



C-489-827
Investigation
Public Document
E&C/Office VII: EH/GC

January 8, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Negative
Determination: Countervailing Duty Investigation of Certain Hot-
Rolled Steel Flat Products from the Republic of Turkey

I. SUMMARY

The Department of Commerce (Department) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of certain hot-rolled steel flat products (hot-rolled steel, or subject merchandise) from the Republic of Turkey (Turkey), as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On August 11, 2015, AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation (collectively, Petitioners) filed the countervailing duty (CVD) petition on hot-rolled steel from Turkey.¹ Supplements to the CVD Petition and our consultations with the Government of Turkey (GOT) are described in the CVD Initiation Checklist.² On August 31, 2015, the Department initiated a CVD investigation on hot-rolled steel from Turkey.³

¹ See "Certain Hot-Rolled Steel Flat Products from Australia, Brazil, Japan, the Republic of Korea, the Netherlands, Turkey, and the United Kingdom: Petitions for the Imposition of Antidumping and Countervailing Duties," August 11, 2015 (CVD Petition).

² See "Countervailing Duty Initiation Checklist: Certain Hot-Rolled Steel Flat Products from the Republic of Turkey," August 31, 2015 (CVD Initiation Checklist).

³ See *Certain Hot-Rolled Steel Flat Products from Brazil, the Republic of Korea, and Turkey: Initiation of Countervailing Duty Investigations*, 80 FR 54267 (September 9, 2015) (*Initiation Notice*).



We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁴ On September 1, 2015, the Department released the CBP entry data under administrative protective order.⁵ Section 777A(e)(1) of the Act directs the Department to calculate individual countervailable subsidy rates for each known producer/exporter of the subject merchandise. However, when faced with a large number of producers/exporters, and, if the Department determines it is therefore not practicable to examine all companies, section 777A(e)(2)(A)(ii) of the Act and 19 CFR 351.204(c) give the Department discretion to limit its examination to a reasonable number of the producers/exporters accounting for the largest volume of the subject merchandise that can reasonably be examined.

On September 29, 2015, the Department selected Colakoglu Dis Ticaret A.S. (COTAS) and Eregli Demir ve Celik Fabrikalari T.A.S. (Erdemir) as the mandatory respondents, and issued the Initial Questionnaire to the GOT.⁶ The Department instructed the GOT to forward the questionnaire to the selected mandatory respondents. On October 14, 2015, COTAS timely responded to our questions in the Initial Questionnaire related to its affiliated companies.⁷ COTAS identified one company, Çolakoglu Metalurji, A.Ş. (Colakoglu Metalurji) with which it was affiliated that produced subject merchandise that COTAS exported from Turkey. We issued a supplemental questionnaire to COTAS regarding its response on October 29, 2015; COTAS timely submitted its response to this supplemental on November 5, 2015.⁸

On October 21, 2015, Erdemir timely responded to our questions in the Initial Questionnaire related to its affiliated companies.⁹ Erdemir identified several affiliated companies that are involved in the production of subject merchandise: Iskenderun Demir ve Celik A.S. (Isdemir), an integrated producer of subject merchandise; Erdemir Celik Servis Merkezi San. ve Tic. A.S. (Ersem), which also produces subject merchandise; Erdemir Madencilik San. ve Tic. A.S. (Ermaden), a provider of inputs to Erdemir and to Isdemir for the production of subject merchandise.¹⁰

⁴ *Id.*, 80 FR at 54267, 54270.

⁵ See Memorandum, “Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Customs Entry Data for Respondent Selection,” September 1, 2015.

⁶ See Letter to the GOT, “Countervailing Duty Investigation on Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Countervailing Duty Questionnaire,” September 30, 2015 (Initial Questionnaire).

⁷ See Letter from COTAS, “Certain Hot-Rolled Steel Flat Products from Turkey: Colakoglu Response to Sec. III of the CVD Questionnaire Identifying Affiliated Parties,” October 14, 2015 (COTAS Affiliation QR).

⁸ See Letter to COTAS, “Supplemental Questionnaire for the Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey,” October 29, 2015; see also Letter from COTAS, “Certain Hot-Rolled Steel Flat Products from Turkey: Colakoglu Response to Supplemental Sec. III of the CVD Questionnaire Identifying Affiliated Parties,” November 5, 2015 (COTAS Affiliation SQR).

⁹ See Letter from Erdemir, “Hot-Rolled Steel Flat Products from Turkey; Erdemir response to affiliation questionnaire,” October 21, 2015 (Erdemir Affiliation QR).

¹⁰ *Id.* at 4-5.

COTAS and Erdemir on November 13, 2015, and the GOT on November 16, 2015, timely submitted their complete responses to the Initial Questionnaire.¹¹ Supplemental questionnaires were issued to COTAS on November 30, 2015, and to Erdemir and the GOT on December 2, 2015.¹² An additional supplemental questionnaire was issued to Erdemir and the GOT on December 9, 2015.¹³ COTAS, Erdemir and the GOT's responses to these supplemental questionnaires were timely filed.¹⁴

Petitioners filed comments in advance of this preliminary determination on December 23, 2015.¹⁵ We have considered these comments in making this determination.

B. Postponement of Preliminary Determination

On October 21, 2015, the Department postponed the deadline for the preliminary determination until no later than 130 days after the initiation of the investigation, based on a request from Petitioners. The Department postponed the preliminary determination until January 8, 2016, in accordance with sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).¹⁶

C. Period of Investigation

The period of investigation (POI) is January 1, 2014, through December 31, 2014.

¹¹ See Letter from COTAS, "Certain Hot-Rolled Steel Flat Products from Turkey: Colakoglu Response to Sections III of the CVD Questionnaire," November 13, 2015 (COTAS November 13 QR); see also Letter from Erdemir, "Hot-Rolled Steel Flat Products from Turkey; Erdemir response to questionnaire," November 13, 2015 (Erdemir November 13 QR); see also Letter from the GOT, "Response of the Government of Turkey in CVD Investigation on Imports of Certain Hot Rolled Steel Flat Products from the Republic of Turkey," November 16, 2015 (GOT November 16 QR).

¹² See Letter to COTAS, "Supplemental Questionnaire for the Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey," November 30, 2015; see also Letter to Erdemir, "Supplemental Questionnaire for the Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey," December 2, 2015; see also Letter to the GOT, "Supplemental Questionnaire for the Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey," December 2, 2015.

¹³ See Letter to Erdemir, "Supplemental Questionnaire for the Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey," December 9, 2015; see Letter to the GOT, "Supplemental Questionnaire for the Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey," December 9, 2015.

¹⁴ See Letter from COTAS, "Certain Hot-Rolled Steel Flat Products from Turkey: Colakoglu Response to Sections III of the CVD Questionnaire," December 14, 2015 (COTAS December 14 SQR); see also Letter from the GOT, "First Supplemental Questionnaire Response of the Government of Turkey in CVD Investigation on Imports of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey," December 16, 2015 (GOT First SQR); see also Letter from the GOT, "Second Supplemental Questionnaire Response of the Government of Turkey in CVD Investigation on Imports of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey," December 16, 2015 (GOT Second SQR); see also Letter from Erdemir, "Hot-Rolled Steel Flat Products from Turkey; Erdemir response to supplemental questionnaires 1 and 2," December 16, 2015 (Erdemir December 16 SQR).

¹⁵ See Letter from Petitioners, "Hot-Rolled Steel Flat Products from Turkey - Petitioner's Deficiency and Pre-Preliminary Comments," December 23, 2015.

¹⁶ See *Certain Hot-Rolled Steel Flat Products From Brazil, the Republic of Korea, and Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 80 FR 63745 (October 21, 2015).

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations, we set aside a period of time in our *Initiation Notice* for parties to raise issues regarding product coverage, and we encouraged all parties to submit comments within 20 calendar days of the signature date of that notice.¹⁷

We received several comments concerning the scope of the antidumping (AD) and CVD investigations of hot-rolled steel from, *inter alia*, Turkey. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determination of the companion AD investigations, which are due for signature on March 8, 2016. We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determinations after considering any relevant comments submitted in case and rebuttal briefs.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of thickness, and regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping¹⁸ or countervailing duty¹⁹ orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A-580-836; C-580-837), and

¹⁷ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997); see also *Initiation Notice*, 80 FR 54267, at 54268.

¹⁸ See *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

¹⁹ See *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000).

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this

investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Universal mill plates (*i.e.*, hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;²⁰
- Ball bearing steels;²¹
- Tool steels;²² and
- Silico-manganese steels;²³

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

The HTSUS subheadings above are provided for convenience and U.S. Customs and Border Protection purposes only. The written description of the scope of the investigation is dispositive.

²⁰ For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

²¹ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

²² Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

²³ Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

V. ALIGNMENT

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on Petitioners' request, we are aligning the final CVD determination in this investigation with the final determination in the companion antidumping duty (AD) investigation of hot-rolled steel from Turkey.²⁴ Consequently, the final CVD determination in this investigation will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than May 23, 2016, unless postponed.

VI. INJURY TEST

Because Turkey is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a U.S. industry. On September 25, 2015, the ITC preliminarily determined that there was a reasonable indication that an industry in the United States is materially injured by reason of imports of hot-rolled steel from Turkey.²⁵

VII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the AUL of renewable physical assets used in the production of subject merchandise.²⁶ 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.²⁷ The Department notified the respondents of the 15-year AUL in the Initial Questionnaire and requested data accordingly. No party in this proceeding disputed this allocation period.

Furthermore, for non-recurring subsidies, we applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the year in which the assistance was approved. 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 over the AUL.

²⁴ See Letter from Petitioners, "Hot-Rolled Steel Flat Products from Turkey - Petitioner's Request to Align the Countervailing Duty Final Determination With the Companion Antidumping Duty Final Determination," December 23, 2015.

²⁵ See *Certain Hot-Rolled Steel Flat Products From Australia, Brazil, Japan, Korea, the Netherlands, Turkey, and the United Kingdom: Determinations*, 80 FR 58787 (September 30, 2015).

²⁶ See 19 CFR 351.524(b).

²⁷ See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods.

B. Attribution of Subsidies

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) provide additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

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

{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.²⁸

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 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.²⁹

COTAS

In its October 14, 2015 questionnaire response, COTAS reported that it was part of the Colakoglu Group, a group that includes 25 affiliated companies.³⁰ The Colakoglu Group's companies are wholly- or majority-owned, either directly or indirectly, by the Colakoglu

²⁸ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

²⁹ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

³⁰ See COTAS Affiliation QR at 3.

family.³¹ COTAS states that companies within the Colakoglu Group have common officers and interlocking directorates.³² Because each of these 25 companies are either directly or indirectly owned by the Colakoglu family, they meet the definition of cross-ownership as described in the Department's regulations at 19 CFR 351.525(b)(6)(vi).

Of these 25 companies, only Colakoglu Metalurji is a producer of subject merchandise. COTAS also reported that Colakoglu Metalurji is its parent company. Accordingly, we are attributing any subsidies received by Colakoglu Metalurji to its consolidated sales, in accordance with 19 CFR 351.525(b)(6)(iii). COTAS reported that it is a trading company that handles a majority of Colakoglu Metalurji's export sales to the United States, and is not a producer. Therefore, we are cumulating any benefits received by COTAS with benefits received by Colakoglu Metalurji, in accordance with 19 CFR 351.525(c). To do so, we divided benefits received by COTAS by its total or exports sales, as appropriate, to derive program-specific subsidy rates. We then added the total subsidy rate for COTAS to the total subsidy rate calculated for Colakoglu Metalurji.

Additionally, besides Colakoglu Metalurji, COTAS provided details of numerous other affiliated companies, none of which meets the requirements of the attribution rules under 19 CFR 351.525 for the purpose of attributing to COTAS the benefits from any subsidies these companies may have received, if any; *i.e.*, they are not Turkish-registered holding companies or trading companies that export subject merchandise, or producers of subject merchandise or inputs used in the production of subject merchandise.

Erdemir

Erdemir reported that it is a member of the Erdemir Group of companies owned in whole, or in major part, by Erdemir.³³ Because these companies are owned in whole, or in major part, by Erdemir, they meet the definition of cross-ownership as defined at 19 CFR 351.525(b)(6)(vi). Erdemir reported that it is a producer of subject merchandise. Two cross-owned affiliates, Isdemir and Ersem, are also producers of subject merchandise.³⁴ As a result, we are attributing the subsidies received by these companies to the combined sales of these companies, less inter-company sales, in accordance with 19 CFR 351.525(b)(6)(ii). Erdemir also reported that Ermaden supplies inputs (*i.e.*, iron ore) to Erdemir and to Isdemir for the production of subject merchandise and other steel products (flat-rolled steel and long steel products).³⁵ We preliminarily determine that the iron ore supplied by Ermaden is primarily dedicated to the production of downstream steel products in accordance with 19 CFR 351.525(b)(6)(iv). As a result, we are attributing subsidies received by Ermaden to the combined sales of the company itself and to the producers of subject merchandise (*i.e.*, Erdemir, Isdemir, and Ersem), excluding inter-company sales, as instructed by 19 CFR 351.525(b)(6)(iv). Concerning other affiliated companies reported by Erdemir,³⁶ we preliminarily find that these companies do not meet any of

³¹ See COTAS Affiliation SQR at Exhibit CVD S1-1. Colakoglu family members include brothers, their children, and spouses.

³² See COTAS Affiliation QR at 3.

³³ See Erdemir Affiliation QR at 4-5.

³⁴ *Id.*

³⁵ See Erdemir's November 13 QR at 4.

³⁶ See Erdemir's Affiliation QR at 4-5.

the attribution conditions of 19 CFR 351.525(b)(6)(ii)-(v). Therefore, we have preliminarily determined not to include these companies in our subsidy analysis.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in further detail in the Preliminary Analysis Memoranda, prepared for this investigation.³⁷ Consistent with 19 CFR 351.525(b)(3), we have used each mandatory respondents' total "free-on-board" (FOB) sales, FOB export sales, or consolidated sales from the year the subsidy was received as the sales denominator.

VIII. LOAN BENCHMARKS AND INTEREST RATES

We are investigating export loans and non-recurring, allocable subsidies that the respondents received.³⁸ In the section below, we discuss the derivation of the benchmarks for the POI.

Short-Term Benchmark Interest Rate

We are examining export financing provided by the GOT.³⁹ To determine whether government provided loans confer a benefit, we use, where possible, company-specific interest rates for comparable commercial loans.⁴⁰ When loans are denominated in a foreign currency, 19 CFR 351.505(a)(2)(i) directs us to use a benchmark denominated in the same foreign currency as the loan. As discussed below at "Rediscount Program," COTAS and Colakoglu Metalurji reported that they paid interest on export loans denominated in U.S. dollars (USD), which were outstanding during the POI. The companies submitted the weighted-average interest rate that they paid on comparable short-term, USD commercial loans during the POI.⁴¹ Consistent with 19 CFR 351.505(a)(2)(ii), we are preliminarily using the interest rates that COTAS and Colakoglu Metalurji submitted on comparable short-term loans as benchmarks. Erdemir also reported that Erdemir and Isdemir paid interest on export loans denominated in USD, and these companies also submitted a weighted-average interest rate that they paid on comparable short-term, USD commercial loans during the POI.⁴² In accordance with 19 CFR 351.505(a)(2)(ii), we preliminarily determine to use the interest rates provided by Erdemir as benchmarks for the Erdemir companies' short-term loans.

³⁷ See Memoranda, "Preliminary Determination Analysis for Colakoglu Dis Ticaret A.S.," and "Preliminary Determination Analysis for Eregli Demir ve Celik Fabrikalari T.A.S.," dated concurrently with this memorandum (Preliminary Analysis Memoranda).

³⁸ See 19 CFR 351.524(b)(1).

³⁹ See CVD Initiation Checklist at 10.

⁴⁰ See 19 CFR 351.505(a)(2)(ii).

⁴¹ See COTAS November 13 QR at III-15 and Exhibit CVD-20.

⁴² See Erdemir's November 13 QR at Exhibit 19.

IX. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined To Be Countervailable

1. Deductions from Taxable Income for Export Revenue

Addendum 4108 of Article 40 of the Income Tax Law Number 193, effective June 2, 1995, allows taxpayers engaged in export activities to claim a lump sum deduction from gross income resulting from exports, construction, maintenance, assembly, and transportation activities abroad in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings from such activities.⁴³ This deduction is to cover the expenditures without documentation incurred from exports, construction, maintenance, assembly, and transportation activities abroad.⁴⁴ The deduction for export earnings may either be taken as a lump sum on a company's annual income tax return or be shown within the company's marketing, selling and distribution expense account of the income statement.⁴⁵ Under this program, marketing, selling, and distribution expenses are deductible expenditures for tax purposes. The Ministry of Finance is responsible for administering the program.⁴⁶

Consistent with prior determinations, we preliminarily find that this tax deduction provides a countervailable subsidy.⁴⁷ The income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, to the extent it results in revenue forgone by the GOT by lowering the company's taxable income and, thus, reducing its tax liability. The deduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). It is also specific under section 771(5A)(B) of the Act because its receipt is contingent upon export earnings. During the POI, COTAS reported receiving the deduction for export earnings with respect to their 2013 tax returns filed during the POI.⁴⁸

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 additional tax that would have been paid absent the program. To calculate the countervailable subsidy rate for COTAS for this export-

⁴³ See GOT November 16 QR at 5.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 16, 2012), and accompanying Issues and Decision Memorandum at "Deduction from Taxable Income for Export Revenue"; *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination in the Countervailing Duty Determination and Final Affirmation Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG Turkey CVD Final*), and accompanying Issues and Decision Memorandum at "Deduction from Taxable Income for Export Revenue."

⁴⁸ See COTAS November 13 QR at III-9.

contingent program, we divided this benefit by COTAS's FOB export sales for the POI. On this basis, we preliminarily determine a subsidy rate of 0.03 percent *ad valorem* for COTAS.

2. Social Security Premium Exemptions

According to the GOT, this program was established in May 2013 under Law 6486 as an added provision to Law 5510, effective as of January 1, 2013.⁴⁹ Under the administration of the Social Security Institution of the GOT, this program aims to increase production and employment levels in certain provinces by reducing the costs of employers' insurance premiums. Companies employing at least 10 workers and operating in certain provinces determined by the Council of Ministers are eligible for this program.⁵⁰ Companies can benefit from this program by not paying the employers' share of long-term social security insurance premiums, which is 11 percent of the employee's earnings subject to the premium.⁵¹

Erdemir's cross-owned input supplier, Ermaden, reported receiving social security premium exemptions under this program as it has facilities in Sivas, which is an eligible location.⁵²

We find that Ermaden's exemption from paying its share of social security premiums under this program during the POI constitutes a financial contribution in the form of revenue foregone to the GOT within the meaning of section 771(5)(D)(ii) of the Act. We further preliminarily determine that Ermaden benefitted under this program pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1) in the amount of social security premiums that Ermaden 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 certain provinces.

To calculate the benefit Ermaden received under this program, we summed the total amount of insurance premium savings reported by Ermaden during the POI. To calculate the net subsidy rate, we divided the benefit by the total combined sales of Ermaden and the cross-owned producers of subject merchandise (*i.e.*, Erdemir, Isdemir, and Ersem). On this basis, we preliminarily determine the net subsidy rate from this program to be 0.04 percent *ad valorem* for Erdemir.⁵³

3. Rediscount Program

The Rediscount Program was established in 1999 and is administered by the Export Credit Bank of Turkey (Turk Eximbank).⁵⁴ The Rediscount Program was designed to provide financial

⁴⁹ See GOT November 16 QR at 15.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See Erdemir's November 13 QR at 15.

⁵³ The Department has previously found this program to be countervailable. See, e.g., *Welded Line Pipe From the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*Welded Line Pipe from Turkey*) and accompanying Issues and Decision Memorandum at 25, "Law 6486: Social Security Premium Incentive."

⁵⁴ See GOT November 16 QR at 29-30.

support to Turkish exporters, manufacturer-exporters, and manufacturers supplying exporters.⁵⁵ This program is contingent upon an export commitment.⁵⁶ Under the Rediscount Program, there is a minimum loan amount of 200,000 U.S. dollars per company.⁵⁷ Loan payments shall be made within the credit period or at maturity to the Turk Eximbank.⁵⁸ 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.⁵⁹ Colakoglu Metalurji and Erdemir reported that they had loans outstanding under this program during the POI.⁶⁰

We preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT under 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amount paid by the company for the loans during the POI and the amount the company would have paid on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance. The Department's finding in this regard is consistent with its practice.⁶¹

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 (based on the short-term benchmarks discussed above) because a borrower pays the interest due upfront when the loan is received. Further, for Colakoglu Metalurji, in accordance with section 771(6)(A) of the Act, we subtracted the fees that it paid for guarantees required for receipt of the loans from the benefit calculation. To calculate the countervailable subsidy rate for COTAS, we divided each company's benefit amount by its total export sales value (COTAS) or consolidated export sales value (Colakoglu Metalurji) for the POI. We then added together the subsidy rate calculated for each company to arrive at the program subsidy rate for COTAS.

For Erdemir, we did not subtract such fees from the benefit calculation because we have no information that Erdemir paid such fees. To calculate the countervailable subsidy rate for Erdemir, we summed the benefits for loans reported by Erdemir and its cross-owned producer of subject merchandise, Isdemir, and divided these benefits by the combined, total POI export sales values for Erdemir, Isdemir and Ersem.

On this basis, we preliminarily determine a subsidy rate of 0.14 percent *ad valorem* for COTAS and 0.10 percent *ad valorem* for Erdemir.

⁵⁵ *Id.*.

⁵⁶ *Id.*

⁵⁷ *Id.* at Exhibit 7.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ See COTAS November 13 QR at III-13 through III-18; see also Erdemir November 13 QR at 18.

⁶¹ 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) (*Steel Rebar from Turkey*), and accompanying Issues and Decision Memorandum at 17-18 where the Department has previously found this program to be countervailable.

4. Provision of Natural Gas for Less than Adequate Remuneration (LTAR)

We initiated an investigation of whether, during the POI, Turkish hot-rolled steel producers received countervailable subsidies by purchasing natural gas from Boru Hatlari Ile Petrol Tasima A.S. (BOTAS) for LTAR.⁶² Colakoglu Metalurji reported that it made purchases of natural gas from BOTAS and provided signed contracts.⁶³ Erdemir also reported that it and its cross-owned producers of subject merchandise (*i.e.*, Isdemir and Ersem) purchased natural gas from BOTAS during the POI.⁶⁴

With regard to whether the GOT provides a financial contribution through the sale of natural gas by BOTAS, the GOT reported that since its founding, BOTAS has been a state-economic enterprise.⁶⁵ The GOT also reported that, according to Article 6 of Decree Law No. 233, all members of BOTAS' Board of Directors are appointed by approval of the Turkish President and the Turkish Prime Minister.⁶⁶ Moreover, according to Decree Law No. 233, Article 9, paragraph 2, and Articles 29 and 32, the Board makes decisions in line with determined governmental programs and budgets and subject to approval by the Council of Ministers.⁶⁷ For these reasons, we find BOTAS to be a government authority that provides a financial contribution within the meaning section 771(5)(D)(iii) of the Act.

With regard to specificity, Petitioners alleged that the “predominant user” of natural gas in Turkey (*i.e.*, the industry or group which receives “a disproportionately large amount of the subsidy”) is the power industry. The GOT reported that the total consumption of natural gas in Turkey in 2014, was 48,717,180 Sm³, and that BOTAS sold 40.119 million Sm³ of natural gas during the same year, or 82.35 percent of domestic consumption.⁶⁸ The GOT provided a breakdown of the industries that purchased natural gas in 2014.⁶⁹ This information indicates that power producers accounted for 23,441,970 Sm³, which is approximately 48.11 percent of all natural gas purchases in 2014, and that the next largest sector of the six sectors that use natural gas (the “Industry Sector”) accounted for 12,375,530 Sm³, which is only 25.4 percent of the total.⁷⁰ Thus, because power producers consumed 48.11 percent of natural gas during the POI, we determine that the provision of natural gas by BOTAS is predominantly used by, and specific to, power producers under section 771(5A)(D)(iii)(II) of the Act, including Colakoglu Metalurji and Erdemir, both of which used natural gas to produce electricity during the POI.

With regard to benefit, under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate market-determined benchmarks for measuring the adequacy of remuneration for government provided goods or services. These potential benchmarks are listed

⁶² See CVD Initiation Checklist at 13.

⁶³ See COTAS November 13 QR at III-20 and III-21, and Exhibit CVD-24.

⁶⁴ See Erdemir November 13 QR at 22.

⁶⁵ See GOT November 16 QR at 43.

⁶⁶ *Id.* at Exhibit 12.

⁶⁷ *Id.* at 42 and Exhibit 12.

⁶⁸ *Id.* at 45.

⁶⁹ *Id.* at 47-48.

⁷⁰ *Id.*

in hierarchical order by preference: (1) market prices from actual transactions of the good within the country under investigation (e.g., actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in the regulations, the preferred benchmark in the hierarchy is an observed market price for the good at issue from actual transactions within the country under investigation.⁷¹ Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority, or in certain circumstances, a substantial portion, of the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.⁷² As explained above, sales of natural gas by BOTAS account for 82.35 percent of domestic consumption, with another 479.39 Sm³ (0.98 percent) accounted for by other domestic producers, and the remainder accounted for by direct purchases by Turkish consumers from foreign suppliers (BOTAS serves as the transporter for these imports, charging a fee for its transmission services, but does not take title to gas imported directly under this latter group of transactions).

Consequently, because of the government's overwhelming involvement in the natural gas market, the use of private producer prices in the Turkey would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government presence).⁷³ Therefore, we determine that there is no viable "tier one" benchmark for natural gas in Turkey for 2014.

Under 19 CFR 351.511(a)(2)(ii), if there is no useable market-determined price to make the comparison under "tier one," then the government price is compared to a world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question (a "tier two" benchmark). Petitioners placed on the record a set of monthly prices for natural gas sales between various European countries, sourced from Global Trade Information Services (GTIS).⁷⁴ COTAS submitted similar information, and agreed with Petitioners that if the Department used a tier two benchmark, then a regional average price would be acceptable, as long as the countries selected are "representative," outlier prices are removed, and the

⁷¹ 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 IDM at "Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark" ("Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier").

⁷² See *Preamble*, 63 FR at 65377.

⁷³ See *Softwood Lumber from Canada*, and accompanying IDM at "Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark Analysis."

⁷⁴ See Letter from Petitioners, "Hot-Rolled Steel Flat Products from Turkey - Petitioner's Submission of Factual Information on Adequacy of Remuneration," December 9, 2015. The European countries are Croatia, the Czech Republic, Hungary, Italy, Norway, Slovakia, Serbia, and Spain; see also *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 11-13, where the Department relied on similar information for a benchmark for the provision of natural gas for LTAR.

benchmark price is weight averaged to prevent skewed results.⁷⁵ However, COTAS requested that the Department add another supplier/exporter, Kazakhstan, as “Kazak gas export data is readily available in GTIS and Kazakhstan is a significant source of gas for Europe. Kazakhstan is on the route for the Central Asia-Center Pipeline that connects Turkmenistan, Uzbekistan, Kazakhstan and Russia. Central Asia – Center pipeline is operated by GAZPROM.”⁷⁶

The GTIS dataset provided by Petitioners and COTAS includes natural gas sales among European countries and Kazakhstan, a country that Turkish producers could readily purchase natural gas from. We, therefore, find that the data placed on the record by Petitioners and COTAS represent prices of natural gas that would be potentially available to purchasers in Turkey. As such, we determine that the GTIS data, including data from Kazakhstan, are useable for benchmark purposes under 19 CFR 351.511(a)(2)(ii), “tier two” of the hierarchy.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties, *i.e.*, a “delivered” price to the factory. Therefore, in order to ensure that the monthly benchmark prices reflect what the respondents would have paid if they had imported natural gas directly, the regulation stipulates that the monthly average prices be adjusted by adding the delivery charges for the transmission of natural gas in Turkey and any import duties and VAT. The purchase agreement between the companies and BOTAS indicates that they paid delivered prices for their purchases of natural gas from BOTAS.⁷⁷ Colakoglu Metalurji and Erdemir also reported that they paid domestic VAT.⁷⁸

The GOT reported that prices charged by BOTAS consist of a per-unit charge for the natural gas and some per-unit transmission and capacity fees.⁷⁹ However, the benchmark prices provided by Petitioners and COTAS are the prices for natural gas to the borders of the importing countries and, therefore, do not include transmission fees within the borders of the purchasing countries. In order to ensure that the monthly benchmark prices reflect delivery charges in Turkey, we added the per-unit transmission and capacity fees charged by BOTAS to each monthly average world market price. The GOT reported that there are no import duties on imports of natural gas, but there is an 18 percent VAT.⁸⁰ As such, we included VAT in the monthly benchmark prices to construct a delivered price.

To calculate the program benefit, we compared the corresponding monthly benchmark unit prices to the unit prices that Colakoglu Metalurji and Erdemir paid BOTAS for natural gas purchased from BOTAS, including transmission and capacity fees and VAT, during the POI. Where the benchmark unit price was greater than the price paid to BOTAS, we multiplied the difference by the quantity of natural gas purchased from BOTAS to arrive at the benefit. We

⁷⁵ See Letter from COTAS, “Certain Hot-Rolled Steel Flat Products from Turkey: Çolakoğlu’s Reply to Petitioner’s Submission of Factual Information on Adequacy of Remuneration,” December 21, 2015.

⁷⁶ *Id.*

⁷⁷ See COTAS November 13 QR at Exhibit CVD-24; *see also* Erdemir November 13 QR at Exhibit 20.

⁷⁸ See COTAS November 13 QR at Exhibit CVD-21; *see also* Erdemir November 13 QR at Exhibit 20.

⁷⁹ See GOT November 16 QR at 50.

⁸⁰ *Id.* at 47.

next summed the benefits and divided that amount by the respective companies' total sales for the POI.

On this basis, we preliminarily determine subsidy rates for COTAS of 0.21 percent *ad valorem*, and 0.09 percent *ad valorem* for Erdemir.

Finally, we note that COTAS states that only a certain percentage of its natural gas benefits should be included in the subsidy rate because only a certain portion of the electricity production is used for steel production, while the surplus of the electricity unused in production is sold.⁸¹ However, 19 CFR 351.525(b)(3) requires the attribution of domestic subsidies to "all products sold by a firm," and pursuant to 19 CFR 351.525(b)(5)(i) the Department may depart from this rule and attribute a subsidy only to certain products sold by a firm only where that subsidy is "tied to the production or sale of a particular product." The Department's practice is to identify the type and monetary value of a subsidy at the time the subsidy is bestowed, and not to examine the use or effect of subsidies, *i.e.*, to trace how the benefits are used by companies. A subsidy is only tied to a particular product when the intended use is known to the subsidy provider (in this case the GOT) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. The Department's tying analysis has been upheld in various cases at the Court of International Trade (CIT).⁸² Because there has not been a showing that the GOT ever intended to limit the application of natural gas it provided to non-subject merchandise, and because the natural gas sold by BOTAS and corresponding benefits are not tied to the production of any type of product (*e.g.*, a company does not need to produce hot-rolled steel or to sell surplus electricity to the grid in order to purchase natural gas from BOTAS), we are countervailing all of COTAS's purchases of natural gas from BOTAS.⁸³

B. Programs Preliminarily Determined Not to Confer a Measurable Benefit During the POI

1. Provision of Hard Coal for LTAR

We initiated an investigation into whether Turkish steel producers that produce power with coal receive subsidies from the GOT in the form of reduced coal prices.⁸⁴ In their allegation, Petitioners claimed that the GOT controls the hard coal market in Turkey through the state-owned enterprise Turkish Hard Coal Enterprises (TTK). Erdemir reported purchasing "PCI" coal from TTK during the POI.⁸⁵ The GOT reported that TTK is a state economic enterprise subject to the provisions of Decree Law No. 233,⁸⁶ and that all of its board members are

⁸¹ See COTAS November 13 QR at III-20.

⁸² See, *e.g.*, *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1296 (CIT 2010), *aff'd* 678 F.3d 1268, 1274 (Fed. Cir. 2012); *MTZ Polyfilms, Ltd. v. United States*, 659 F. Supp. 2d 1303, 1314-15 (CIT 2009); *Royal Thai Government v. United States*, 441 F. Supp. 2d 1350, 1363-64 (CIT 2006); *Samsung Electronics Co. v. United States*, 973 F. Supp. 2d 1321, 1329-30 (CIT 2014).

⁸³ See, *e.g.*, *Rebar from Turkey* and accompanying Issues and Decision Memorandum at 8-13, "Provision of Natural Gas for LTAR."

⁸⁴ See CVD Initiation Checklist at 13.

⁸⁵ See Erdemir November 13 QR at 24.

⁸⁶ See GOT November 16 QR at 53-54 and 57.

appointed by approval of the Turkish President and the Turkish Prime Minister.⁸⁷ Moreover, according to Decree Law No. 233, Articles 29 - 32, the Board makes decisions in line with determined governmental programs and budgets and subject to approval by the Council of Ministers.⁸⁸ Further, according to Article 4 of TTK's Articles of Incorporation, TTK is obligated to utilize its resources toward meeting national requirements, making the maximum contribution to the country's economy and implementing strategies accordingly.⁸⁹ Accordingly, we preliminarily find TTK to be a government authority that provides a financial contribution within the meaning of section 771(5)(D)(iii) of the Act. According to the GOT, electric power plant consumers accounted for 45 percent of hard coal consumption during the POI, while the next largest industrial consumer, coke factories, accounted for 18 percent.⁹⁰ As a result, we preliminarily determine that the provision of coal by TTK is specific under sections 771(5A)(D)(iii)(II) and (III) of the Act because the predominate users are power producers, including Erdemir.

Under 19 CFR 351.511(a)(2), the Department sets forth the basis for identifying appropriate market-dominated benchmarks for measuring the adequacy of remuneration for government-provided goods or services. These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided by our regulations, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.⁹¹

Based on the hierarchy established above, we must first determine whether there are market prices from actual sales transactions that can be used to determine whether TTK sold coal to Erdemir for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transaction in the country, where the Department finds that the government provides the majority, or in certain circumstances, a substantial portion of, the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining whether there is a benefit.⁹²

The GOT provided information on the volume of domestic production of hard coal production and the total volume of domestic production that is accounted for by TTK.⁹³ Based on the volume data provided by the GOT, we calculated TTK's percentage of domestic production of hard coal for the POI to be 76 percent.⁹⁴ However, our examination of the hard coal data

⁸⁷ *Id.*

⁸⁸ *Id.* at 54 and Exhibit 12.

⁸⁹ *Id.* at 55 and Exhibit 19.

⁹⁰ *Id.*

⁹¹ See *Softwood Lumber from Canada*, and accompanying Issues and Decision Memorandum at "Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark."

⁹² See *Preamble*, 63 FR 65348, 65377.

⁹³ See GOT November 16 QR at 57-58.

⁹⁴ *Id.*

provided by the GOT leads us to conclude that hard coal produced by “government entities”⁹⁵ in Turkey only accounted for approximately four percent of domestic consumption, with imports accounting for nearly 95 percent of domestic consumption and other domestic producers slightly more than one percent.⁹⁶ Based on the small share of hard coal accounted for by state-owned enterprises and the absence of any other apparent government interventions into the hard coal market, we preliminarily determine that the hard coal market is not distorted by government intervention. As a result, a tier one benchmark is warranted.

Erdemir reported that it purchased domestic and imported PCI coal during the POI, while its cross-owned affiliate Isdemir purchased imported PCI coal during the POI.⁹⁷ Thus, we preliminarily determine that Erdemir’s and Isdemir’s domestic and imported steam coal purchases can serve as a tier one benchmark in accordance with 19 CFR 351.511(a)(2)(i), and we have taken an average of the companies’ domestic and import steam coal prices on a monthly basis as the benchmark price.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties, *i.e.*, a “delivered” price to the factory. Because we are using actual domestic and import prices paid by Erdemir and Isdemir for delivered sales, the benchmark prices already include delivery charges. The companies reported that they did not pay import tariffs on their imported PCI coal during the POI. Because the companies did not pay import tariffs on their steam coal purchases, we did not add any such charges to the benchmark prices.

To calculate the program benefit, we compared the benchmark unit prices to the unit prices paid by Erdemir (Isdemir did not purchase PCI coal from any state-owned enterprise during the POI). Where the benchmark unit price was greater than the unit price paid by Erdemir, we multiplied the difference to arrive at the benefit.⁹⁸ We next summed the benefits and divided this value by the total POI sales values of the producers of subject merchandise in the Erdemir group (*i.e.*, Erdemir, Isdemir, and Ersem). On this basis, we preliminarily calculate the subsidy rate to be 0.00 percent *ad valorem* for Erdemir.

2. Investment Encouragement Program (IEP) Customs Duty and VAT Exemptions

The GOT provides certificates through the IEP that qualified recipients can use to import items at reduced duty rates. The GOT’s Council of Minister’s Decree No. 2012/3305 (June 2012) provides certain producers with Investment Incentive Certificates (IICs) under four separate incentive schemes: Regional Investment; Large Scale Investment; Strategic Investment; and General Investment.”⁹⁹ According to the GOT, Annex IV of Decree No. 2012/3305 excludes

⁹⁵ It is unclear whether the GOT is referring only to TTK when it references “government entities,” or if there are other state-owned hard coal producers.

⁹⁶ *Id.*

⁹⁷ See Erdemir November 13 QR at 24.

⁹⁸ See, *e.g.*, *Steel Rebar from Turkey* and accompanying Issues and Decision Memorandum at 13-17, “Provision of Lignite for LTAR.”

⁹⁹ See GOT November 16 QR at 14.

iron and steel producers from all of these incentive schemes unless they meet certain conditions, such as having fewer than 250 employees, or having annual net sales revenue of less than 50 million Euros.¹⁰⁰ The GOT explains that as a result, producers of hot-rolled steel can only benefit from exemptions of customs duties, VAT, and “income tax withholding support,” which is limited to certain geographic regions.¹⁰¹

We preliminarily find that the VAT and duty exemptions received through IICs under this program constitute a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act, and confer a benefit within the meaning of section 771(5)(E) of the Act and 19 CFR 351.509(a)(1) in the amount of tax savings.

Erdemir’s cross-owned input provider, Ermaden, utilized an IIC during the POI that granted it VAT exemptions on imported items purchased related to a modernization project for its facility in Divrigi-Sivas.¹⁰² Based on our review of this investment certificate, we preliminarily determine that the benefit received by Ermaden was not tied to the production of any particular products. To calculate the benefit, we measured the difference in the amount of the VAT Ermaden paid on these items under this program during the POI to the amount of VAT Ermaden would have paid absent this program. We then attributed these benefits to the total POI sales of itself and to the producers of subject merchandise within the Erdemir group. As a result, we preliminarily determine the net countervailable subsidy rate for this program to be 0.00 percent *ad valorem* for Erdemir.

Because we preliminarily determine that this program does not confer a measurable benefit during the POI, the question on whether this program is specific is moot.

3. Provision of Electricity for LTAR/Law 5084 Energy Support

According to the GOT, this program was administered by the Ministry of Economy pursuant to Article 6 of the “Law Concerning Incentives on Investments and Employment and on the Amendment of Certain Laws,” (Law No. 5084).¹⁰³ The GOT explains that this law was provided for 49 provinces which have a GDP per capita equal to or less than \$1,500, or which have a negative socio-economic development index value as determined by the State Planning Organization for 2003. Enterprises operating or investing in these provinces could be eligible for support ranging from 20 percent to 50 percent of the cost of electricity energy consumption according to their employment levels and the number of new employee recruitment.¹⁰⁴ In prior proceedings, the Department has found this program to provide countervailable subsidies in the form of grants.¹⁰⁵ According to the GOT, the last date for an investment to benefit from this program was December 31, 2012.¹⁰⁶

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See Erdemir November 13 QR at 13 and at Exhibit 16.

¹⁰³ See GOT November 16 QR at 61.

¹⁰⁴ *Id.*

¹⁰⁵ See *OCTG Turkey CVD Final* and accompanying Issues and Decision Memorandum at 17.

¹⁰⁶ See GOT November 16 QR at 61.

The GOT reported that Erdemir's cross-owned input supplier, Ermaden, received grants from this program during the AUL.¹⁰⁷ Consistent with our determination in *OCTG CVD Turkey Final*, we preliminarily determine that this program provides a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act. We also preliminarily determine that the grants from this program confer a benefit to the recipient under section 771(5)(E)(iv) of the Act and 19 CFR 351.504(a) because the recipients obtain grants from the GOT to offset their electricity costs.

To calculate the POI benefits from this program, we treated grants from this program as a non-recurring grant, and in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate these grants over the AUL by dividing the approved amount of the grants received during the AUL by the respective total sales values of Ermaden itself and the total sales of the producers of subject merchandise in the Erdemir group (*i.e.*, Erdemir, Isdemir, and Ersem). On this basis, we find that all of the benefits Ermaden received from this program were expensed prior to the POI.¹⁰⁸

Because we preliminarily determine that this program does not confer a measurable benefit during the POI, the question on whether this program is specific is moot.

4. Incentives Under the R&D Law No. 5746

According to the GOT, R&D incentives are based on the "Law on Supporting Research and Development Activities," (Law No. 5746), which has been in effect since April 1, 2008.¹⁰⁹ The GOT explains that the government policy behind this law is to support and to encourage, through R&D and innovation, the production of technological knowledge, innovation in production processes, enhancement in product and quality standards, *inter alia*.¹¹⁰ Support measures provided under this program are R&D Allowance, Income Tax Withholding Support, Insurance Premium Support, and a Stamp Tax Exemption.¹¹¹ The GOT states that the Ministry of Science, Industry and Technology is responsible for administering this program. We preliminarily find that tax exemptions and deductions from this program provide a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act, and confer a benefit within the meaning of section 771(5)(E) of the Act and 19 CFR 351.509(a)(1) in the amount of tax savings.

Erdemir reported that it received an exemption from the payment of income tax withholding on its employees involved in R&D work, and it also enjoyed deductions from social security premiums for R&D personnel and a deduction from its stamp tax payment.¹¹² To calculate the subsidy rate for this program, we summed the exemptions and deductions received by Erdemir during the POI, and divided this value by the combined total sales value of Erdemir itself and the

¹⁰⁷ See GOT November 16 Electricity Grants QR at 9.

¹⁰⁸ See Preliminary Analysis Memoranda regarding Erdemir.

¹⁰⁹ See GOT November 16 QR at 69.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² See Erdemir November 13 QR at 29-30.

other producers of subject merchandise in the Erdemir group (*i.e.*, Isdemir and Ersem). As a result, we preliminarily determine that that net countervailable subsidy rate for this program to be 0.00 percent *ad valorem* for Erdemir.

Because we preliminarily determine that this program does not confer a measurable benefit during the POI, the question on whether this program is specific is moot.

5. TUBITAK and TTGV Grants and Loans

The GOT states that Industrial R&D Projects Grant Program is administered by the Scientific and Technological Research Council of Turkey.¹¹³ The purpose of this program is to increase research and technology development capability, innovation culture, and competitiveness of companies. The GOT explains that in accordance with the “Implementation Principles of Industrial R&D Projects Grant Program,” this program supports R&D projects aiming to 1) develop or improve new products, 2) develop new techniques to diminish the cost and/or raise the quality and standard of a product, and 3) develop new production technologies. According to the GOT, any company regardless of region or sector can benefit from these grants, with a ratio of 40 percent to 50 percent of a project’s approved expenses.¹¹⁴ We preliminarily determine that grants from this program provide a financial contribution under section 771(5)(D)(i) of the Act.

Erdemir reported receiving grants from this program during the POI for completing two R&D projects.¹¹⁵ To calculate the POI benefits from this program, we treated grants from this program as a non-recurring grant, and in accordance with 19 CFR 351.524(b)(2), we determined whether to allocate these grants over the AUL by dividing the approved amount of the grants received during the AUL by the respective total sales values of Erdemir itself and the total sales of the other producers of subject merchandise in the Erdemir group (*i.e.*, Isdemir, and Ersem). On this basis, we find that all of the benefits Erdemir received from this program are expensed during the POI.¹¹⁶ As a result, we preliminarily determine that that net countervailable subsidy rate for this program to be 0.00 percent *ad valorem* for Erdemir.

Because we preliminarily determine that this program does not confer a measurable benefit during the POI, the question on whether this program is specific is moot.

B. Programs Preliminarily Determined To Be Not Used

1. Exemption from Property Tax
2. Pre-Shipment Export Credit Program
3. Provision of Land for LTAR
4. Provision of Lignite Coal for LTAR
5. Water Subsidy in the Izmir OIZ
6. Regional Investment Incentive Scheme

¹¹³ See GOT November 16 QR at 82.

¹¹⁴ *Id.*

¹¹⁵ See Erdemir November 16 QR at 28 and at Exhibit 30. The nature of these R&D projects is business proprietary.

¹¹⁶ See Preliminary Analysis Memoranda regarding Erdemir.

7. Large Scale Investment Incentive Scheme
8. Strategic Investment Incentive Scheme

C. Programs Preliminarily Determined To Not Exist

1. GOT's Equity Infusion in Erdemir's "Privatization"

The GOT reported that the alleged equity infusion was actually a transaction between OYAK (the military pension fund) and the Privatization Authority (PA), acting on behalf of the GOT. OYAK bought shares the PA already owned in Erdemir. Therefore, regardless of whether OYAK paid more than market value for the shares, all payment went to the GOT Treasury through the PA. No new shares were issued and no new capital was injected into Erdemir as a result of the transaction. Therefore, there was no equity infusion into Erdemir as alleged.

X. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹¹⁷ Case briefs may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the last verification report is issued in this proceeding and rebuttal briefs, limited to issues raised in the case briefs, may be submitted no later than five days after the deadline for case briefs.¹¹⁸

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.¹¹⁹ This summary should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS. An electronically filed document must be received successfully in its entirety by the Department's electronic records system, ACCESS, by 5:00 p.m. Eastern Time, within 30 days after the date of publication of the accompanying *Federal Register* notice.¹²⁰ Hearing requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues parties intend to present at the hearing. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined. Prior to the date of the hearing, the Department will contact all parties that submitted case or rebuttal briefs to determine if they wish to participate in the hearing. The Department will then distribute a hearing schedule to the parties

¹¹⁷ See 19 CFR 351.224(b).

¹¹⁸ See 19 CFR 351.309(c)(1)(i) and (d)(1).

¹¹⁹ See 19 CFR 351.309(c)(2) and (d)(2).

¹²⁰ See 19 CFR 351.310(c).

prior to the hearing and only those parties listed on the schedule may present issues raised in their briefs.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.¹²¹ Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹²² on the due dates established above.

XI. CONCLUSION

We recommend that you approve the preliminary findings described above.

✓ Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

8 JANUARY 2016
Date

¹²¹ See 19 CFR 351.303(b)(2)(i).

¹²² See 19 CFR 351.303(b)(1).