memo for our calculations.

<sup>85</sup> See GOT Initial Questionnaire Response at III-33 through III-44 and Exhibits 8-9.

<sup>86</sup> Id., at Exhibit 8, Article 1.

<sup>87</sup> See Toscelik Initial Questionnaire Response at 16-18.

<sup>88</sup> See GOT Initial Questionnaire Response at III-33.

<sup>89</sup> See GOT First Supplemental Response at 13.

<sup>90</sup> See OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at 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>91</sup> See OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at 17.

<sup>92</sup> Id.

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>93</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>94</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>95</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>96</sup> Based on this record evidence, and consistent with the OCTG Turkey CVD Final, we find that the OIZ is a GOT authority because it was created by the GOT and implements GOT guidelines and goals.<sup>97</sup> Thus, we find that the allocation of free land to Toscelik by the OIZ authority constitutes a financial contribution under section 771(5)(D)(iii) of the Act.

In 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>98</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>99</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 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 final determination, we are relying upon publicly available information concerning industrial land prices in Turkey for purposes of calculating a comparable commercial benchmark price for land available in Turkey. Specifically, we used as our benchmark publicly available land benchmark data for 2009 and 2010 submitted by Toscelik in its Second and Third

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<sup>93</sup> See GOT Initial Questionnaire Response at Exhibit 8; OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at 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>94</sup> See GOT Initial Questionnaire Response at Exhibit 8.

<sup>95</sup> Id.

<sup>96</sup> Id.

<sup>97</sup> See OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at “Provision of Land for LTAR.”

<sup>98</sup> Id.

<sup>99</sup> Id.

Supplemental Response.<sup>100</sup> We find that these land prices serve as comparable commercial benchmarks under 19 CFR 351.511(a)(2)(i). Moreover, we derived the benchmark for land based on a simple average of the reference land prices available on the record in accordance with the Department's normal practice.<sup>101</sup>

We considered other potential benchmarks submitted on the record but determined not to use them. Specifically, Toscelik also submitted the land benchmark information used in the remand redetermination of the 2011 administrative review of pipe and tube from Turkey.<sup>102</sup> We find that, while these data are from the same information sources as we used in the Preliminary Determination, they have fewer data points. As a result, we find that they are less robust than the data relied on in the Preliminary Determination and, thus, we have not relied on them.

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>103</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>104</sup>

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 final 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

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<sup>100</sup> See Toscelik Second and Third Supplemental Response at Exhibit 20 for the benchmark data; see also Toscelik Final Calc Memo.

<sup>101</sup> See Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 77 FR 32930 (June 4, 2012), at "Land Benchmarks," unchanged in Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, 77 FR 75973 (December 26, 2012), and accompanying Issues and Decision Memorandum at 6.

<sup>102</sup> See Toscelik Second and Third Supplemental Response at Exhibit 23.

<sup>103</sup> See 19 CFR 351.524(d).

<sup>104</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 industry, as indicated by the Internal Revenue Service tables, to allocate benefits received under a land for LTAR program to the POI.

meaning of section 771(5)(E)(iv) of the Act because it is limited to companies located in the 49 eligible provinces. We further determine that the program confers a benefit to the extent that 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>105</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>106</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 determine Toscelik's net subsidy rate under this program to be 0.32 percent ad valorem.

### 3. Law 5084: Energy Support<sup>107</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>108</sup> According to the GOT, the main objective of this program is to reduce inter-regional disparities and to increase employment.<sup>109</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>110</sup> The GOT states that enterprises operating or investing

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<sup>105</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>106</sup> See 19 CFR 351.524(d).

<sup>107</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>108</sup> See GOT Initial Questionnaire Response at III-25 and Exhibit 8.

<sup>109</sup> Id.

<sup>110</sup> Id., at III-25 –III-26.

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>111</sup>

Toscelik reported that it received a benefit under this program in the form of a grant.<sup>112</sup>

We determine that this program provides a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. We further determine that the energy subsidies provided under the program confer a benefit with the meaning of section 771(5)(E) of the Act in that Toscelik received a grant from the GOT to offset its electricity costs. We also determine that this program is regionally-specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in the 49 eligible provinces. The Department's findings in this regard are consistent with its prior determinations.<sup>113</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 determine Toscelik's net countervailable subsidy rate under this program to be 0.02 percent ad valorem.

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

Addendum 4108 of Article 40 of the Income Tax Law Number 193, effective June 2, 1995, allows taxpayers engaged in export activities to claim a lump sum deduction from gross income 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>114</sup> This deduction is to cover the expenditures without documentation incurred from exports, construction, maintenance, assembly, and transportation activities abroad.<sup>115</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 on the income statement.<sup>116</sup> Under this program, marketing, selling, and distribution expenses

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<sup>111</sup> Id., at III-30.

<sup>112</sup> See Toscelik Initial Questionnaire Response at 11, 13 and 14.

<sup>113</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>114</sup> See GOT Initial Questionnaire Response at 38.

<sup>115</sup> Id.

<sup>116</sup> Id., at Exhibit 10.

are deductible expenditures for tax purposes. The Ministry of Finance is responsible for administering the program.<sup>117</sup>

Consistent with prior determinations, we find that this tax deduction is a countervailable subsidy.<sup>118</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, Tosyali Dis reported receiving the deduction for export earnings with respect to its 2012 tax returns filed during the POI.<sup>119</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.

For Tosyali Dis, we divided its tax savings by Toscelik's total export sales value for the POI. On this basis, we determine the net countervailable subsidy for this program to be 0.03 percent ad valorem for Toscelik.

## 5. Export Financing

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

### Rediscount Program<sup>120</sup>

The Rediscount Program was established in 1999 and is administered by the Export Credit Bank of Turkey (Turk Eximbank).<sup>121</sup> The Rediscount Program was designed to provide financial support to Turkish exporters, manufacturer-exporters, and manufacturers supplying exporters.<sup>122</sup> This program is contingent upon an export commitment.<sup>123</sup> Under the Rediscount Program, there is a minimum loan amount of 200,000 U.S. dollars per company.<sup>124</sup> Loan payments shall

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<sup>117</sup> Id., at III-40 and Exhibit 10.

<sup>118</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) (CWP from Turkey 2010 AR), 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>119</sup> See Toscelik Initial Questionnaire Response at 21.

<sup>120</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>121</sup> See GOT Initial Questionnaire Response at III-83.

<sup>122</sup> Id.

<sup>123</sup> Id., at III-87 – 88 and Exhibit 15.

<sup>124</sup> Id., at III-86.

be made within the credit period or at maturity to the Turk Eximbank.<sup>125</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>126</sup> Toscelik reported that it had loans outstanding under this program during the POI.<sup>127</sup>

We find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT under 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>128</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. To calculate the countervailable subsidy rate, we divided Toscelik's benefit amount by its respective total export sales value for the POI. On this basis, we determine that the net countervailable subsidy rate for this program is 0.82 percent ad valorem for Toscelik.

#### 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>129</sup> The GOT also provided a response with respect to this program.<sup>130</sup>

The Post-Shipment Rediscount Credit Program was established in 1996.<sup>131</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>132</sup> This program is contingent upon an export commitment.<sup>133</sup> Loan payments are made within the credit period or at maturity to the Turk Eximbank.<sup>134</sup>

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<sup>125</sup> Id., at III-87.

<sup>126</sup> Id.

<sup>127</sup> See Toscelik Initial Questionnaire Response at 23-27.

<sup>128</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.

<sup>129</sup> See Toscelik Initial Questionnaire Response at 24-27 and Exhibit 21.

<sup>130</sup> See GOT Initial Questionnaire Response at III-91 through III-100.

<sup>131</sup> Id., at III-91.

<sup>132</sup> Id.

<sup>133</sup> Id., at III-98.

<sup>134</sup> Id., at III-87.

Tosyali Dis reported that it had loans outstanding under this program during the POI.<sup>135</sup>

We find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT under 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. To calculate the countervailable subsidy rates, we divided Tosyali Dis' benefit amount by the total POI export sales value of Toscelik Profil and Tosyali Dis. On this basis, we determine that the net countervailable subsidy rate for this program is 0.01 percent ad valorem for Toscelik.

#### 6. 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>136</sup> The program's objective is to increase the investment opportunities in OIZs.<sup>137</sup> The GOT provides an exemption of property tax for the first five years following the completion date of the construction of buildings.<sup>138</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>139</sup>

We find that this program constitutes a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. We also determine that tax benefits under the program conferred a benefit under section 771(5)(E) of the Act. Further, we determine that this program is regionally-specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in the OIZ. Our findings in this regard are consistent with the Department's practice.<sup>140</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

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

<sup>136</sup> See GOT Initial Questionnaire Response at III-74.

<sup>137</sup> Id.

<sup>138</sup> Id.

<sup>139</sup> See Toscelik Initial Questionnaire Response at 33-34.

<sup>140</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."

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.

#### 7. 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>141</sup> The GOT also provided a response with respect to this program.<sup>142</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>143</sup> The Social Security Institution of the GOT administers this program.<sup>144</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>145</sup> Companies employing at least 10 workers and operating in the provinces determined by the Council of Ministers are eligible for this program.<sup>146</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>147</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>148</sup>

We 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 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 determine Toscelik's net subsidy rate under this program to be 0.04 percent ad valorem.

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<sup>141</sup> See Toscelik Second and Third Supplemental Response at 5-6.

<sup>142</sup> See GOT First Supplemental Response at 20-26.

<sup>143</sup> Id., at 21.

<sup>144</sup> Id., at 21 and 23.

<sup>145</sup> Id., at 21 and Exhibit 22.

<sup>146</sup> Id., at 21.

<sup>147</sup> Id., at 23.

<sup>148</sup> See Toscelik Second and Third Supplemental Response at 6 and Exhibit 10.

## **B. Programs Found Not To Confer Countervailable Benefits**

### **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>149</sup> The program was established in 1987.<sup>150</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>151</sup> Further, under the program, policyholders are required to make monthly declarations of shipments to the Turk Eximbank.<sup>152</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 made to the United States.<sup>153</sup> In addition, the GOT reported that Toscelik neither submitted an insurance claim nor received a reimbursement under this program during the POI.<sup>154</sup> Further, according to the GOT, the premiums paid for the export credit insurance exceeded the operating costs of the program.<sup>155</sup> On this basis, consistent with Standard Pipe from Turkey,<sup>156</sup> and in accordance with 19 CFR 351.520(a)(1), we 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>157</sup> The GOT also provided a response with respect to this program.<sup>158</sup>

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<sup>149</sup> See GOT Initial Questionnaire Response at III-48 and III-49.

<sup>150</sup> *Id.*, at III-49.

<sup>151</sup> See GOT First Supplemental Response at 17.

<sup>152</sup> *Id.*

<sup>153</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>154</sup> See GOT First Supplemental Response at 17.

<sup>155</sup> See GOT Initial Questionnaire Response at III-59.

<sup>156</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>157</sup> See Toscelik Affiliation Questionnaire Response at 24-27 and Exhibit 21.

<sup>158</sup> See GOT Initial Questionnaire Response at III-100 through III-108.

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>159</sup> This program is contingent upon an export commitment.<sup>160</sup>

Toscelik reported that it had loans outstanding under this program during the POI.<sup>161</sup>

We 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-term U.S. dollar interest rate obtained from the IMF's International Financial Statistics.<sup>162</sup> Therefore, on this basis, we find that the export-oriented working capital program did not confer countervailable benefits to Toscelik during the POI.

### **C. Programs Found Not To Be Used By Toscelik**

1. Provision of Lignite for LTAR
2. Incentives for 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 Exemptions
  - b. Customs Duty Exemptions
  - c. Tax Reductions
  - d. Income Tax Withholdings
  - e. Social Security and Interest Support
  - f. Land Allocation
5. Strategic Investment Incentives
  - a. VAT Exemptions
  - b. Customs Duty Exemptions
  - c. Tax Reductions

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<sup>159</sup> Id., at III-101.

<sup>160</sup> Id., at III-106.

<sup>161</sup> See Toscelik Initial Questionnaire Response at 24-27.

<sup>162</sup> See Toscelik Final Calc Memo at Attachment 14.

- d. Income Tax Withholdings
- e. Social Security and Interest Support
- f. Land Allocation
- 6. Law 5084: Withholding of Income Tax on Wages and Salaries
- 7. Law 5084: Incentive for Employer's Share in Insurance Premiums

#### **D. Program Found Not To Be Countervailable**

##### Export Financing 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>163</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>164</sup> As this is a program funded by an international development institution, we find that this program is not countervailable in accordance with 19 CFR 351.527(b).

## **VII. ANALYSIS OF COMMENTS**

### Comment 1: Application of AFA to Borusan

As noted above, on April 14, 2015, Borusan notified the Department that it would not be participating in verification in this investigation, requesting instead that we rely on the verification report covering the same 2013 period from the CVD administrative review of circular welded carbon steel pipes and tubes (pipe and tube) from Turkey. On April 28, 2015, we notified Borusan that we would not be placing the pipe and tube verification report on the record of this investigation.

The petitioners state that section 782(i) of the Act requires the Department to verify the information used in a final determination in an investigation. Therefore, because Borusan declined to participate in verification, the petitioners maintain that the Department should base the CVD rate for it on AFA for the final determination, pursuant to section 776(b) of the Act.

When selecting an AFA rate, the petitioners assert that the Department must select a rate which induces a respondent to provide complete and accurate information and ensures that the party does not obtain a more favorable rate than if it had cooperated fully.<sup>165</sup> When calculating CVD AFA rates, the petitioners note that the Department's practice is to use the highest non-de minimis program-specific subsidy rate calculated in other proceedings for the country under

<sup>163</sup> See Toscelik Second and Third Supplemental Response at 14 and Exhibit 18; see also GOT Initial Questionnaire Response at III-109 - 117.

<sup>164</sup> See GOT Initial Questionnaire Response at III-109 and GOT First Supplemental Response at Exhibit 25.

<sup>165</sup> See SAA at 870 and Static Random Access Memory Semiconductors from Taiwan, 63 FR 8909, 8932 (February 23, 1998).

investigation. However, the petitioners argue that using such an approach here may result in Borusan's benefitting from its failure to cooperate. Accordingly, the petitioners assert that the Department should apply the highest program rate calculated in the preliminary determination for any program to all subsidy programs in this investigation, while Maverick maintains that the Department should apply this same rate to each of the programs for which the Department determined Borusan received a benefit in the Preliminary Determination.

Borusan argues there is no basis for the Department to apply AFA to it for not participating in verification in this investigation. Borusan notes that the Department verified the same programs for the same period in the administrative review of pipe and tube from Turkey. Thus, Borusan claims that the Department can satisfy its statutory verification requirement by simply placing the pipe and tube verification report and exhibits on the record of this case. In any event, Borusan contends that the Department lawfully can decide not to conduct verification for it in this case, similar to its decision not to verify the GOT in the OCTG investigation.<sup>166</sup>

Nonetheless, Borusan argues that, if the Department does apply AFA to it in the final determination, the Department should not do so in the manner suggested by the petitioners because it has no authority to do so. Instead, Borusan notes that the Department should use its standard CVD AFA hierarchy.<sup>167</sup>

Borusan notes that, in this investigation, Toscelik used virtually the same programs as Borusan. Therefore, Borusan asserts that, if the Department applies AFA, the Department should use the rates calculated for Toscelik for the identical programs that the Department found that Borusan used in the Preliminary Determination. According to Borusan, these programs include the HRS for LTAR program, the deduction from taxable income for export revenue program, and the rediscount loan program. With respect to the investment encouragement program for customs duty and VAT exemptions, Borusan points out that Toscelik did not use this program during the POI. Thus, Borusan states that the Department should use in its AFA calculation the highest calculated rate for this program (i.e., the rate calculated for Toscelik in the OCTG investigation).

Regarding the other programs discussed in the Preliminary Determination, Borusan argues that the Department should not include them in its calculation of the AFA rate because the Department verified that Borusan did not use them in the pipe and tube administrative review. Further, Borusan contends that the GOT's verified response on the record of this case supports Borusan's claim that certain POI regional development programs only applied to Toscelik.<sup>168</sup>

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<sup>166</sup> See OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at Comment 9.

<sup>167</sup> See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination, 73 FR 70971, 70975 (November 24, 2008) (unchanged in Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum at "Application of Facts Available, Including the Application of Adverse Inferences."); and Thermal Paper from the PRC, and accompanying Issues and Decision Memorandum at "Selection of the Adverse Facts Available."

<sup>168</sup> In addition, Borusan claims that, in OCTG Turkey CVD Final, the Department found that Toscelik was the only respondent to benefit from certain regional programs. See OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at 18 and 26-30.

In any event, Borsuan argues that it is the Department's practice to exclude provincial programs from its AFA subsidy rate calculation when the government demonstrates that the non-cooperative companies are not located in the provinces where such subsidies are being investigated.

Department's Position:

As described under the "Use of Facts Otherwise Available and Adverse Inferences" section, above, we are applying AFA to Borusan for purposes of the final determination because it did not participate in verification. Further, in applying AFA to Borusan, we followed the Department's normal CVD AFA methodology.

We disagree with Borusan's claim that it is not appropriate to apply AFA to it in this investigation. Regarding Borusan's contention that the Department can simply place the verification report and exhibits from the pipe and tube administrative review on the record of this case, we note that section 782(i) of the Act requires that the Department verify all information relied upon in making a final determination in an investigation. Thus, as we explained in our April 28, 2015, letter to Borusan, "Verification of data submitted in a separate proceeding related to a different industry does not satisfy the requirement in section 782(i) of the Act that the Department verify the information relied upon in making its final determination here."<sup>169</sup> Furthermore, the Department may not transfer proprietary information from record to record across different, unrelated proceedings.<sup>170</sup> Finally, we disagree with Borusan that its decision not to participate in verification is analogous to the Department's decision in OCTG Turkey CVD Final not to verify certain information submitted by the GOT. The GOT participated in verification that case, and did not decline to participate in verification, as Borusan did in this investigation.<sup>171</sup> Therefore, any programs that were not verified in OCTG from Turkey were because of the Department's decision not to verify them, not because of a lack of cooperation or refusal to be verified by the GOT.

The Department's longstanding practice, as upheld by the court, is that each segment of a proceeding is independent, with separate records and independent determinations.<sup>172</sup> This principle applies even more so to completely separate proceedings, involving different products and, in countervailing duty proceedings, different programs.

Borusan did not provide any satisfactory reason for its refusal to participate in verification and its claim that the verification report from another proceeding could be used in this proceeding is meritless. Despite Borusan's implications to the contrary, the records of the pipe and tube

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<sup>169</sup> See Letter from the Department to Borusan, dated April 28, 2015.

<sup>170</sup> See section 777(b)-(c) of the Act; and 19 CFR 351.306.

<sup>171</sup> See OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at Comment 9.

<sup>172</sup> "Commerce's longstanding practice, upheld by this court, is to treat each segment of an antidumping proceeding, including the antidumping investigation and the administrative reviews that may follow, as independent proceedings with separate records and which lead to independent determinations." See Clearon Corp. v. United States, No. 13-73, Slip. Op. 2014-88 \*52 (CIT 2014) (quoting Gourmet Equip. Taiwan Corp. v. United States, 24 CIT 572, 577-78 (2000)).

administrative review and this investigation are not the same. For example, several programs examined in this case were not examined in the pipe and tube administrative review: Social Security Premium Incentive; Lignite for LTAR; Incentives for R&D Activities; Export Insurance provided by the Turk Eximbank; and Export-Oriented Working Capital Program. Furthermore, in the pipe and tube administrative review, Borusan cooperated and participated in verification, as explained above, and the Department's verification findings are on that record. Finally, none of the petitioners in these proceedings is the same. The Department is basing its determination in this case on the separate administrative record associated with this investigation. We note that relying on the Department's findings in the pipe and tube administrative review would reward Borusan by allowing it to cherry pick the proceeding in which it decides to participate, prejudicing the ability of the petitioners and other interested parties to engage on issues in the proceeding that it did not select. Because of Borusan's non-cooperation, none of the relevant facts are verified on the record here and the petitioners here were unable to comment substantively on the record or the Department's conclusions regarding Borusan in the pipe and tube administrative review. Therefore, the Department has resorted to using the facts available for Borusan in this final determination.

We also find that it would be inappropriate to reward Borusan for its failure to cooperate in this investigation by assigning it the same rates calculated in the pipe and tube administrative review, a proceeding in which it fully participated. Just as it would be inappropriate to apply an adverse inference in a segment in which a party cooperated because that party failed to cooperate in a different segment, the Department finds that Borusan's cooperation in an entirely different proceeding, involving a different product, does not "cure" the gaps left on this record by its non-cooperation.

Finally, we disagree with Borusan that the Department has no basis to apply an AFA rate to programs where the Department has verified Borusan's non-use in other proceedings. As discussed above, we are making this determination based on the facts on the record in this case. Consistent with our AFA methodology, we have not applied AFA to any programs that were previously proven not to exist. However, beyond that, determinations in other proceedings are based on the record before the Department in those proceedings. On the record in this case, the Department has no verified information indicating Borusan's non-use of certain programs.

Comment 2: Provision of HRS for LTAR – Whether Erdemir and Isdemir Are "Authorities"

Toscelik contends that the Department erred in the Preliminary Determination when it determined that Erdemir and Isdemir supplied HRS to it for LTAR. As an initial matter, Toscelik notes that there is no evidence that OYAK, the military pension fund which owns Erdemir and Isdemir, is affiliated with any government institution, is part of the Turkish armed forces, or is the recipient of any government support in any form.<sup>173</sup> According to Toscelik, there is also no evidence of any instance where OYAK made a decision under the direction of the GOT. Thus, Toscelik claims that, despite stating in the Preliminary Determination that it has evidence of the government's significant involvement in OYAK, the Department did not cite

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<sup>173</sup> See GOT Initial Questionnaire Response at Exhibit 7G.

any. Toscelik notes that OYAK had a financial rate of return of 15.3 percent in 2013,<sup>174</sup> indicating that it operates in a market-driven manner. Toscelik argues that, if the GOT was directing OYAK to support certain sectors of the economy with preferential prices, as is alleged here, it would not be possible for OYAK to consistently outperform the Turkish economy as it has done. Toscelik contends that OYAK is no more an instrument of the GOT than the California Public Employees' Retirement System (CalPERS) is an instrument of the State of California.<sup>175</sup>

Furthermore, the GOT argues that the Department's finding that OYAK is a public body is inconsistent with the World Trade Organization (WTO) Appellate Body's finding in U.S.-Anti-Dumping and Countervailing duties (China) (DS 379). According to the GOT, the WTO has held that, for the Department to determine that an entity is a public body, the entity should possess governmental authority and perform governmental functions.<sup>176</sup> The GOT notes that the Department has pointed to no evidence on the record of this case showing that the GOT may use OYAK's resources as its own or that OYAK has been performing any governmental functions. Thus, the GOT argues that the Department's determination that OYAK (and by extension, Erdemir and Isdemir) is a public body is inconsistent with Article 1.1(a)(1) of the WTO's Subsidies and Countervailing Measures Agreement.

Moreover, Toscelik argues that Erdemir and Isdemir are not state-controlled enterprises. Toscelik notes that Erdemir's shares are traded on the Istanbul stock exchange and, as a result, the company is subject to the stock exchange's disclosure regulations, including a requirement to follow corporate governance principles.<sup>177</sup> According to Toscelik, Erdemir's sales of HRS to the pipe sector are a major part of its business, accounting for 40 percent of its 2013 sales.<sup>178</sup> Thus, Toscelik contends that, if Erdemir were selling HRS to the pipe sector at below-market prices, its officers and managers would be under an obligation to disclose such pricing as a "material event" to its investors.<sup>179</sup> Instead, Toscelik and the GOT note that Erdemir is a consistently profitable company with a 16 percent operating profit in 2013. Toscelik claims that Erdemir could not be so profitable while selling HRS at below-market prices to 40 percent of its market.

Further, Toscelik disagrees with the Department's contention that the GOT's purported "significant involvement" in OYAK infects Erdemir because of the declaration in Erdemir's annual report that it made a major contribution to the 4.6 percent increase in Turkey's manufacturing exports in 2013. Toscelik likens Erdemir's declaration to that of a company like Boeing touting its contribution to Washington State exports (or American exports overall) in its annual report, which would not make Boeing part of the U.S. government. Therefore, Toscelik

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<sup>174</sup> See GOT Initial Questionnaire Response at 8.

<sup>175</sup> According to Toscelik, OYAK, like CalPERS, manages an investment portfolio for the benefit of certain state retirees and is bound by its fiduciary responsibilities to secure and ensure the pension benefits of its members.

<sup>176</sup> See also U.S. – Countervailing Measures on Certain Hot Rolled Carbon Steel Flat Products from India (DS 346) and U.S. – Countervailing Duty Measures on Certain Products from China (DS 437).

<sup>177</sup> See GOT Initial Questionnaire Response at Exhibits 7C and 7M.

<sup>178</sup> Id., at Exhibit 7C.

<sup>179</sup> Id., at Exhibit 7M.

argues that the Department should focus on the actions, not the words, of OYAK and Erdemir, and determine if there is evidence of their state control or influence. Toscelik claims that the Department cited no such evidence in the Preliminary Determination because none exists.<sup>180</sup> Consequently, Toscelik and the GOT contend that the Department should not find that Erdemir and Isdemir are state controlled for purposes of the final determination.

Maverick disagrees with Toscelik and the GOT, pointing out that the Court in Borusan recently upheld the Department's determination that Erdemir and Isdemir are "authorities" within the meaning of section 771(5)(B) of the Act in the OCTG Turkey CVD Final.<sup>181</sup> Thus, Maverick asserts that, because the facts of this case are nearly identical to the OCTG investigation, the Department should continue to find that Erdemir and Isdemir are authorities here.

Specifically, regarding OYAK, Maverick asserts that OYAK's operations are so closely intertwined with the state as to be indistinguishable from any other Turkish government agency. Maverick notes that OYAK serves a state function (providing retirement benefits to members of the Turkish armed forces) and is funded with state resources pursuant to an act of state authority and enjoys legal protections equivalent to those of the state.<sup>182</sup> Moreover, Maverick notes that OYAK was explicitly directed to implement Turkish industrial policy directives in the process of Erdemir's privatization.<sup>183</sup> Therefore, Maverick maintains that, despite Toscelik's and the GOT's arguments to the contrary, record evidence shows that OYAK has made decisions under the direction or suggestion of the GOT. Furthermore, Maverick notes that, while the Department's analysis of OYAK as a public body has focused on its ownership, pursuant to Law No. 205, OYAK's managerial bodies are dominated by various branches of the GOT, not only the Turkish military.<sup>184</sup> Consequently, Maverick asserts that, because GOT officials directly control the management and operation of OYAK, the Department should continue to find that OYAK is an authority for purposes of the final determination.<sup>185</sup>

Furthermore, Maverick notes that, pursuant to section 771(5)(B) of the Act, OYAK's controlling ownership of Erdemir's outstanding shares is sufficient to establish that Erdemir is an authority. According to Maverick, as a condition of the GOT's 2006 sale of Erdemir to OYAK, OYAK

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<sup>180</sup> The GOT also notes that the WTO Appellate Body in DS 436 held that the Department must determine whether an entity is a public body based on an examination of that entity's core characteristics and functions as well as the legal and economic environment prevailing in the country at issue. According to the GOT, the Department in its Preliminary Determination overlooked the core characteristics and functions of OYAK, Erdemir, and Isdemir, as well as the open nature of the Turkish HRS market.

<sup>181</sup> See Borusan Mannesmann v. United States, Slip Op. 15-36 at 13-28 (CIT 2015) (Borusan).

<sup>182</sup> See GOT Initial Questionnaire Response at Exhibit 7-G.

<sup>183</sup> See the Letter from Maverick to the Department entitled, "Welded Line Pipe from the Republic of Turkey: Comments on the Government of Turkey's Third Supplemental Questionnaire Response," dated March 10, 2015 (Maverick's March 10 Comments), at 5.

<sup>184</sup> See GOT Initial Questionnaire Response at Exhibit 7-G.

<sup>185</sup> Further, the petitioners take issue with Toscelik's comparison of OYAK and CalPERS, noting that California's public employees and the Turkish military do not exert comparable levels of influence. Nonetheless, the petitioners speculate that, if CalPERS were to buy a 49 percent stake in a major corporation that receives massive public support, CalPERS would likely exercise a close degree of control over that company.

agreed to increase Erdemir's steel production capacity by 3.5 million tons, which it did through the creation of Isdemir in 2008.<sup>186</sup> Maverick also points out that Erdemir's commercial activity has been closely aligned with the GOT's steel sector industrial policies, including the channeling of domestically-produced inputs into downstream value-added products for export.<sup>187</sup> Maverick states that GOT (through the Turkish Privatization Authority) has retained veto authority over key commercial decisions at Erdemir to ensure that its operations do not stray from the GOT's policy objectives.<sup>188</sup> According to Maverick, the GOT through this authority has control over Erdemir's (Turkey's largest steel producer's) output and, thus, controls the price of steel in the Turkish market.<sup>189</sup> Maverick argues that the GOT is making Erdemir perform the most fundamental government functions associated with state ownership: maintaining production and employment at high levels in strategic industries. Therefore, for purposes of the final determination, Maverick asserts that the Department should continue to find that Erdemir is an authority.

Finally, Maverick asserts that Toscelik's and the GOT's arguments that both OYAK and Erdemir operate in a commercial manner, as evidenced by their profitability, is not legally relevant to the Department's analysis.<sup>190</sup> Similarly, Maverick maintains that the GOT's reliance on WTO rulings is unavailing. According to Maverick, the Federal Circuit has held that WTO reports are without effect under U.S. law unless and until they have been adopted pursuant to the statutory scheme established in the URAA.<sup>191</sup> Therefore, Maverick disagrees that either Toscelik or the GOT have provided a legal basis for the Department to depart from its finding that OYAK and Erdemir are authorities.

#### Department's Position:

We continue to find that Erdemir and Isdemir are "authorities" within the meaning of section 771(5)(B) of the Act. As an initial matter, we note that the Court in Borusan affirmed the Department's determination in OCTG Turkey CVD Final that Erdemir and Isdemir are "authorities" as defined in the Act.<sup>192</sup> The analysis supporting our finding that Erdemir and Isdemir are "authorities" in this investigation is largely the same as that performed in OCTG

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<sup>186</sup> Id., at Exhibit 7-C; see also Maverick's March 10 Comments at Exhibit 4.

<sup>187</sup> See Maverick's March 10 Comment at Exhibit 6.

<sup>188</sup> See GOT First Supplemental Response at 7.

<sup>189</sup> Maverick also points to various policy documents in its rebuttal brief which it claims appear to call for expanded production of HRS and the channeling of inputs into downstream production for export. According to Maverick, Erdemir, as Turkey's largest producer of flat steel products, is central to these objectives. However, Maverick claims that the GOT mentioned none of these policy documents in its responses to the Department, and it refused the Department's request to provide other documents regarding the GOT's support for the Turkish steel industry. Thus, Maverick contends that, to the extent that there is any question regarding Erdemir's role in state industrial policy, it is only because the GOT has refused to cooperate and provide this information.

<sup>190</sup> See, e.g., OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at 35.

<sup>191</sup> See, e.g., Drawn Stainless Steel Sinks From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 13017 (February 26, 2013) (Sinks from the PRC), and accompanying Issues and Decision Memorandum at Comment 5; and Chorus Staal BV v. Dep't Commerce, 395 F.3d 1343, 1349 (CAFC 2005).

<sup>192</sup> See Borusan, Slip Op. 15-36 at 13-28.

Turkey CVD Final. Specifically, both in the Preliminary Determination and explained again in detail above at the “Programs Determined to be Countervailable – Provision of HRS for LTAR” section, we determined that Erdemir and Isdemir are public bodies, and hence “authorities” pursuant to section 771(5)(B) of the Act, based on our analysis of record evidence very similar to that in the record of OCTG from Turkey. As described in detail above, and as we did in OCTG Turkey CVD Final, we cited the following record evidence in the Preliminary Determination showing that the GOT exercised meaningful control over OYAK:

- OYAK’s creation by GOT statute;
- The composition of OYAK’s leadership;
- OYAK’s property status; and
- The requirement that members of the military must contribute to OYAK.

As we did in OCTG Turkey CVD Final, we also provided evidence of how the GOT’s meaningful control of OYAK extends to Erdemir (and its subsidiary Isdemir), as follows:

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

Thus, we disagree with Toscelik and the GOT that we failed to provide evidence showing that OYAK and Erdemir are controlled by the government.

We also disagree with Toscelik’s comparison of OYAK to CalPERS. The fact that OYAK and CalPERS are both pension funds does not prove that OYAK is not controlled by the GOT. The constituents of these organizations (i.e., the Turkish military and the public employees of California, respectively) do not exert comparable levels of influence. In addition, in our analysis of OYAK, we pointed to other indicators of government control that are not present in the case of CalPERS.

Moreover, we disagree with the GOT’s reliance on the WTO Appellate Body’s reports to support its statement that we must not find OYAK to be a public body. Congress has adopted an explicit statutory scheme for addressing the implementation of WTO reports. See, e.g., 19 U.S.C. 3538. As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department’s discretion in applying the statute. See 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary). Moreover, as part of the URAA process, Congress has provided a procedure through which the Department may change a regulation or practice in response to WTO reports. See 19 U.S.C. 3533(g). These Appellate Body reports do not address the Department’s finding that Erdemir and Isdemir are public bodies nor do they establish whether our finding in this investigation is consistent with U.S. law.

Furthermore, we disagree with Toscelik and the GOT that, because OYAK, Erdemir, and Isdemir each operate on a commercial basis to maximize profitability, they cannot be

“authorities.” The Department has explained previously why a firm’s commercial behavior is not dispositive in determining whether that firm is a government “authority,” stating that:

It has been argued that government-owned firms may act in a commercial manner. We do not dispute this. Indeed, the Department’s own regulations recognize this in the case of government-owned banks by stating that loans from government-owned banks may serve as benchmarks in determining whether loans given under government programs confer a benefit. However, this line of argument conflates the issues of the “financial contribution” being provided by an authority and “benefit.” If firms with majority government ownership provide loans or goods or services at commercial prices, *i.e.*, act in a commercial manner, then the borrower or purchaser of the good or service receives no benefit. Nonetheless, the loans or goods or service is still being provided by an authority and, thus, constitutes a financial contribution within the meaning of the Act.<sup>193</sup>

Thus, as the Department explained in Kitchen Racks from the PRC, the issue of government entities operating in a commercial manner is not dispositive in determining whether these firms are public bodies, and hence government “authorities,” within the meaning of section 771(5)(B) of the Act. Rather, we find that Toscelik and the GOT in their arguments erroneously conflate the issues of “financial contribution” with “benefit.”

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

Comment 3: Provision of HRS for LTAR – Using a Tier One or Tier Two Benchmark

Toscelik and the GOT state that, even assuming arguendo that Erdemir and Isdemir are state-controlled suppliers, there is no evidence on the record that they are distorting the Turkish HRS market. Toscelik notes that, when a respondent purchases the input subject to an LTAR inquiry from a non-state controlled supplier, the Department’s regulations at 19 CFR 351.511(a)(2)(i) guide it to use that price as its preferred (*i.e.*, tier one) benchmark.<sup>194</sup> However, Toscelik points out that, in the Preliminary Determination, the Department stated that it would not use a tier one benchmark where it finds that the government owns or controls the majority or a substantial portion of the market for HRS.<sup>195</sup> According to Toscelik, the Department’s analysis is in error.

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<sup>193</sup> See Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 74 FR 37012 (July 27, 2009) (Kitchen Racks from the PRC), and accompanying Issues and Decision Memorandum at Comment 4.

<sup>194</sup> See United States Steel Corp. v. United States, 33 CIT 1935, 2009 CIT LEXIS 156, Slip Op. 2009-152 at 7 (CIT 2009).

<sup>195</sup> See Preliminary Determination at 14. The GOT also notes that the Department’s reliance on Softwood Lumber from Canada is misplaced because, in that case, the government’s presence in the market accounted for between approximately 83 to 99 percent, an amount far greater than Erdemir and Isdemir’s collective share of POI domestic

Toscelik states that the Court has held that the Department may not simply assume that the market is distorted whenever a state-controlled entity controls a substantial share of the market, but it must find evidence of distortion beyond market share before dismissing a “tier one” benchmark.<sup>196</sup> Here, Toscelik notes that no party has provided evidence that Erdemir’s putative state ownership distorts the HRS market. Toscelik asserts that, in fact, its experience demonstrates the competitive nature of the Turkish HRS market, noting that: 1) its POI purchase prices for imported HRS were four percent lower than Erdemir’s prices; and 2) Toscelik’s POI sales prices for HRS were two percent higher than Erdemir’s prices.<sup>197</sup> According to Toscelik, in Maverick, the Court required explicit record evidence to support a finding of market distortion where Erdemir’s share of the market was less than 50 percent and there were substantial imports into the market.<sup>198</sup> Consequently, Toscelik and the GOT assert that the Department should not find that the Turkish HRS market is distorted by virtue of Erdemir and Isdemir’s 46.5 percent share of the market.<sup>199</sup> As a result, Toscelik and the GOT maintain that the Department should employ a tier one benchmark in its final determination subsidy calculations for this program.

Maverick disagrees with Toscelik and the GOT, stating that the Department should continue to use a tier two benchmark to measure the adequacy of remuneration. According to Maverick, the Court has established that the Department should use a tier two benchmark to measure the benefit of a countervailable subsidy when: 1) record evidence suggests that a significant government presence in the market distorts prices; and 2) reliable tier one benchmarks are unavailable.<sup>200</sup> Maverick also states that the Department’s regulations direct it to use tier two benchmarks where the government provider constitutes at least “a substantial portion” of the market (as Erdemir and Isdemir do here)<sup>201</sup> because it is reasonable to conclude that the government’s involvement in the market significantly distorts actual transaction prices.<sup>202</sup>

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supply. Moreover, the GOT notes that, in Softwood Lumber from Canada, even in the face of remarkable government presence in the market, the Department stated that it would have based its benchmark on tier one import prices had they been on the record. See Softwood Lumber from Canada, and accompanying Issues and Decision Memorandum at “There are no market-based internal Canadian benchmarks” section.

<sup>196</sup> See Borusan, Slip Op. 15-36 at 34-8. Further, the GOT notes that the WTO Appellate Body in DS 379 held that the government’s role as a significant supplier is not on its own sufficient evidence of market distortion. See DS 379 at paragraphs 441 and 443.

<sup>197</sup> See Toscelik Initial Questionnaire Response at Exhibits 11 and 12.

<sup>198</sup> See Maverick, Slip Op. 15-59 at 10.

<sup>199</sup> The GOT also argues that the Department should revise the domestic supply percentage it relied on in its Preliminary Determination to exclude internally-consumed HRS because such HRS cannot be supplied into the Turkish HRS market.

<sup>200</sup> See Archer Daniels Midland Co. v. United States, 917 F. Supp. 2d 1331, 1343 (2013).

<sup>201</sup> Maverick disagrees with the GOT that the Department should recalculate Erdemir and Isdemir’s share of the domestic supply to exclude internally-consumed production. According to Maverick, internal consumption affects demand for externally-produced HRS which effects prices and, thus, constitutes a critical portion of total supply. Maverick notes that the International Trade Commission often considers internal consumption in its analysis of market conditions. See, e.g., Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil, Japan, and Russia, Inv. Nos. 731-TA-806-807 (Second Review), USITC Pub. 4237 (June 2011) at 26. As a result, Maverick maintains that the Department should continue to include internally-consumed HRS in its calculation of the domestic supply.

<sup>202</sup> See CVD Preamble, 63 FR at 65377.

Moreover, Maverick notes that it has been the Department's practice to use a tier two benchmark given government presence in the market similar to Erdemir's and Isdemir's share of the market in this case.<sup>203</sup>

According to Maverick, Toscelik has mischaracterized the Court's recent decision in Borusan. Maverick argues that the Court in Borusan did not require that the Department "adduce positive evidence of distortion over and above the mere fact of market share," as Toscelik claims. Rather, Maverick notes that the Court required further explanation of those circumstances where government involvement in a substantial portion of the market results in: 1) minimal distortion; and 2) substantial or significant distortion, as well as its reasoning and the evidence which supports it.<sup>204</sup> Maverick contends that answers to the Court's request can be found in the Department's past cases. Specifically, Maverick notes that, in Tires from the PRC, the Department found that, despite a substantial government share of production, the market was not distorted because imports accounted for a share of the market which far exceeded total domestic production.<sup>205</sup> Therefore, Maverick argues that, in order for the Department to rely on a tier one benchmark, there must be record evidence of factors which meaningfully mitigate the market distortion caused by the government producer's substantial share of that market. According to Maverick, there are no such factors present in this case. Instead, Maverick claims that the facts here illustrate a situation where a government producer's sales, accounting for a "substantial portion of the market," result in significant market distortion because of the financial support Erdemir receives from the Turkish government and Erdemir's role in implementing steel sector industrial policy.

Maverick argues that Toscelik's attempt to show that Erdemir is not affecting the Turkish HRS market, by comparing Erdemir's HRS prices to other HRS prices in the Turkish market, is of no significance. Maverick claims that the fact remains that the GOT has a drastic impact on the market dynamics of the Turkish steel industry. According to Maverick, the government price is

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<sup>203</sup> See Kitchen Racks from the PRC, and accompanying Issues and Decision Memorandum at 51 (where the Department found that state-owned enterprises, accounting for 46.12 percent of the production of wire rod, significantly distorted the market). See also Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 59212 (September 27, 2010) (Coated Paper from the PRC), and accompanying Issues and Decision Memorandum at 62 (where the Department found that a government presence of as little as 36.68 of production significantly distorted the market).

<sup>204</sup> See Borusan, Slip Op. 15-36 at 38. Maverick also disagrees with what it claims is Toscelik's mischaracterization of the Court's opinion in Borusan by suggesting that a government producer must possess market power in the antitrust sense to be able to depress prices below what the market would otherwise support. According to Maverick, in Borsuan, the Court actually contrasted the Department's distortion analysis with antitrust law. Id., at 34 n.18. Maverick points out that the Department recognizes the distinction between the distortion analysis and antitrust concepts, noting in several cases that that Department stated that it was not finding collusion between private and state-owned firms, but rather it was recognizing that the government becomes a price leader which forces private suppliers to compete with it. See Kitchen Racks from the PRC, and accompanying Issues and Decision Memorandum at 52; see also Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 32902 (June 10, 2010), and accompanying Issues and Decision Memorandum at 57.

<sup>205</sup> See Certain New Pneumatic Off-The-Road Tires from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances, 73 FR 40480 (July 15, 2008) (Tires from the PRC), and accompanying Issues and Decision Memorandum at 79.

not always lower than the prices of private producers, but those prices are nonetheless affected by the large volume of GOT-controlled and -supported capacity in the market. Maverick notes that this is why, when the Department finds a market to be distorted, it relies on a tier two benchmark, excluding the prices of imports into and exports from the market in question.<sup>206</sup> Consequently, Maverick argues that the Department should continue to find that Erdemir's substantial share of the domestic supply of the Turkish HRS market is distortive and, as a result, continue to use a tier two benchmark to measure the benefit of the GOT's provision of HRS for LTAR in the final determination.

#### Department's Position:

Following the remand redetermination issued in OCTG from Turkey CVD Final, we have reconsidered our distortion finding for the final determination.

In Borusan, the Court pointed to language from the CVD Preamble and directed the Department to provide further analysis of the "certain circumstances" that would lead it to find, or not find, the existence of market distortion where the government supplier accounts for a "substantial portion," but not a majority, of the input market in question.<sup>207</sup> In compliance with the Court's direction, in OCTG from Turkey Remand Redetermination, the Department re-assessed the underlying record and determined that "the other factors that Commerce has considered as additional evidence of market distortion in other proceedings {were} not evident on the record" of the investigation.<sup>208</sup> Accordingly, the Department concluded that "HRS prices stemming from transactions within Turkey – including domestic purchases and imports into the country (*i.e.*, tier one prices) – may be considered appropriate, pursuant to the statutory and regulatory requirements, to use as benchmarks" in measuring the benefit under the provision of HRS for LTAR program.<sup>209</sup>

Similar to OCTG from Turkey Remand Redetermination, the record of this investigation does not contain evidence of the GOT's direct or indirect involvement resulting in distortion of the Turkish HRS market during the POI sufficient to warrant using an out-of-country benchmark.<sup>210</sup> For example, the record does not contain evidence of GOT export restraints on HRS<sup>211</sup> and the share of imports into the domestic market is higher than in certain past cases where the Department pointed to low import levels as relevant information in rejecting tier one prices.<sup>212</sup> The record information regarding any policies that the GOT may have with respect to

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<sup>206</sup> See, e.g., Utility Scale Wind Towers From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 75978 (December 26, 2012), and accompanying Issues and Decision Memorandum at Comment 15. Maverick states that this is the Department's practice because, in such situations, using "in-country private producer prices would be akin to comparing the benchmark to itself." See Sinks from the PRC, and accompanying Issues and Decision Memorandum at 49.

<sup>207</sup> See Borusan, 61 F. Supp. 3d at 1330-1332.

<sup>208</sup> See OCTG from Turkey Remand Redetermination.

<sup>209</sup> Id.

<sup>210</sup> Id.

<sup>211</sup> See GOT Initial Questionnaire Response at III-15.

<sup>212</sup> See Domestic Supply Recalculation Memo at Attachment 1.

the steel industry does not indicate that the GOT's pursuit of those policies results in a significant distortion of the Turkish HRS market. There is no indication otherwise that government involvement significantly distorts this market. Thus, the record of this investigation lacks additional facts present in other cases in which the agency found government distortion even where record evidence did not show that government-controlled producers accounted for a majority of the market for the good.<sup>213</sup>

Therefore, in light of the Department's reconsideration of that evidence pursuant to Borusan, we find it appropriate to conclude, consistent with OCTG from Turkey Remand Redetermination, that Toscelik's domestic and import prices for HRS can serve as a tier one benchmark in this investigation. Consequently, pursuant to 19 CFR 351.511(a)(2)(i), we used Toscelik's actual domestic and import prices for HRS to calculate the benefit from Toscelik's purchases of HRS from Erdemir and Isdemir during the POI. See "Programs Determined to be Countervailable – HRS for LTAR," above, for the details of the final determination tier one benchmark calculation.

#### Comment 4: Other Arguments Related to the HRS for LTAR Program

Toscelik and the GOT assert that the Department's tier two benchmark for HRS contains numerous errors. Because we are now using a tier one benchmark for HRS in our final determination subsidy calculations, these arguments are moot and we have not addressed them.

#### Comment 5: Provision of Land for LTAR

Toscelik and the GOT argue that the Department incorrectly valued the land benchmark in this case by using the benchmark from OCTG Turkey CVD Final, which the CIT found to be unlawful.<sup>214</sup> According to Toscelik and the GOT, the Department should instead use the land benchmark from the remand redetermination of CWP Turkey 2011 AR.<sup>215</sup>

Maverick states that the Department should not change its land benchmark in the final determination. Maverick maintains that the Department is not obligated to use the same benchmark to measure a benefit in every independent proceeding. According to Maverick, the CIT in Maverick held that the Department in the OCTG investigation merely adopted the results of CWP Turkey 2011 AR and those results became unlawful when the court overturned CWP Turkey 2011 AR.<sup>216</sup> Maverick contrasts the facts of the OCTG investigation with the instant

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<sup>213</sup> See, e.g., Kitchen Racks from the PRC at Comment 8, where the Department found that the domestic market for wire rod was distorted by government producers accounting for approximately 46 percent of production because of the presence of export tariffs and export licensing requirements, as well as the low share of imports in the domestic market; and Coated Paper from the PRC at Comment 14, where the Department found that the domestic market for caustic soda was distorted by government producers accounting for approximately 37 percent of production because imports as a share of domestic consumption were insignificant.

<sup>214</sup> See Maverick Tube Corporation v. United States, Consol. Court No. 14-00229, Slip Op. 15-59 at 11-12 (CIT 2015) (Maverick).

<sup>215</sup> See CWP Turkey 2011 AR and Final Results of Redetermination Pursuant to Court Remand, Circular Welded Carbon Steel Pipes and Tubes From Turkey, Toscelik Profil ve Sa Endustrisi A.S. vs United States, Court No. 13-00371, dated February 13, 2015.

<sup>216</sup> See Maverick, Slip Op. 15-59 at 12.

case, where the Department did not merely adopt the OCTG investigation results, but instead determined that the most appropriate land benchmark based on the facts on this record was the land benchmark used in the OCTG investigation. According to Maverick, Toscelik cited no evidence on the record of this case which undermines the land benchmark used in the Preliminary Determination. Maverick argues that, as a result, the Department should not change the land benchmark here based on a determination made in a separate case with different facts.

#### Department's Position:

We did not change the land benchmark we are using for purposes of the final determination. We analyzed the data on the record of this investigation and continued to determine that the most appropriate land benchmark is that described in the "Analysis of Programs - Provision of Land for LTAR" section, above.

While this benchmark happens to be the same land benchmark used in the OCTG from Turkey CVD Final, we disagree with Toscelik and the GOT that it is inappropriate to use in this investigation. In Maverick, the Court held that, because the Department had simply adopted the results of CWP Turkey 2011 AR in OCTG from Turkey CVD Final, the remand redetermination issued in CWP Turkey 2011 AR applied directly to that case.<sup>217</sup> However, in this investigation we have not simply adopted the results of OCTG from Turkey CVD Final. Instead, we analyzed the record of this investigation and determined the appropriate land benchmark to use in our calculations. Moreover, in the separate decision that resulted in the redetermination of CWP Turkey 2011 AR, the Court faulted not the Department's benchmark methodology as such, but rather the fact that the Department altered a benefit allocation determined in a prior administrative review of the proceeding.<sup>218</sup> Therefore, we continued to rely on the land benchmark calculated in the Preliminary Determination for our final determination subsidy calculations.

#### Comment 6: The Sales Denominator Used for Toscelik

In the Preliminary Determination, we calculated the subsidy rates for most of Toscelik's reported programs using either the combined total sales or the export sales of Toscelik Profil and Tsyali Dis Ticaret as the denominator.<sup>219</sup>

Toscelik contends that the Department incorrectly excluded sales by Tsyali Demir from the denominator of its benefit calculations. Toscelik notes that Toscelik Profil sells all of the billets it produces to Tsyali Demir, and Tsyali Demir uses those billets solely to produce long steel

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<sup>217</sup> See Maverick at 12.

<sup>218</sup> See Toscelik Profil ve Sac Endustrisi A.S. v. United States, Slip Op. 14-126 (Oct. 29, 2014), remand results sustained, Slip Op. 15-28 (Apr. 1, 2015). (Toscelik) ("Having thus established the benchmark for the 2008 parcel and the benchmark's AUL amortization schedule in the prior review, use of that benchmark and schedule became final and unappealable.")

<sup>219</sup> The only programs for which we used a different denominator were: 1) Law 6486: Social Security Premium Incentive, where we used as the denominator the combined total sales of Toscelik Profil, Tsyali Dis, Tsyali Demir, and Tsyali Holding; and 2) the export loan rediscount program for Tsyali Demir, where we used as the denominator the combined total sales of Toscelik Profil, Tsyali Dis, and Tsyali Demir.

products. Thus, according to Toscelik, Toscelik Profil is an “input supplier” to Tosyali Demir and Tosyali Demir is a “downstream producer.” Therefore, Toscelik argues that all domestic subsidies received by Toscelik Profil must be attributed to the combined sales of both the input supplier and the downstream producer, pursuant to 19 CFR 351.525(b)(6)(iv). Consequently, Toscelik argues that all subsidies other than export subsidies should be attributed to the combined sales of Toscelik Profil, Tosyali Demir, and Tosyali Dis, exclusive of intercompany transfers.<sup>220</sup>

The petitioners disagree with Toscelik, asserting that the Department correctly excluded Tosyali Demir’s sales from the denominator of its calculations of domestic subsidies. The petitioners state that Toscelik has misinterpreted the “input suppliers” rule at 19 CFR 351.525(b)(6)(iv). According to the petitioners, the Department intended to apply this section of its regulations to situations where, when a subsidy benefitted the producer of an input dedicated primarily to the product under investigation, it would attribute the benefit of that subsidy to the combined sales of the input and downstream products.<sup>221</sup> As an example, the petitioners point to the CVD investigations of softwood lumber from Canada and pasta from Italy, where the Department considered whether upstream products, timber and semolina, respectively, were primarily dedicated to make the downstream products under investigation, lumber and pasta. In contrast, the petitioners note that the Department has stated that the “input suppliers” rule would not apply in situations where the input producer’s products are not primarily dedicated to the production of downstream subject merchandise.<sup>222</sup>

The petitioners point out that Toscelik did not cite any cases in which the Department considered companies producing inputs used to produce non-subject merchandise under the “input suppliers” rule. In fact, the petitioners note that the Department in its recent Indonesian paper investigation considered whether timber suppliers provided wood used in the downstream production of paper, but did not consider whether they supplied wood used to produce other products, such as lumber; thus, the Department did not include downstream sales of products such as lumber in the denominator of its subsidy calculation.<sup>223</sup>

The petitioners maintain that the Department correctly calculated the sales denominators used in the preliminary determination. The petitioners note that the Department in its benefit

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<sup>220</sup> Toscelik notes that the sales of billets from Toscelik Profil to Tosyali Demir, which were excluded from Toscelik’s reported sales, benefitted from any domestic subsidies Toscelik Profil received in the same manner as the coils Toscelik Profil produced and used to make welded line pipe. For example, Toscelik points out that Toscelik Profil’s melt shop, as well as its billet and slab casters, are located on the company’s land in Osmaniye, at issue in the land for LTAR program. Thus, Toscelik argues that any benefit from that land supports not only coil and welded line pipe production, but also billet and Tosyali Demir’s long product production. According to Toscelik, excluding Tosyali Demir’s finished products creates a mismatch between the subsidies received and the goods to which they are attributed. Toscelik contends that this violates the Department’s obligation to calculate margins and subsidy rates accurately. See Rhone Poulenc, Inc. v. United States, 899 F.2d 1185, 1191 (CAFC 1990); see also Maverick, Slip Op. 15-59 at 11-12.

<sup>221</sup> See CVD Preamble, 63 FR at 65401.

<sup>222</sup> Id.

<sup>223</sup> See Certain Uncoated Paper From Indonesia: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Determination, 80 FR 36971 (June 29, 2015).

calculations already accounts for subsidies which flow to other products Toscelik Profil sells because all of Toscelik Profil's sales are in the denominator. According to the petitioners, under Toscelik's proposal, the Department would excessively account for the effect of Toscelik Profil's sales used to produce non-subject merchandise.<sup>224</sup> Thus, the petitioners assert that the Department should not modify the sales denominators for Toscelik from those used in the Preliminary Results.

Finally, Maverick notes that, while it is inappropriate for the Department to include Tosyali Demir's sales in the denominator of any domestic subsidy program, it must not include these sales in the denominator for the HRS for LTAR benefit calculation. Maverick states that 19 CFR 351.525(b)(5) provides that, if a subsidy is tied to the production or sale of a particular product, the Department will attribute the subsidy to only that product. Consequently, Maverick asserts that, because HRS is not used to produce long products, subsidies under the HRS for LTAR program cannot be attributed to Tosyali Demir.

Department's Position:

We did not modify the sales denominators used to calculate Toscelik's subsidy rates.<sup>225</sup> Section 351.525(b)(6)(i) of the Department's regulations states that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. Section 351.525(b)(6)(iv) of the Department's regulations states the following:

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

Toscelik requests that we include the sales of Tosyali Demir in the denominator for any subsidies that Toscelik Profil or Tosyali Dis received because Toscelik Profil supplies billets to Tosyali Demir. However, according to 19 CFR 351.525(b)(6)(iv), the Department attributes subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations only when it determines that production of the input product is primarily dedicated to production of the downstream product. Tosyali Demir produces non-subject merchandise.<sup>226</sup> We made no determination that the input product Toscelik Profil supplies to Tosyali Demir (*i.e.*, billet) is primarily dedicated to Tosyali Demir's production of its downstream non-subject merchandise, and Toscelik has not presented evidence that the input product is primarily dedicated to the production of this downstream non-subject merchandise.

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<sup>224</sup> The petitioners note that, while it does not appear that Tosyali Demir uses billets from Toscelik Profil to produce any one product, it is clear that billets are not used to make the product under investigation, welded line pipe.

<sup>225</sup> We note that we are calculating Toscelik's denominators in this investigation in the same manner as in OCTG Turkey CVD Final. See OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at Comment 10.

<sup>226</sup> See Toscelik Affiliation Questionnaire Response at 2 and 6.

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

Comment 7: Specificity and Countervailability of the IEP: Customs Duty and VAT Exemption

In the Preliminary Determination, we stated that, under Article 3.2 of Decree No. 2009/15199, the customs duty and VAT exemption program is limited to firms that make an iron and steel investment in excess of 50 million Turkish lira in certain regions of Turkey. Therefore, we found the GOT's customs duty and VAT exemption program to be specific under section 771(5A)(D)(i) of the Act because it is limited to firms making investments in excess of 50 million Turkish lira.

The GOT asserts that the Department incorrectly found this program to be specific. As an initial matter, the GOT notes that, pursuant to Article 3.2 of Decree No. 2009/15199, this program is available to all firms in Turkey regardless of their location (*i.e.*, no regions or cities are excluded). Moreover, the GOT points out that, according to Article 4 of Decree No. 2009/15199, the minimum fixed investment a firm must make to be eligible for this program is between five hundred thousand and one million Turkish lira, depending on the region where the investment is made. Thus, according to the GOT, the criteria for this program are in accordance with Article 2.1 of the WTO Subsidies and Countervailing Measures Agreement and preclude this program from being specific.

The GOT notes that the Department examined this program (in its current and earlier versions) in prior cases and did not find the program to be specific; as a result, the GOT claims that the Department did not find this program countervailable.<sup>227</sup> Therefore, the GOT contends that the Department should correct its error and determine that this program is not specific in the final determination.

The petitioners did not comment on this issue.

Department Position:

We continue to find this program to be specific for purposes of the final determination. In past CVD proceedings, the Department found previous versions of this program not countervailable because it found the program not to be specific.<sup>228</sup> However, in CWP Turkey 2011 AR and OCTG Turkey CVD Final, the Department examined certain changes to the program applicable

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<sup>227</sup> See CWP Turkey 2011 AR, and accompanying Issues and Decision Memorandum at 17.

<sup>228</sup> See, *e.g.*, CWP from Turkey 2010 AR, and accompanying Issues and Decision Memorandum at 17.

to licenses issued after January 1, 2009.<sup>229</sup> The Department found that, under these program changes, the GOT limited benefits under the program by the express inclusion of certain enterprises or industrial sectors and the express exclusion of others, as well as restricting benefits to certain investments in designated regions.<sup>230</sup> Record information in this investigation is consistent with the Department's findings in CWP Turkey 2011 AR and OCTG Turkey CVD Final.

While the GOT argues that it does not limit benefits under the program to firms making investments in excess of 50 million Turkish lira, Decree No. 2009/15199 (governing the post-2008 iteration of this program) limits the customs duty and VAT exemptions under this program to firms that make investments in excess of 50 million Turkish lira.<sup>231</sup> The GOT also argues that all cities and regions in Turkey may use the investment incentive program as a whole; however, the decree limits customs duty and VAT exemptions for iron and steel investments to certain regions.<sup>232</sup>

Therefore, based on the information in the legislation that governs the IEP program, we continue to find that this program is limited to firms making investments in excess of 50 million Turkish lira and, thus, it is specific under section 771(5A)(D)(i) of the Act. As a result, we have included this program in the AFA countervailable subsidy rate calculated for Borusan.<sup>233</sup> See the "Use of Facts Otherwise Available and Adverse Inferences" section, above, for further discussion.

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<sup>229</sup> See CWP Turkey 2011 AR, and accompanying Issues and Decision Memorandum at 17 and Comment 5; and OCTG Turkey CVD Final, and accompanying Issues and Decision Memorandum at 15 and Comment 14.

<sup>230</sup> Id.

<sup>231</sup> See GOT First Supplemental Response at Exhibit 19.

<sup>232</sup> Id.

<sup>233</sup> In the Preliminary Determination, we found that only Borusan received exemptions on imports of equipment under this program during the POI. As a result, we have not included this program in the countervailable subsidy rate calculated for Toscelik. See Preliminary Determination, and accompanying Preliminary Decision Memorandum at 25.

## VIII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish this final determination of this investigation and the final subsidy rates in the Federal Register.

✓  
Agree                      Disagree

Paul Piquado  
Assistant Secretary  
for Enforcement and Compliance

5 October 2015  
Date