C-489-825
Investigation
POI: 01/01/2014 – 12/31/2014
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DATE: July 14, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Countervailing Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Issues and Decision Memorandum for the Final Determination

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I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of heavy walled rectangular welded carbon steel pipes and tubes from the Republic of Turkey (Turkey), pursuant to 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:

Comment 1: Provision of Hot-Rolled Steel (HRS) for Less than Adequate Remuneration (LTAR)
- A. Whether Eregli Demir ve Celik Fabrikalari T.A.S. (Erdemir) and Iskenderun Iron & Steel Works Co. (Isdemir) Are "Authorities"
- B. Whether the HRS for LTAR Program is De Facto Specific
- C. Whether the Department's HRS Purchase Price Comparison is Distortive

Comment 2: Provision of Land for LTAR Program
Comment 3: Ministerial Errors
Comment 4: Treatment of Income from Services in Ozdemir's Total Sales Denominator

II. BACKGROUND

A. Case History

The mandatory respondents in this investigation are MMZ Onur Boru Profil uretim San Ve Tic. A.S. (MMZ), Ozdemir Boru Profil San ve Tic. Ltd Sti. (Ozdemir), and the Government of Turkey (GOT). The petitioners are Atlas Tube, a division of JMC Steel Group, Bull Moose

Tube Company, EXLTUBE, Hannibal Industries, Inc., Independence Tube Corporation, Maruichi American Corporation, Searing Industries, Southland Tube, and Vest, Inc. (collectively, the petitioners).

On December 28, 2015, the Department published the Preliminary Determination in this investigation.[1] On the same date, Ozdemir timely filed an allegation of ministerial errors in the Preliminary Determination.[2] The Department responded to these allegations on January 21, 2016, finding that while two of Ozdemir's allegations were "ministerial errors" within the meaning of 19 CFR 351.224(f), they did not warrant correction at that time pursuant to 19 CFR 351.224(e), as they were not "significant" as defined by 19 CFR 351.224(g).[3] For that reason, we stated that these errors would be corrected for the final determination.[4]

Between January 27 and February 3, 2016, we conducted verifications of the questionnaire responses submitted by MMZ and Ozdemir, in accordance with section 782(i) of the Act. Verification reports were issued on March 10, 2016.[5] On March 24, 2016, we received case briefs from MMZ, Ozdemir, and the GOT.[6] We received the petitioners' rebuttal brief on March 29, 2016.[7] Requests for a hearing[8] were subsequently withdrawn by the parties.[9]

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[1] See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination, 80 FR 80749 (December 28, 2015) (Preliminary Determination); and Memorandum from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Countervailing Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Decision Memorandum for the Preliminary Determination" (December 18, 2015) (Preliminary Decision Memorandum).

[2] See Letter from Ozdemir, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Request for correction of ministerial errors" (December 28, 2015).

[3] See Memorandum from Melissa Skinner, Director AD/CVD Operations, Office II to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Ministerial Error Allegations on the Preliminary Determination" (January 21, 2016) (Ministerial Error Memorandum).

[4] Id.

[5] See Memorandum to the File (MTF) from Brian Smith, Reza Karamloo, Senior International Trade Compliance Analysts, AD/CVD Operations, Office II, "Verification of the Questionnaire Responses of MMZ Onur Boru Profil uretim San Ve Tic. A.S." (March 10, 2016) (MMZ VR); and MTF from Reza Karamloo, Brian Smith, Senior International Trade Compliance Analysts, AD/CVD Operations, Office II, "Verification of the Questionnaire Responses of Ozdemir Boru Profil San ve Tic. Ltd Sti." (March 10, 2016) (Ozdemir VR).

[6] See Letter from MMZ, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Case Brief of MMZ ONUR BORU PROFIL URETIM SANAYi VE TiC A.S." (March 24, 2016) (MMZ Case Brief); Letter from Ozdemir, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Case brief" (March 24, 2016) (Ozdemir Case Brief); and Letter from the GOT, "Case Brief of the Government of Turkey in CVD Investigation on Imports of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey" (March 24, 2016) (GOT Case Brief).

[7] See Letter from the petitioners, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Rebuttal brief" (March 29, 2016) (Petitioners Rebuttal Brief).

[8] See Letter from MMZ, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Request for Hearing" (January 28, 2016); and Letter from Ozdemir, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Hearing request" (January 21, 2016).

[9] See Letter from MMZ, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Withdrawal of Request for Hearing" (April 13, 2016); and Letter from Ozdemir, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Withdrawal of hearing request" (April 13, 2016).

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government.[10] For that reason, all deadlines in this proceeding were extended by four business days.

B. Period of Investigation

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

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those 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 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
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[10] See MTF from Ron Lorentzen, Acting A/S for Enforcement and Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure during Snowstorm Jonas" (January 27, 2016).

IV. 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 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 countervailing duty (CVD) law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[11] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[12]

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.[13] 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.[14]

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

[11] 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.

[12] See Applicability Notice, 80 FR at 46794-95.

[13] See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

[14] See also 19 CFR 351.308(c).

disposal.[15] 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.[16] Further, under the TPEA, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.[17]

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 countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.[18] 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.[19]

A. Application of Adverse Facts Available (AFA): MMZ and Ozdemir

At verification, we found that MMZ and Ozdemir used certain programs that were previously not reported to the Department.[20] Specifically, MMZ did not report use of the Deduction from Taxable Income for Export Revenue and Provision of Electricity for LTAR programs, and Ozdemir did not report use of the Exemption from Property Tax program.[21]

In its initial questionnaire, the Department asked respondents to report all "other subsidies" received from the GOT.[22] The questionnaire is clear in instructing respondents to report "any other forms of assistance to {the} company."[23] However, the respondents did not follow these instructions with respect to the above-specified programs. Therefore, we find that necessary information is not available on the record, and that MMZ and Ozdemir withheld information requested by the Department. In accordance with sections 776(a)(1) and 776(a)(2) of the Act, we determine that the use of facts available is warranted in calculating MMZ's and Ozdemir's

[15] See also 19 CFR 351.308(d).
[16] See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc. No. 103-316, Vol. 1 at 870 reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (1994).
[17] See section 776(c)(2) of the Act; TPEA, section 502(2).
[18] See section 776(d)(1) of the Act; TPEA, section 502(3).
[19] See section 776(d)(3) of the Act; TPEA, section 502(3).
[20] See MMZ VR, at 2; and Ozdemir VR, at 2 and 9. See also Letter from MMZ, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: MMZ ONUR BORU PROFIL URETIM SANAYi VE TiC A.S. (MMZ) Response to the Department's Section III (CVD) Questionnaire" (October 30, 2015) (MIQR); Letter from MMZ, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: MMZ ONUR BORU PROFIL URETIM SANAYi VE TiC A.S. Response to the Department of Commerce's Supplemental CVD Questionnaire" (November 30, 2015) (MSQR), at 14; and Letter from Ozdemir, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Response to questionnaire" (October 30, 2015) (OIQR), at 33.
[21] Id.
[22] See Letter from Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations, Office II, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Countervailing Duty Questionnaire" (September 9, 2015) (Initial CVD Questionnaire), at Section III.
[23] Id.

benefits from these programs, respectively. Moreover, because MMZ and Ozdemir failed to answer our questions on "other subsidies," including reporting assistance which should have been discovered in the respondents' accounting system, we find that MMZ and Ozdemir failed to act to the best of their abilities in providing requested, necessary information that was in their possession, and that, therefore, the application of AFA is warranted, pursuant to 776(b) of the Act, in determining benefit.

B. Selection of AFA Rates

As stated above, in deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the result is sufficiently adverse "as to effectuate the statutory purposes of the AFA rule to induce respondents to provide the Department with complete and accurate information in a timely manner."[24] The Department's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[25] In selecting AFA rates for programs on which a company has failed to fully cooperate, it is the Department's practice to use 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. 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.[26] 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 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.[27]

In applying AFA to MMZ and Ozdemir, we are guided by the Department's methodology detailed above. Because both companies failed to act to the best of their abilities in this investigation, as discussed above, we made adverse inferences that they benefitted from their respective unreported programs found at verification, appearing below.

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[24] See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan, 63 FR 8909, 8932 (February 23, 1998).
[25] See SAA, accompanying the URAA, H. Doc. No. 16, 103d Cong. 2d Session at 870 (1994).
[26] For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be de minimis. See, e.g., Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 75 FR 28557 (May 21, 2010), and accompanying Issues and Decision Memorandum (IDM) at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."
[27] Id.; see also Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 73 FR 57323 (October 2, 2008), and accompanying IDM at "Selection of the Adverse Facts Available Rate."

We are applying the above-zero rates calculated for Ozdemir in this investigation to MMZ for the following identical program:

- Deduction from Taxable Income for Export Revenue

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

- The Provision of Electricity for LTAR [28]
- Exemption from Property Tax[29]

The AFA rates applicable are reflected in the Subsidy Rate Chart below.

Company-Specific Program	Rate (%)
MMZ	
Deduction from Taxable Income from Export Revenue	0.06
The Provision of Electricity for LTAR	15.58
Ozdemir	
Exemption from Property Tax	14.01

C. Corroboration of Secondary Information Used to Derive AFA Rates

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[30]

The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[31] The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[32]

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits

[28] See 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 from Turkey), and accompanying IDM at "Provision for HRS LTAR."
[29] See Final Affirmative Countervailing Duty Determinations; Certain Welded Carbon, 51 FR 1268, 1270 (January 10, 1986).
[30] See SAA, accompanying the URAA, H. Doc. No. 16, 103d Cong. 2d Session at 870 (1994).
[31] Id.
[32] Id., at 869-870.

resulting from countervailable subsidy programs. Additionally, as stated above, we are applying subsidy rates which were calculated in this investigation or previous Turkey CVD investigations or administrative reviews. Additionally, no information has been presented which calls into question the reliability of these previously calculated subsidy rates that we are applying as AFA.

With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.[33]

In the absence of record evidence concerning certain programs under investigation, we reviewed the information concerning Turkish subsidy programs in this and other cases. For those programs for which the Department found a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs under investigation in this case. For the programs for which there is no program-type match, we selected the highest calculated subsidy rate for any Turkish program from which the respondents could receive a benefit to use as AFA. The relevance of these rates is that they are actual, calculated CVD rates for Turkish programs from which the companies could actually receive a benefit. Due to the lack of certain record information concerning the programs under investigation, the Department corroborated the rates it selected to the extent practicable.

V. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.[34] 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.[35] 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.

[33] See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812 (February 22, 1996).
[34] See 19 CFR 351.524(b).
[35] 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

The Department's regulations at 19 CFR 351.525(b)(6)(i) state that the Department will normally attribute a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) directs that the Department will attribute subsidies received by certain other companies to the combined sales of those companies if (1) cross-ownership exists between the companies, and (2) the cross-owned companies produce the subject merchandise, are a holding or parent company of the subject company, produce an input that is primarily dedicated to the production of the downstream product, or transfer a subsidy to a cross-owned company.

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 regulation states that this standard will normally be met where there is a majority voting interest between two corporations or through common ownership of two (or more) corporations. The Court of International Trade (CIT) 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.[36]

MMZ

MMZ reported that it is a privately held company with three shareholders, and that it had no affiliated companies during the POI or the AUL.[37] Accordingly, MMZ responded to the Initial CVD Questionnaire only with regard to itself. Pursuant to 19 CFR 351.525(b)(6)(i), we attributed subsidies received by MMZ to the sales of MMZ.

Ozdemir

Ozdemir reported that it has no parent companies or subsidiaries, and that it had no cross-owned affiliates during the POI or the AUL.[38] Accordingly, Ozdemir responded to the Initial CVD Questionnaire only with regard to itself. Pursuant to 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Ozdemir to the sales of Ozdemir.

C. Denominators

In accordance with 19 CFR 351.525(b), when selecting an appropriate denominator for use in calculating the ad valorem subsidy rate, the Department considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Determined to be Countervailable" section, where the program has been found to be

[36] See Fabrique de Fer de Charleroi SA v. United States, 66 F. Supp. 2d 593, 603 (CIT 2001).
[37] See Letter from MMZ, "Countervailing Duty Investigations of Imports of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: CVD Questionnaire Answer to Affiliated Companies" (September 21, 2015) (MACR), at 4; see also MIQR at 1 and 4.
[38] See Letter from Ozdemir, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Response to affiliation section of questionnaire" (September 22, 2015) (OACR), at 1-4.

countervailable as a domestic subsidy, we used the recipient's total sales as the denominator. Similarly, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.

Additionally, as stated in the Department's Position to Comment 4 below, we find it is appropriate to include revenue from the sale the services provided by Ozdemir in the company's total sales denominator for this final determination.

D. Benchmark Interest Rates

We are investigating export loans and non-recurring, allocable subsidies that the respondents received.[39] 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.[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. Ozdemir submitted weighted-average interest rates, along with the underlying data, that it paid on comparable short-term commercial loans.[41] Consistent with 19 CFR 351.505(a)(2)(ii), we are using the interest rates that Ozdemir submitted on comparable short-term loans as the benchmark.

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.[42] Where such benchmark rates are unavailable, consistent with 19 CFR 351.505(a)(3)(ii), we use lending rate data from the International Monetary Fund's International Financial Statistics as our national average benchmark.[43]

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.

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[39] See 19 CFR 351.524(b)(1).
[40] See 19 CFR 351.505(a)(2)(ii).
[41] See OIQR at Exhibit 12(b).
[42] See 19 CFR 351.505(a)(2)(ii).
[43] 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 IDM at "Benchmarks and Interest Rates."

VI. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, including parties' comments addressed below, we determine the following:

A. Programs Determined To Be Countervailable

1. Provision of HRS for LTAR

We initiated an investigation into whether Erdemir and Isdemir provided respondents with HRS for LTAR.[44] MMZ reported purchasing HRS from Erdemir during the POI, while Ozdemir reported purchasing HRS from both Erdemir and Isdemir.[45] In the GOT's initial questionnaire response, the GOT provided information on Erdemir, Isdemir, and Ordu Yardımlaşma Kurumu (OYAK), the Turkish military pension fund that is the majority shareholder of Erdemir and Isdemir.[46]

In its initial questionnaire response, the GOT responded to the Input Producer Appendix for Erdemir and Isdemir.[47] In addition, we asked the GOT to submit certain documents relevant to the Turkish flat steel industry.[48] The GOT claimed it could not submit these documents under its confidentiality agreements with the European Union.[49] The GOT, however, previously provided limited public summaries of the contents of these documents.[50]

According to the GOT's response, Erdemir owns 95 percent of Isdemir.[51] Further, OYAK, the Turkish military pension fund, holds 49 percent of the outstanding shares of Erdemir through a wholly-owned holding company, Ataer Holding A.S.[52] The law establishing OYAK in 1961 states that the GOT created OYAK as "an institution related to the Ministry of National Defense."[53] Information in the GOT's responses, the Petition, and other submissions on the

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[44] See Initiation Checklist, at 7.
[45] See Letter from MMZ, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Public Treatment of Raw Material Supplier Name" (December 3, 2015); OIQR, at 10; and Letter from Ozdemir, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Supplemental information in response to phone call" (December 3, 2015).
[46] See Letter from the GOT, "Response of the Government of Turkey in CVD Investigation on Imports of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey" (October 28, 2015) (GIQR), at 18.
[47] Id., at Exhibit 8.
[48] Specifically, we requested that the GOT provide the National Restructuring Plan for the Turkish Steel Industry (National Restructuring Plan), including any annexes and revisions. See Letter from the Department to the GOT, "Countervailing Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey" (November 12, 2015).
[49] See Letter from the GOT, "Supplemental Questionnaire Response of the Government of Turkey in CVD Investigation on Imports of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey" (November 27, 2015) (GSQR), at 4.
[50] See Memorandum to the File, "Countervailing Duty Investigation of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Additional Information" (December 21, 2015) (Additional Information Memorandum), at Attachment 1.
[51] See GIQR, at Exhibit 8.
[52] The GOT sold its 49.93 percent stake in Erdemir to OYAK in 2006. See GIQR, at 21, and Exhibit 8; see also Initiation Checklist at 7-8.
[53] See GIQR, at Exhibits 8 and 8-G.

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."[54] The Representative Assembly, in turn, elects 20 of the 40 members of OYAK's General Assembly.[55] Of the General Assembly's other 20 members, 17 are by statute government officials (e.g., Ministers of Finance and Defense).[56] Members of the General Assembly elect the eight-person Board of Directors.[57] Also, because OYAK's property has by law the "same rights and privileges as 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.[58]

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."[59] Moreover, 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.[60] Further, Erdemir's 2013 Annual Report shows that OYAK and the TPA both have members on Erdemir's Board of Directors.[61]

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 determinations in OCTG from Turkey and WLP from Turkey,[62] 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 the respondents 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.[63] 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.[64]

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[54] See GIQR, at Exhibit 8-G.
[55] Id.
[56] Id.
[57] Id.
[58] Id.
[59] Id., at Exhibit 8-C (Erdemir 2013 Annual Report at pages 18 and 35).
[60] Id., at Exhibits 8 and 8-A.
[61] Id., at Exhibit 8-C.
[62] See OCTG from Turkey, and accompanying IDM at Comment 1; and Welded Line Pipe From the Republic of Turkey: Final Affirmative Countervailing Duty Determination, 80 FR 61371 (October 13, 2015) (WLP from Turkey), and accompanying IDM.
[63] See GIQR, at 17; see also GSQR, at 6.
[64] See, e.g., OCTG from Turkey, and accompanying IDM at "Provision of HRS for LTAR"; and WLP from Turkey, and accompanying IDM at "Provision of HRS for LTAR."

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.[65] 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 MMZ and Ozdemir 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.[66]

Consistent with the Department's final CVD determination in WLP from Turkey, we determine that the record evidence in this investigation does not support a finding that the Turkish HRS market is so distorted that it cannot serve as a source for an appropriate benchmark.[67] On that basis, we determine that the respondents' reported prices for domestic HRS (other than from Erdemir and Isdemir) and imported HRS can serve as tier one benchmarks. Accordingly, pursuant to 19 CFR 351.511(a)(2)(i), we used the respondents' actual domestic and import prices for HRS to calculate the benefit from their respective purchases of HRS from Erdemir and Isdemir, where applicable, 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 the import and domestic prices paid by the respondents are reported exclusive of the delivery charges and value added tax (VAT) paid, we included this information for benchmarking purposes where appropriate.

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[65] 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 "Market-Based Benchmark."

[66] See Countervailing Duties; Final Rule 63 FR 65347, 65401 (November 25, 1998) (CVD Preamble), at 65377.

[67] According to the GOT, Erdemir's and Isdemir's collective share of the domestic supply of HRS during 2012, 2013, and 2014 accounted for 43.47 percent, 40.81 percent, and 44.76 percent, respectively, of the total domestic supply of HRS (inclusive of imports and internally-consumed production) in Turkey. See GIQR, at 14-15; see also WLP from Turkey, and accompanying IDM at "Provision of HRS for LTAR."

We then compared the monthly benchmark prices to the respondent's actual purchase prices for HRS, including taxes and delivery charges, as appropriate. For instances in which either respondent paid to Erdemir or 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.[68] Under this methodology, we find that MMZ and Ozdemir received a benefit to the extent that the prices they paid for HRS produced by Erdemir and/or Isdemir, respectively, were for LTAR.[69]

To calculate the net subsidy rates attributable to MMZ and Ozdemir, we divided the benefits received by the respective company's POI sales value, as described in the "Subsidies Valuation Information – Attribution of Subsidies" section above.

On this basis, we find that MMZ received a countervailable subsidy of 7.61 percent ad valorem, and Ozdemir received a countervailable subsidy of 0.34 percent ad valorem.[70]

2. Provision of Land for LTAR

According to the GOT, support is provided in the form of allocation of land to firms operating in provinces as set forth in Article 2 of Law No. 5084 (February 6, 2004), including (previously) non-allocated parcels in Organized Industrial Zones (OIZs) in provinces subject to clause (b) of Article 2.[71] The GOT further states that this program is used to promote investment and to increase employment in selected provinces where the development level is relatively low.[72]

The GOT reported that Ozdemir used this program before the POI.[73] Ozdemir states that it did not receive free land pursuant to Law 5084.[74] Instead, Ozdemir asserts that it purchased land from the Zonguldak OIZ in May 2008.[75] According to the GOT, the program is administered by the Ministry of Science, Industry and Technology, Directorate General of Industrial Zones, a national government authority, and implemented in each industrial zone by the respective OIZ, in this case the Zonguldak OIZ.[76]

We find for purposes of this final determination that the Zonguldak OIZ land sold to Ozdemir in 2008 constitutes a financial contribution within the meaning of section 771(5)(E)(iv) of the Act, and it is specific under section 771(5A)(D)(iv) of the Act because it is limited to companies

[68] See Memorandum to Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations, Office II, "Final Determination Calculations for MMZ Onur Boru Profil uretim San Ve Tic. A.S.," dated concurrently with this memorandum (MMZ Final Calculation Memorandum); and Memorandum to Irene Darzenta Tzafolias, Program Manager, AD/CVD Operations, Office II, "Final Determination Calculations for Ozdemir Boru Profil San ve Tic. Ltd Sti.," dated concurrently with this memorandum (Ozdemir Final Calculation Memorandum).
[69] See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.
[70] See MMZ Final Calculation Memorandum and Ozdemir Final Calculation Memorandum.
[71] See GIQR, at 25-31, and Exhibits 9 and 10. In particular, Exhibit 10 shows Zonguldak listed among the provinces in which land allocation is provided, as stipulated under clause (b) of Article 2 of Law No. 5084.
[72] Id., at 25 and Exhibit 9.
[73] Id., at 27.
[74] See OIQR, at 16; see also Letter from Ozdemir, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Response to supplemental questionnaire" (November 30, 2015) (OSQR), at 6.
[75] See OIQR, at 13-16; see also OSQR, at 6.
[76] See GIQR, at 26; see also GSQR, at 9.

located in provinces designated as priority regions for development.[77] We further determine that the program confers a benefit to the extent that the land in question was sold to Ozdemir 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.[78]

For this final determination, we relied upon the land benchmark data used in WLP from Turkey. Specifically, we used as our benchmark publicly available information concerning industrial land prices in Turkey for purposes of calculating a comparable commercial benchmark price for land available in Turkey.[79] We find that these land prices serve as comparable commercial benchmarks under 19 CFR 351.511(a)(2)(i).

To determine whether Ozdemir's acquisition of land from the OIZ entity constitutes the provision of land for LTAR, we multiplied the area of land Ozdemir purchased from the GOT in 2008 by the unit benchmark land price discussed above. Next, we divided the benefit amount received in 2008 by Ozdemir's total sales for 2008 and found that the resulting ratio exceeded 0.5 percent. Therefore, we allocated a portion of the benefit to the POI using the Department's standard grant allocation formula.[80] We lack either: 1) company-specific information concerning interest rates charged to Ozdemir on long-term, Turkish lira-denominated debt which originated in 2008; or 2) 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.

To calculate the net subsidy rate, we divided the amount of the subsidy allocated to the POI by Ozdemir's POI sales value. On this basis, we determine Ozdemir's net subsidy rate under this program to be 0.54 percent ad valorem.[81]

3. 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.[82] This deduction is to cover the expenditures without documentation incurred from exports, construction, maintenance, assembly, and transportation activities abroad.[83] 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

[77] See GIQR, at 26, and Exhibits 9 and 10. In this case, the land obtained by Ozdemir was a (previously) non-allocated parcel in an OIZ (Zonguldak) located in a province subject to clause (b) of Article 2 of Law No. 5084.
[78] See WLP from Turkey, and accompanying IDM at "Provision of Land for LTAR"; see also OCTG from Turkey, and accompanying IDM at "Provision of Land for LTAR."
[79] See Additional Information Memorandum, at Attachments 2-3; see also Ozdemir Final Calculation Memorandum.
[80] See 19 CFR 351.524(d).
[81] See Ozdemir Final Calculation Memorandum.
[82] See GIQR, at 34.
[83] Id.

of the income statement.[84] Under this program, expenses (e.g., marketing, selling, and distribution expenses) are deductible expenditures for tax purposes.[85] The Ministry of Finance is responsible for administering the program.[86]

Consistent with prior determinations, we find that this tax deduction is a countervailable subsidy.[87] 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.[88] During the POI, Ozdemir reported receiving the deduction for export earnings with respect to its 2013 tax return filed during the POI.[89]

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

To calculate the countervailable subsidy rate for Ozdemir, we divided its tax savings by its total export sales value for the POI. On this basis, we determine the net countervailable subsidy for this program to be 0.06 percent ad valorem for Ozdemir.[90]

4. Export Financing

Ozdemir reported receiving benefits under the Rediscount Program[91] during the POI.

Rediscount Program

The Rediscount Program was established in 1999 and is administered by the Export Credit Bank of Turkey (Turk Eximbank).[92] The Rediscount Program was designed to provide financial support to Turkish exporters, manufacturer-exporters, and manufacturers supplying exporters.[93] This program is contingent upon an export commitment.[94] Under the Rediscount Program, there

[84] See GIQR, at Exhibit 12.
[85] Id., at 34.
[86] Id.
[87] 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 IDM at "Deduction from Taxable Income for Export Revenue"; OCTG from Turkey, and accompanying IDM at "Deduction from Taxable Income for Export Revenue;" and WLP from Turkey, and accompanying IDM at "Deduction from Taxable Income for Export Revenue."
[88] See GIQR, at 37.
[89] See OIQR, at 18 and Exhibit 2.
[90] See Ozdemir Final Calculation Memorandum; see also Ministerial Error Memorandum.
[91] In the Initiation Checklist, we referred to this program as the "Short-Term Pre-Shipment Rediscount Program." See Initiation Checklist, at 13. According to the GOT, however, this was the previous name of the program now called "Rediscount Program." See GIQR, at 43.
[92] See GIQR, at 43-44.
[93] Id.
[94] Id.

is a minimum loan amount of 200,000 U.S. dollars per company.[95] Loan payments shall be made within the credit period or at maturity to the Turk Eximbank.[96] 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.[97] Ozdemir reported that it used one rediscount loan from Turk Eximbank under this program during the POI.[98]

We determine that this loan confers a countervailable subsidy within the meaning of section 771(5) of the Act. This 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 of interest paid by the company for this loan during the POI and the amount the company would have paid on a comparable commercial loan. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance. The Department's finding in this regard is consistent with its practice.[99]

In calculating the benefit 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. In accordance with section 771(6)(A) of the Act, we subtracted the fees that Ozdemir paid for guarantees required for receipt of the loans from the benefit calculation.

To calculate the countervailable subsidy rate, we divided Ozdemir's adjusted benefit amount by its total export sales value for the POI. On this basis, we determine the net countervailable subsidy rate for this program to be 0.13 percent ad valorem.[100]

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

The GOT provides certificates through the IEP that qualified recipients use to import items duty free.[101] The Council of Ministers' Decision No. 2012/3305, which has been in force since June 2012, provides producers investment encouragement certificates to receive customs duty and VAT exemptions on equipment and machinery imported for use.[102] According to the GOT, this program is administered by the Ministry of Economy and the Ministry of Customs and Trade.[103] The GOT reported that MMZ and Ozdemir had investment incentive certificates under this program which were effective during the POI.[104] MMZ reported receiving exemptions under this

[95] See GIQR, at Exhibit 13.
[96] See GIQR, at 47 and Exhibit 13.
[97] Id.
[98] See OIQR, at 22; see also GIQR, at 45.
[99] See, e.g., OCTG from Turkey, and accompanying IDM at 11-12; and WLP from Turkey, and accompanying IDM at 22-23.
[100] See Ozdemir Final Calculation Memorandum.
[101] See GIQR, at 66, and Exhibit 18.
[102] Id., at 62-66, and Exhibit 18.
[103] Id., at 64-65.
[104] Id., at 63.

program in 2012, 2013, and 2014 for machinery.[105] Ozdemir reported receiving exemptions under the program in 2009, 2010, and 2011 for equipment.[106]

Consistent with previous determinations,[107] we determine that benefits received under exemption licenses granted after January 1, 2009, constitute a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act in the amount of the tax savings. We further find that the respondents benefitted under this program pursuant to section 771(5)(E) of the Act in the amount of the tax savings. In prior determinations, the Department found that 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.[108] Additionally, the Department also found that this program is limited to firms making investments in excess of 50 million Turkish lira.[109] Record information in this investigation is consistent with the Department's prior findings. Accordingly, we find that this program is specific under section 771(5A)(D)(i) of the Act.

To calculate the benefit, we derived the amount of duties that MMZ and Ozdemir would have paid absent the program. We first analyzed whether these duty exemptions on imports of capital equipment during the applicable year of import were allocable as non-recurring subsidies.[110] MMZ's exemptions during the applicable years of import (i.e., 2012, 2013, and 2014) were less than 0.5 percent of its sales in those years. Therefore, we expensed the benefit to the year of receipt.[111] To calculate the total net subsidy amount for this program for MMZ, we divided the portion of MMZ's benefit expensed in the POI by MMZ's total POI sales. On this basis, we determine that MMZ received a countervailable subsidy rate of 0.02 percent ad valorem under this program.[112]

As Ozdemir's exemptions during the applicable years of import (i.e., 2009, 2010, and 2011) were less than 0.5 percent of its sales in those years, we expensed the benefit to the year of receipt and thus, Ozdemir did not receive a countervailable benefit during the POI.[113]

6. Law 6486: Social Security Premium Incentive

This program was not alleged by the petitioners, but MMZ reported receiving benefits under this program in its initial questionnaire response.[114] The GOT also provided a response with respect to this program.[115]

[105] See MIQR, at 19-20, and Exhibits 9, 11, and 12.
[106] See OIQR, at 27-28, and Exhibits 14 and 15.
[107] See, e.g., WLP from Turkey, and accompanying IDM at "Comment 7: Specificity and Countervailability of the IEP: Customs Duty and VAT Exemption."
[108] See CWP Turkey 2011 AR, and accompanying IDM at 17 and Comment 5; and OCTG from Turkey, and accompanying IDM at 15 and Comment 14.
[109] Id.
[110] See 19 CFR 351.524(c).
[111] See 19 CFR 351.524(b)(2); see also MMZ Final Calculation Memorandum.
[112] See MMZ Final Calculation Memorandum.
[113] See 19 CFR 351.524(b)(2); see also Ozdemir Final Calculation Memorandum.
[114] See MIQR, at 27-28.
[115] See GIQR, at 84-90.

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.[116] The Social Security Institution of the GOT administers this program.[117] The purpose of this program, as set forth in Article 1 of the Annex to 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.[118] Companies employing at least 10 workers and operating in the provinces determined by the Council of Ministers are eligible for this program.[119] Employers can benefit from this program by not paying the employers' share of long-term social security insurance premiums.[120]

MMZ reported that it received benefits under this program during the POI because of its location in Düzce, which is an eligible province.[121]

Consistent with WLP from Turkey,[122] we find that MMZ'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 MMZ benefitted under this program pursuant to section 771(5)(E) of the Act in the amount of the insurance premiums that MMZ 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 MMZ received under the program, we summed the total amount of insurance premium savings reported by MMZ during the POI. To calculate the net subsidy rate, we divided the benefit by MMZ's total sales value during the POI. On this basis, we determine MMZ's net subsidy rate under this program to be 0.10 percent ad valorem.[123]

B. Programs Determined To Be Not Used

1. Provision of Lignite for LTAR
2. Tax Incentives for Research & Development (R&D) Activities
    a. Tax Benefits for R&D Activities
    b. Product Development R&D Support-UFT
3. Pre-Export Credit Program
4. Export Insurance Provided by Turk Eximbank[124]
5. Large Scale Investment Incentives

[116] See GIQR, at 84-85.
[117] Id., at 85.
[118] Id., at 84-85 and Exhibit 20.
[119] Id., at 84.
[120] According to the GOT, the Treasury will cover six percent of the employer's social security premiums if the employer's operations are in one of the provinces selected by the Council of Ministers, pursuant to Law 6486. See GIQR, at 86.
[121] See MIQR, at 27-30, and MSQR, at 13-14; see also GIQR, at 85-86.
[122] See WLP from Turkey, and accompanying IDM at "Law 6486: Social Security Premium Incentive."
[123] See MMZ Final Calculation Memorandum.
[124] Although MMZ had a short-term export credit insurance policy with the Turk Eximbank during the POI, both the GOT and MMZ reported that MMZ did not receive any payment under this program during the POI. On this basis, we find that MMZ did not use this program during the POI. See GIQR, at 54, and MIQR, at 17.

    a. VAT and Customs Duty Exemptions
    b. Tax Reductions
    c. Income Tax Withholding
    d. Social Security and Interest Support
    e. Land Allocation
6. Strategic Investment Incentives
    a. VAT and Customs Duty Exemptions
    b. Tax Reductions
    c. Income Tax Withholding
    d. Social Security and Interest Support
    e. Land Allocation
7. Law 5084: Withholding of Income Tax on Wages and Salaries
8. Law 5084: Incentive for Employer's Share in Insurance Premiums

VII. ANALYSIS OF COMMENTS

Comment 1: Provision of HRS for LTAR

A. Whether Erdemir and Isdemir Are "Authorities"

The GOT and MMZ contend that OYAK, and by extension, Erdemir and Isdemir are not government authorities. As an initial matter, MMZ notes that evidence on the record of this proceeding shows that OYAK, the military pension fund which owns Erdemir and Isdemir, is not affiliated with any government institution, is not part of the Turkish armed forces, and is not the recipient of any government support in any form. MMZ further states that there is no record evidence that OYAK exercises any government function or makes any decision under the direction of the GOT.[125]

Moreover, MMZ argues there is no evidence that Erdemir is a state institution. According to MMZ, Erdemir is a publicly traded company that is subject to the Istanbul stock exchange's disclosure regulations, including a requirement to follow corporate governance principles. MMZ further adds that 47.63 percent of Erdemir's shares are owned by institutional investors in North America, Europe, the United Kingdom, and Ireland. For these reasons, MMZ contends that Erdemir cannot carry out government policy by selling HRS at below-market prices as it must fully disclose such activity to its shareholders.[126]

Additionally, the GOT adds that Erdemir has always been a profitable company, reaching a net operating profit worth of 732 million dollars in 2014. According to the GOT, the Department failed to consider this information, and instead relied solely on OYAK's majority shareholder situation to find that Erdemir and Isdemir are authorities.[127]

The GOT and MMZ further argue that the Department's finding that OYAK is a public body is inconsistent with the World Trade Organization (WTO) Appellate Body's finding in

[125] See MMZ Case Brief at 1-2.
[126] Id., at 2-3.
[127] See GOT Case Brief at 5.

U.S.-Anti-Dumping and Countervailing Duties (China) (DS 379).[128] According to the GOT and MMZ, 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.[129] 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. MMZ further adds that for the Department to conclude that OYAK and Erdemir are public bodies within the meaning of Article 1.1(a)(1) of the WTO's Subsidies and Countervailing Measures Agreement, it must move beyond the superficial consideration of OYAK and the shareholding of Erdemir, and evaluate the core features of these companies and their relationships to the Turkish government. For these reasons, the GOT and MMZ conclude 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.[130]

The petitioners disagree with the arguments made by the GOT and MMZ, and note that they merely repeat claims that were previously rejected by both the Department and the CIT.[131] Additionally, the petitioners note that it is entirely credible that institutional investors buy shares in a state-controlled company.[132]

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 from Turkey that Erdemir and Isdemir are "authorities" as defined in the Act.[133] The analysis supporting our finding that Erdemir and Isdemir are "authorities" in this investigation is largely the same as that performed in OCTG from Turkey and WLP from Turkey.[134] 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 and WLP from Turkey. As described in detail above, and consistent with the Department's positions in OCTG from Turkey and WLP from Turkey, we cited the following record evidence in the Preliminary Determination showing that the GOT exercised meaningful control over OYAK:

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[128] See GOT Case Brief at 4 (citing U.S. – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China (DS 379)).
[129] See GOT Case Brief at 4 (citing U.S. – Countervailing Measures on Certain Hot Rolled Carbon Steel Flat Products from India (DS 436) and U.S. – Countervailing Duty Measures on Certain Products from China (DS 437)); see also MMZ Case Brief at 3-4 (citing U.S. – Countervailing Measures on Certain Hot Rolled Carbon Steel Flat Products from India (DS 436)).
[130] See GOT Case Brief at 4-5; see also MMZ Case Brief at 3-4.
[131] See Petitioners Rebuttal Brief at 6 (citing Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States, 61 F. Supp. 3d 1306, 1314-24 (CIT 2015) (Borusan), and OCTG from Turkey).
[132] See Petitioners Rebuttal Brief at 7.
[133] See Borusan, Slip Op. 15-36 at 13-28; see also OCTG from Turkey, and accompanying IDM at Comment 1.
[134] See OCTG from Turkey, and accompanying IDM at Comment 1; see also WLP from Turkey, and accompanying IDM at Comment 2.

- OYAK's creation by GOT statute;
- The composition of OYAK's leadership;
- OYAK's property status has the same rights and privileges of state property; and
- The requirement that members of the military must contribute to OYAK.

As we did in OCTG from Turkey and WLP from Turkey, 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.

As such, we disagree with the GOT and MMZ that we failed to provide evidence showing that OYAK and Erdemir are controlled by the GOT.

Furthermore, we disagree with the GOT that, because Erdemir operates on a commercial basis to maximize profitability, i.e., is a publicly traded company, is required to follow corporate governance principles, and has shares owned by institutional investors from around the world, Erdemir, and by extension Isdemir, cannot be considered "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.[135]

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 the GOT in its arguments erroneously conflates the issues of "financial contribution" with "benefit."

Moreover, we disagree with the GOT's and MMZ's reliance on the WTO Appellate Body's

[135] 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 IDM at Comment 4.

reports to support their statements that we must not find OYAK to be a public body. Congress 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 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 neither address the Department's finding that Erdemir and Isdemir are public bodies nor could they establish whether our finding in this investigation is consistent with U.S. law.[136]

Therefore, based on the totality of the record evidence, 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 the respondents is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act.

B. Whether the HRS LTAR Program is De Facto Specific

MMZ contends that the Department's preliminary determination that the provision of HRS for LTAR program is de facto specific, and therefore countervailable, because the number of industries using the program is limited, is unsupported by the record. As an initial matter, MMZ argues that a finding of de facto specificity requires an examination of the composition of eligible industries using the program, and not necessarily the number of these entities. MMZ notes that the industry classifications (i.e., nine specific industry classifications, and an additional classification of "other") provided by the GOT in its response were a direct result of the Department's question in the Standard Questionnaire Appendix, and not because sales of HRS are limited to an enterprise/industry or group of enterprises/industries.[137]

MMZ further argues that the Department's determination on this issue is inconsistent with the CVD Preamble and the Court of Appeals for the Federal Circuit's (CAFC's) holding in PPG Industries.[138] As MMZ explains, the CAFC has explained that the actual number of eligible industries must be considered, but is not controlling because the actual make-up of the eligible firms must also be evaluated.[139] MMZ also references the Department's determination in Chlorinated Isocyanurates from the PRC as an example of where the Department conducted a more fulsome analysis of de facto specificity.[140] According to MMZ, in Chlorinated Isocyanurates from the PRC, the Department concluded:

[136] See Corus Staal BV v. Department of Commerce, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005).
[137] See MMZ Case Brief at 5-6 (citing CVD Preamble).
[138] Id., at 6-7 (citing PPG Industries, Inc. v. United States, 978 F.2d 1232 (Fed. Cir. 1992) (PPG Industries)).
[139] Id.
[140] See MMZ Case Brief at 7-8 (citing Chlorinated Isocyanurates From the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2012, 79 FR 56560 (September 22, 2014) (Chlorinated Isocyanurates from the PRC), and accompanying IDM at comment 4).

> Simply identifying various subcategories does not contravene the overarching fact that a large number of diverse industrial sectors in the PRC use urea and that the industry producing subject merchandise is not the predominant or disproportionate user of urea.[141]

MMZ also adds that there are nine broad industrial sectors in addition to "other" sectors that consumed HRS during the POI. For these reasons, MMZ contends that under a correct de facto analysis, the number of industries using the Provision of HRS for LTAR program is not limited.

The petitioners disagree and argue that MMZ's arguments were previously rejected by both the Department and the CIT in OCTG from Turkey and Borusan, respectively.[142]

Department's Position:

As the petitioners correctly state, the Department has previously addressed MMZ's arguments on this issue in prior CVD investigations involving Turkey.[143] Here, as in past proceedings, we continue to find that users of HRS are limited and, consequently, that the provision of HRS is de facto specific under section 771(5A)(D)(iii)(I) of the Act.[144] Although the nine industries that the GOT identified as users of HRS may comprise many companies, section 771(5A)(D)(iii)(I) of the Act clearly directs the Department to conduct its analysis on an industry or enterprise basis. Consistent with our past practice, the industries that the GOT identified (i.e., steel pipe and profile, rerolling producers, machinery, construction, domestic appliances, automotive, shipbuilding, agricultural equipment, and pressure purposes) are limited in number.[145] For example, in Belgium Steel, and more recently in WLP from Turkey, we concluded that eight industries were "too few" users, and as a result, found the subsidies in each proceeding to be de facto specific.[146] Moreover, in Stainless Steel Sinks from the PRC, we found specificity within the meaning of section 771(5A)(D)(iii)(I) of the Act, based on information showing that potential users of stainless steel products fell into 20 or 32 different industry classifications under International Standard Industrial Classification and Chinese national economy industry classifications, respectively.[147] It is uncontroverted that the users of HRS in Turkey are, as a matter of fact, limited in number. Additionally, whether or not the nine industry groupings identified by the GOT as purchasers of HRS constitutes the only possible users of HRS is not relevant to our analysis.

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[141] See MMZ Case Brief at 7-8 (citing Chlorinated Isocyanurates from the PRC), and accompanying IDM at comment 4).
[142] See Petitioners Rebuttal Brief at 6 (citing Borusan, 61 F. Supp. 3d 1306, 1342-43, and OCTG from Turkey).
[143] See, e.g., OCTG from Turkey, and accompanying IDM at Comment 5; and WLP from Turkey, and accompanying IDM at Comment 8.
[144] Id.
[145] See GIQR, at 17; see also GSQR, at 6.
[146] See Final Affirmative Countervailing Duty Determination: Certain Steel from Belgium, 58 FR at 32273, 37276 (July 9, 1993) (Belgium Steel); and WLP from Turkey, and accompanying IDM at Comment 8.
[147] See Drawn Stainless Steel Sinks from the People's Republic of China: Final Affirmative Countervailing Duty Determination, 78 FR 13017 (February 26, 2013) (Stainless Steel Sinks from the PRC), and accompanying IDM at Comment 8.

With respect to MMZ's argument regarding Chlorinated Isocyanurates from the PRC, we disagree. In Chlorinated Isocyanurates from the PRC, the Department found that the provision of the input at issue, urea, was not specific because "a large number of diverse industrial sectors in the PRC use urea."[148] This is in contrast to the current investigation in which the Department finds that the industries named are "too few" and therefore, limited in number.

MMZ's reliance on PPG Industries is also misplaced. As explained above, section 771(5A)(D)(iii)(I) forms the basis for the Department's decision. PPG Industries was decided in 1992 before the addition of 771(5A)(D)(iii)(I) to the Act which states that "where there are reasons to believe that a subsidy may be specific as a matter of fact, the subsidy is specific if… the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number." Section 771(5A) was passed into law with the URAA in 1994. The CAFC in PPG Industries did not rule on an application of 771(5A) because it was not in force yet, and so its holding is not directly applicable to this case.

Furthermore, in PPG Industries the CAFC upheld that the Department's finding that a subsidy was not specific was supported by substantial evidence. Specifically the CAFC explained that the following three facts did not mandate reversing the Department's decision that the program at issue was not specific.[149]

1) "nine companies received over 50 percent of the benefits"
2) "23 companies received over 60 percent of the benefits" and
3) one particular group alone accounted for eight percent of all instances of the program at issue's uses."[150]

The CAFC held that none of these facts warranted reversal of the Department's non-specificity finding because on their face these facts say nothing of the industries to which these various companies and industry groups belong to which did not preclude the possibility that there was too broad a group of industries to find the program at issue de facto specific. By contrast in this case the facts on the record support the Department's finding that the provision of HRS for LTAR is specific because the industries that may possibly use HRS is, as explained above, too few.

For these reasons, we continue to find that the provision of HRS for LTAR by the GOT (by way of Erdemir and Isdemir) is de facto specific.

C. Whether the Department's HRS Purchase Price Comparison is Distortive

MMZ contends that in assessing the market value of its HRS purchases from Erdemir, the Department should account for "other factors affecting comparability" pursuant to 19 CFR 351.511(a)(2)(i). Specifically, MMZ argues that the Department should compare VAT-inclusive purchases from Erdemir to a monthly VAT-inclusive benchmark, and VAT- exclusive purchases from Erdemir to a monthly VAT-exclusive benchmark. MMZ further claims that in Steel

[148] See Chlorinated Isocyanurates from the PRC, and accompanying IDM at comment 4.
[149] See PPG Industries at 1241.
[150] Id.

Cylinders from the PRC, the Department rejected comparisons between VAT-inclusive and VAT-exclusive prices as distortive and inconsistent with the requirements of 19 CFR 351.511(a)(2)(iv).[151]

The petitioners disagree with MMZ, and argue that it misinterprets the nature of the Department's benchmark comparison methodology. According to the petitioners, in creating a benchmark, the Department accounts for differences and variations in the dataset by using averages. The petitioners further note that the fact that individual transactions vary does not make them non-comparable. Moreover, the petitioners note that unlike Steel Cylinders from the PRC, here the Department has accounted for variations in VAT by including both VAT-inclusive and VAT-exclusive transactions in both the benchmark dataset and the dataset to which it is making comparisons. Finally, the petitioners note that selectively omitting one variable from the comparison, as proposed by MMZ, is distortive in itself, as it will reduce the reliability of the comparison.

Department's Position:

MMZ's assertion that the Department's calculation methodology is distortive is incorrect. As we stated in prior cases, section 351.511(a)(2)(iv) of the Department's regulations directs the Department to adjust the benchmark price "to reflect the price a firm actually paid or would pay if it imported the product."[152] Therefore, as long as VAT and import duties are reflective of what an importer – and not necessarily the respondent specifically – would have paid, the VAT and duties are appropriate to include in our benchmark.

Moreover, as we stated in the Preliminary Determination, we "compared the monthly benchmark prices to the {MMZ's} actual purchase prices for HRS, including taxes and delivery charges, as appropriate."[153] As such, the calculation methodology incorporated VAT into both the benchmark and MMZ's purchase prices. This is consistent with 19 CFR 351.511(a)(2)(iv), which directs the Department to adjust the price "to reflect the price a firm actually paid or would pay if it imported the product," including VAT.

Finally, MMZ's reliance on Steel Cylinders from the PRC is misplaced, as the statement regarding an "apples-to-apples" comparison to which MMZ cites was made in a discussion regarding the inclusion of VAT and import duties in the comparison benchmark for inputs that were all purchased at prices inclusive of delivery charges and VAT.[154] In this proceeding, VAT is incorporated into both the benchmark and MMZ's purchase prices, and is therefore consistent with the requirements of 19 CFR 351.511(a)(2)(iv).

[151] See MMZ Case Brief at 8-10 (citing High Pressure Steel Cylinders From the People's Republic of China: Final Affirmative Countervailing Duty Determination, 77 FR 26738 (May 7, 2012) (Steel Cylinders from the PRC)).
[152] See, e.g., OCTG from Turkey, and accompanying IDM at Comment 3; and WLP from Turkey, and accompanying IDM at Comment 8.
[153] See Preliminary Determination at 10.
[154] See Steel Cylinders from the PRC at Comment 9.

Comment 2: Provision of Land for LTAR Program

The GOT argues that the Department incorrectly valued the land benchmark in this case by using the benchmark from WLP from Turkey, which in turn relied on the land benchmark used in OCTG from Turkey, which the GOT further argues was previously found to be unlawful by the CIT.[155] According to the GOT, the Department should instead use the land benchmark from the remand redetermination of CWP Turkey 2011 AR.[156] Similarly, Ozdemir argues that in Toscelik, the CIT disqualified the Istanbul and Yalova "agricultural" parcels from the land benchmark.[157]

The GOT and Ozdemir further contend that 19 CFR 351.511(a)(2) requires that the Department consider comparability factors in selecting benchmark candidates. Accordingly, they maintain that the Istanbul and Yalova land parcels should be excluded from the Department's land benchmark in this proceeding because they are agricultural land, and therefore, not comparable to Ozdemir's land.[158] Additionally, Ozdemir argues that the price of its two private land acquisitions from 1999 should be used as the benchmark in this proceeding, because the company began making payments on the parcels subject to the Provision of Land for LTAR program in 1999.[159]

The petitioners argue that the Department should maintain its land benchmark in the final determination. According to the petitioners, the Department's inclusion of the Istanbul and Yalova parcels in its land benchmark was reasonable because (1) if the parcels were not suitable for industrial development their value would have been lower; (2) in assessing value, it only matters how a parcel can be used in the future; and (3) there is no record evidence that Ozdemir's allotted parcel was not agricultural when it was first acquired. The petitioners also note that the Department's exclusion of certain parcels from the land benchmark in the remand redetermination of CWP Turkey 2011 AR was unrelated to whether their inclusion was distortive, but, rather, because they were absent from the dataset altogether.[160]

The petitioners further oppose using Ozdemir's 1999 land acquisitions as land benchmark candidates in this proceeding. According to the petitioners, the Department first learned that Ozdemir began making payments on the land at the company's verification. Moreover, as the petitioners argue, Ozdemir did not obtain the land in question in 1999; the land was allocated in 1998, the terms of the purchase were fixed in 2008, and title was received in 2009. The petitioners finally note that using Ozdemir's 1999 land acquisitions as benchmark candidates is distortive and would result in a biased outcome. According to the petitioners, had the prices

[155] See GOT Case Brief at 6 (citing Maverick Tube Corporation v. United States, Consol. Court No. 14-00229; Slip Op. 16-16 (CIT 2016) (Maverick)).
[156] See GOT Case Brief at 6-7 (citing 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; Slip Op. 14-126 (CIT 2014), dated February 13, 2015).
[157] See Ozdemir Case Brief at 2, 4 (citing Toscelik Profil ve Sac Endustrisi A.S. v. United States, Slip Op. 14-126 (October 29, 2014) (Toscelik)).
[158] See GOT Case Brief at 7; and Ozdemir Case Brief at 2-4.
[159] See Ozdemir Case Brief at 4-5.
[160] See Petitioners Rebuttal Brief at 1-3.

Ozdemir paid for these parcels been higher, the company would not have even raised this argument.[161]

Department's Position:

We agree with the petitioners. Despite its clarifications at verification, Ozdemir failed to provide sufficient evidence (e.g., purchase agreement) to refute the Department's preliminary finding that the Zonguldak OIZ land was sold to the company in 2008.[162] Accordingly, for the final determination, we have not changed the land benchmark from the preliminary determination. Based on our analysis of the data on the record of this investigation, we continue to find that the land benchmark as described in the "Analysis of Programs - Provision of Land for LTAR" section, above, is appropriate and satisfies the requirements under 19 CFR 351.511.

While the benchmark used in WLP from Turkey happens to be the same land benchmark as that used in OCTG from Turkey, we disagree with Ozdemir 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, the remand redetermination issued in CWP Turkey 2011 AR applied directly to that case.[163] Moreover, the benchmark was applied to the same land transaction involving Toscelik Profil ve Sac Endustrisi A.S in both CWP Turkey 2011 AR and OCTG from Turkey.[164] However, in this investigation we have not simply adopted the results of OCTG from Turkey.[165]

Instead, we analyzed the record of this investigation and determined the appropriate land benchmark to use in our calculations. We agree with the petitioners that the mere fact that past or current usage of the Istanbul and Yalova parcels was "agricultural" does not undermine comparability for benchmarking purposes. What matters, as the petitioners correctly implied, is the usage for which these parcels were being offered on the market for future use. Specifically, these parcels were being offered for industrial development and, for that purpose, were classified as "investment land for industrial facilities." This puts them in essentially the same category in the land market as the other parcels in the benchmark, and in deriving an average price from all the parcels, we thereby moderate any differences in, e.g., the levels of infrastructure development, maintaining a reasonable level of comparability that satisfies the requirements of 19 CFR 351.511.

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[161] Id., at 3-5.
[162] See Ozdemir VR at 6 and VE-10.
[163] See Maverick at 12.
[164] Id., at 20 (upholding revised benchmark) ("U.S. Steel does not persuade that error is manifest in {the Department's} benchmark valuation of the Osmaniye Parcel and/or the amortization schedule thereof as established in CWP from Turkey through appeal thereof, and in the absence of such a showing a disparate valuation of that same parcel of land as a final result of this proceeding would be odd indeed") (emphasis added); see also CWP Turkey 2011 AR, and OCTG from Turkey (both valuing the Osmaniye Parcel).
[165] 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. See Toscelik, remand results sustained, Slip Op. 15-28 (April 1, 2015) ("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.")

Thus, we find no compelling argument against including these parcels in the benchmark. Therefore, we continue to rely on the land benchmark calculated in the Preliminary Determination for our final determination subsidy calculations.

Comment 3: Ministerial Errors

Ozdemir argues that the Department should correct its acknowledged ministerial errors for this final determination. Specifically, Ozdemir argues that the Department should (1) properly measure the benefit from the Deduction from Taxable Income for Export Revenue program; and (2) use the same number of days in a year for purposes of calculating the benefit from the Rediscount Program as that used in calculating the short-term loans benchmark (i.e., 365 days rather than 360 days).[166]

Department's Position:

We agree and corrected the errors outlined in the Department's Ministerial Error Memorandum for this final determination.[167]

Comment 4: Treatment of Income from Services in Ozdemir's Total Sales Denominator

Ozdemir argues that the Department should include revenue from sale of services in the sales denominator used for calculating CVD rates if the service is performed on the company's productive facilities and by its workers in the ordinary course of business. According to Ozdemir, the Department confirmed at verification that each of the services provided by Ozdemir – transformation (i.e., tolling), slitting, and de-beading – during the POI, as well as the other years of the AUL, utilized the company's production equipment and were performed by the company's workers in the ordinary course of business. As such, Ozdemir contends that the Department should include service income in Ozdemir's sales denominator.[168]

The petitioners argue that the Department correctly excluded service income from Ozdemir's total sales denominator in its Preliminary Determination. According to the petitioners, the Department should not adopt Ozdemir's proposed distinction between services that utilize a company's productive facilities and those that do not. Moreover, the petitioners contend that the Department need not make presumptions concerning whether the resulting benefit from a subsidy passes to buyers of services on the same basis as that of buyers of merchandise. As the petitioners note, under 19 USC 1671(a) the Department is only required to determine whether subsidies are provided to merchandise.[169]

Department's Position:

We find it is appropriate to include Ozdemir's revenue from production-related service activities – transformation (i.e., tolling), slitting, and de-beading – during the POI, as well as the other

[166] See Ozdemir Case Brief at 2.
[167] See Ozdemir Final Calculation Memorandum.
[168] See Ozdemir Case Brief at 5-6.
[169] See Petitioners Rebuttal Brief at 5-6.

years of the AUL, in the company's total sales denominator.[170] Under the Department's practice, revenue from services may be included in the denominator. Specifically, where a subsidy is not tied per se to merchandise production, such a subsidy benefits a company's entire operation, including its service activities. As the Department explained in Austria Steel GIA:

> We determine that the value of services sold should be included in a company's total sales when the subsidy for which we are measuring the benefit is not tied to the production of merchandise. This determination derives from the reasonable presumption that, to the extent a government provides a subsidy which is not tied to a company's productive activities, a recipient company can be presumed to use that subsidy to benefit its entire operations, including its service functions.[171]

The Department further explained in Austria Steel GIA that a determination of whether or not a subsidy is tied to merchandise production, and thus whether or not the value of services is included in the denominator, is made on a case-by-case basis.[172]

In any case, the record is clear that Ozdemir's service revenue involved the use of its productive facilities. As Ozdemir correctly notes, at the company's verification, we confirmed that each of the services provided – transformation (i.e., tolling), slitting, and de-beading – during the POI, as well as the other years of the AUL, utilized the company's production equipment and were performed by the company's workers in the ordinary course of business.[173] As such, we included revenue from the sale the services provided by Ozdemir – transformation (i.e., tolling), slitting, and de-beading – in the company's total sales denominator for this final determination.[174] The same modifications were also made for MMZ.[175]

[170] See Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 74 FR 14514 (March 31, 2009)
[171] See Final Affirmative Countervailing Duty Determination: Certain Steel Products From Austria, 58 FR 37217, 37238 (July 9, 1993), General Issues Appendix at "C. Services" (Austria Steel GIA).
[172] See, e.g., Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea, 68 FR 37122 (June 23, 2003), and accompanying IDM at Comment 23.
[173] See Ozdemir VR at VE-6 and VE-7.
[174] See Ozdemir Final Calculation Memorandum.
[175] See MMZ Final Calculation Memorandum.

VIII. CONCLUSION

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

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

14 July 2016
(Date)