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Investigation  
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MEMORANDUM TO: Carole Showers  
Executive Director, Office of Policy,  
Policy & Negotiations

FROM: Gary Taverman  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the  
Countervailing Duty Investigation of Steel Concrete Reinforcing  
Bar from the Republic of Turkey

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## I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey), as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

## II. BACKGROUND

### A. Initiation and Case History

On September 20, 2016, antidumping duty (AD) and countervailing duty (CVD) petitions regarding imports of rebar from, *inter alia*, Turkey were properly filed with the Department by the Rebar Trade Action Coalition and its individual members (collectively, Petitioner).<sup>1</sup> The individual members of the Rebar Trade Action Coalition are Byer Steel Group, Inc., Commercial Metals Company, Gerdau Ameristeel U.S. Inc., Nucor Corporation, and Steel Dynamics, Inc.<sup>2</sup> Supplements to the Petition and our consultations with the Government of Turkey (GOT) are

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<sup>1</sup> See Letter from Petitioner, "Petition for the Imposition of Antidumping and Countervailing Duties: Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey," September 20, 2016 (Petition).

<sup>2</sup> See Letter from Petitioners, "Steel Concrete Reinforcing Bar from Japan, Taiwan, and Turkey: Notice Regarding Composition of the Petitioning Coalition," February 15, 2017 (notifying the Department that "Bayou Steel Group no longer intends to continue as a member of the petitioning coalition"); *see also* Petition, Volume I at 1.

described in the *Initiation Notice* and accompanying Initiation Checklist.<sup>3</sup> On October 11, 2016, the Department initiated a CVD investigation of rebar from Turkey.<sup>4</sup> On November 25, 2016, the Department postponed its preliminary determination until February 21, 2017.<sup>5</sup>

The scope of this investigation only covers rebar produced and/or exported by companies excluded from the existing CVD order on rebar from Turkey.<sup>6</sup> Therefore, at the time of respondent selection, the merchandise subject to this investigation is rebar produced by Habaş Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.Ş. (Habas), the sole Turkish rebar producer/exporter excluded from the *2014 Turkey Rebar CVD Order*. On October 13, 2016, the Department released Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.<sup>7</sup> Because the CBP entry data indicated that Habas exported rebar to the United States during the period of investigation (POI), Habas is the only mandatory company respondent in this proceeding.<sup>8</sup>

The Department issued a questionnaire to the GOT on October 17, 2016, requesting that it, along with the mandatory respondent, provide information regarding the subsidy programs alleged in the Petition.<sup>9</sup> On October 31, 2016, we received a timely affiliation questionnaire response from Habas,<sup>10</sup> on which Petitioner subsequently commented.<sup>11</sup> Based on the information provided in Habas's affiliation questionnaire response, the Department requested that Habas provide a full questionnaire response on behalf of four affiliates: Habaş Elektrik Üretim A.Ş. (Habas Elektrik), Habaş Endüstri Tesisleri A.Ş. (Habas Endustrisi), Habaş Petrol A.Ş. (Habas Petrol), and Mertaş Turizm Nakliyat ve Ticaret A.Ş. (Mertas).<sup>12</sup> For reasons discussed in the "Attribution of

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<sup>3</sup> See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Initiation of Countervailing Duty Investigation*, 81 FR 71705 (October 18, 2016) (*Initiation Notice*) and accompanying Initiation Checklist.

<sup>4</sup> See *Initiation Notice*.

<sup>5</sup> See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Postponement of Preliminary Determination in Countervailing Duty Investigation*, 81 FR 86701 (December 1, 2016).

<sup>6</sup> See *Initiation Notice* at Attachment; see also *Steel Concrete Reinforcing Bar from the Republic of Turkey: Countervailing Duty Order*, 79 FR 65926 (November 6, 2014) (*2014 Turkey Rebar CVD Order*).

<sup>7</sup> See Department Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Release of Customs Entry Data for Countervailing Duty Investigation," October 13, 2016 (Respondent Selection Memorandum).

<sup>8</sup> *Id.* at 2.

<sup>9</sup> See Letter from the Department, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Countervailing Duty Questionnaire," October 17, 2016.

<sup>10</sup> See Letter from Habas, "Steel Concrete Reinforcing Bar from Turkey; Habas "affiliation" questionnaire response," October 31, 2016 (Habas Affiliation Questionnaire Response).

<sup>11</sup> See Letter from Petitioner, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Comments on the Affiliation Questionnaire Response of Habas," November 17, 2016.

<sup>12</sup> See Letter from the Department, "Countervailing Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey; Supplemental Affiliation Questionnaire," November 3, 2016; see also Letter from the Department, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Partial Extension of Time and Request for Countervailing Duty Questionnaire Response Pertaining to Respondent's Cross-Owned Company," November 3, 2016; Letter from the Department, "Countervailing Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey; Request for Complete Questionnaire Response on Behalf of Affiliated Companies," November 22, 2016; Letter from the Department, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Request for Countervailing Duty Questionnaire Response Pertaining to Respondent's Cross-Owned Company," November 22, 2016; Letter from the Department, "Steel Concrete Reinforcing Bar from the Republic of Turkey; Request for Additional Countervailing Duty Questionnaire Response from Affiliated Company," January 6, 2017; Letter from

Subsidies” section, below, the Department has requested questionnaire responses from several subcontractors involved in Habas’s production of rebar.<sup>13</sup>

Between December 12, 2016, and February 13, 2017, we received questionnaire responses from the GOT and Habas.<sup>14</sup> Petitioner filed comments on these responses between December 21, 2016, and January 30, 2017.<sup>15</sup> Petitioner also filed factual information and pre-preliminary comments.<sup>16</sup> Habas responded to Petitioner’s factual information on February 6, 2017.<sup>17</sup>

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the Department, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Request for Countervailing Duty Questionnaire Response Pertaining to Respondent’s Cross-Owned Company and Additional Information Regarding Tax Program,” January 6, 2017.

<sup>13</sup> See Letter from the Department, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Request for Countervailing Duty Questionnaire Response Pertaining to Additional Companies,” February 17, 2017; *see also* Letter from the Department, “Steel Concrete Reinforcing Bar from the Republic of Turkey; Request for Additional Countervailing Duty Questionnaire Responses,” February 17, 2017.

<sup>14</sup> See Letter from the GOT, “Response of the Government of Turkey in Countervailing Duty Investigation on Steel Concrete Reinforcing Bar from the Republic of Turkey,” December 12, 2016 (GOT Initial Questionnaire Response); *see also* Letter from Habas, “Steel Concrete Reinforcing Bar from Turkey; Habas questionnaire response,” December 12, 2016 (Habas and Habas Elektrik Questionnaire Response); Letter from Habas, “Steel Concrete Reinforcing Bar from Turkey; Habas supplemental questionnaire response,” December 29, 2016 (Habas Endustrisi and Habas Petrol Questionnaire Response); Letter from the GOT, “Response of the Government of Turkey to Supplemental Questionnaire in Countervailing Duty Investigation on Steel Concrete Reinforcing Bar from the Republic of Turkey,” January 17, 2017 (GOT Supplemental Questionnaire Response); Letter from Habas, “Steel Concrete Reinforcing Bar from Turkey; Habas: Mertas questionnaire response,” January 23, 2017 (Mertas Questionnaire Response); Letter from the GOT, “Countervailing Duty Questionnaire Response Pertaining to Respondent’s Cross-Owned Company and Additional Information Regarding Tax Program on Steel Concrete Reinforcing Bar from the Republic of Turkey,” January 25, 2017 (GOT Mertas Questionnaire Response); Letter from Habas, “Steel Concrete Reinforcing Bar from Turkey; Habas: Supplemental questionnaire response,” January 26, 2017 (Habas Supplemental Questionnaire Response); Letter from Habas, “Steel Concrete Reinforcing Bar from Turkey; Habas: Second supplemental questionnaire response,” February 3, 2017 (Habas Second Supplemental Questionnaire Response); Letter from Habas, “Steel Concrete Reinforcing Bar from Turkey; Habas: Third supplemental questionnaire response,” February 13, 2017 (Habas Subcontractor Questionnaire Response); Letter from the GOT, “Response of the Government of Turkey for Second Supplemental Questionnaire in Countervailing Duty Investigation on Steel Concrete Reinforcing Bar from the Republic of Turkey,” February 13, 2017 (GOT Second Supplemental Questionnaire Response).

<sup>15</sup> See Letter from Petitioner, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Comments on the Government of Turkey’s Initial Questionnaire Response,” December 21, 2016; *see also* Letter from Petitioner, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Comments on Habas’ Initial Questionnaire Response,” December 28, 2016; Letter from Petitioner, “Certain Steel Concrete Reinforcing Bar from Turkey: Comments on the Government of Turkey’s Supplemental Questionnaire Response,” January 30, 2017. Habas responded to Petitioner’s comments in a separate submission. *See* Letter from Habas, “Steel Concrete Reinforcing Bar from Turkey; Habas response to petitioners’ comments on Habas initial questionnaire response,” January 6, 2017 (Habas Response to Petitioner Comments).

<sup>16</sup> See Letter from Petitioner, “Certain Steel Concrete Reinforcing Bar from Turkey: Submission of Factual Information,” January 23, 2017 (Petitioner Factual Information); *see also* Letter from Petitioner, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Pre-Preliminary Comments,” February 7, 2017.

<sup>17</sup> See Letter from Habas, “Steel Concrete Reinforcing Bar from Turkey; Habas: Response to petitioners’ submission of factual information of Jan. 23, 2017,” February 6, 2017 (Habas Rebuttal to Factual Information); *see also* Letter from the Department, “Steel Concrete Reinforcing Bar from the Republic of Turkey: Request for Removal of Untimely New Factual Information and Resubmission of Letter in Countervailing Duty Investigation,” February 2, 2017 (Request for Resubmission).

On February 1, 2017, Petitioner requested that the Department align the final determination of this investigation with the final determination in the companion AD investigation of rebar from Turkey.<sup>18</sup> Therefore, as explained below, we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of rebar from Turkey, pursuant to section 705(a)(1) of the Act and 19 CFR 351.210(b)(4).

## **B. Period of Investigation**

The POI is January 1, 2015, through December 31, 2015. This period corresponds to the most recently completed calendar year, in accordance with 19 CFR 351.204(b)(2).

## **III. SCOPE COMMENTS**

As noted in the *Preliminary Determination*,<sup>19</sup> in accordance with the preamble to the Department's regulations,<sup>20</sup> we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days from the signature date of the *Initiation Notice*.<sup>21</sup> We did not receive any comments concerning the scope of this investigation.

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

The product covered by this investigation is rebar from Turkey. For a full description of the scope of this investigation, *see* Appendix I to the *Preliminary Determination*.

## **V. ALIGNMENT**

On the same day that the Department initiated this CVD investigation, the Department also initiated an AD investigation of rebar from Turkey.<sup>22</sup> The AD and CVD investigations cover the same class or kind of merchandise from the same country. On February 1, 2017, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Petitioner requested alignment of the final CVD determination with the final AD determination of rebar from Turkey.<sup>23</sup> Therefore, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we are aligning the final determination in this investigation with the final determination in the companion AD investigation of rebar from Turkey. Consequently, the final CVD determination will be issued

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<sup>18</sup> See Letter from Petitioner, "Steel Concrete Reinforcing Bar from Turkey: Request to Align Countervailing Duty Final Determination with Antidumping Duty Final Determination," February 1, 2017.

<sup>19</sup> See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR \_\_\_\_\_ (February \_\_, 2017) (signed February 21, 2017) (*Preliminary Determination*).

<sup>20</sup> See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

<sup>21</sup> See *Initiation Notice*, 81 FR at 71706.

<sup>22</sup> See *Steel Concrete Reinforcing Bar from Japan, Taiwan, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigation*, 81 FR 71697 (October 18, 2016).

<sup>23</sup> See Letter from Petitioner, "Steel Concrete Reinforcing Bar from Turkey: Request to Align Countervailing Duty Final Determination with Antidumping Duty Final Determination," February 1, 2017.

on the same date as the final AD determination, which is currently due no later than May 15, 2017, unless postponed.

## **VI. RESPONDENT SELECTION**

Section 777A(e)(1) of the Act directs the Department to determine an individual countervailable subsidy rate for each known exporter/producer of subject merchandise. As noted in Appendix I of the *Preliminary Determination*, the scope of this investigation only covers rebar produced and/or exported by companies excluded from the existing CVD order on rebar from Turkey.<sup>24</sup> Therefore, because Habas is a producer of subject merchandise and the sole Turkish rebar producer/exporter excluded from the existing CVD order, Habas is the only mandatory company respondent in this proceeding.<sup>25</sup>

## **VII. INJURY TEST**

Because Turkey is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a U.S. industry. On November 4, 2016, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of rebar from Japan, Taiwan, and Turkey.<sup>26</sup>

## **VIII. SUBSIDIES VALUATION**

### **A. Allocation Period**

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.<sup>27</sup> The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.24(d)(2) and the U.S. Internal Revenue Service’s 1977 Class Life Asset Depreciation Range System, as revised.<sup>28</sup> The Department notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding disputed the 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 that 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 over the AUL.

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<sup>24</sup> See *2014 Turkey Rebar CVD Order*.

<sup>25</sup> See Respondent Selection Memorandum.

<sup>26</sup> See *Steel Concrete Reinforcing Bar from Japan, Taiwan, and Turkey*, 81 FR 79050 (November 10, 2016).

<sup>27</sup> See 19 CFR 351.524(b).

<sup>28</sup> See U.S. Internal Revenue Service Publication 946 (2008), “How to Depreciate Property,” at Table B-2: Table of Class Lives and Recovery Periods.

## B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received that subsidy. However, additional rules at 19 CFR 351.525(b)(6)(ii)-(v) provide for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise, (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to the respondent. Further, 19 CFR 351.525(c) states that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

Section 19 CFR 351.525(b)(1) states that the attribution of subsidies under these regulatory provisions are “general” in nature. As explained in the *Preamble* to the Department’s regulations, these regulatory provisions cannot “account for all the possible permutations in advance” because “the result would be an extremely lengthy set of rules that might prove unduly rigid.”<sup>29</sup> Furthermore, the *Preamble* recognizes that “unique and unforeseen factual situations” may arise in the administration of “these rules.”<sup>30</sup>

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. The regulation states that this standard will normally be met where there is a majority voting interest between two or more 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 a company’s ability to use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>31</sup>

In response to the Department’s questionnaire, Habas reported multiple affiliated companies.<sup>32</sup> As noted above, the Department subsequently requested that, in addition to itself, Habas submit complete questionnaire responses on behalf of its affiliates Habas Elektrik, Habas Endustrisi, and Habas Petrol, based on 19 CFR 351.525(b)(6)(iv), and Mertas, based on 19 CFR 351.525(c). Based on the information provided, we preliminarily find that Habas, Habas Elektrik, Habas Endustrisi, Habas Petrol, and Mertas are cross-owned within the meaning of 19 CFR 351.525(b)(6). We also find that that, during the POI, Habas made export sales through Mertas and, as such, Mertas acted as a trading company within the meaning of 19 CFR 351.525(c). Therefore, benefits from subsidies received by Habas Elektrik, Habas Endustrisi, Habas Petrol, and Mertas will be attributed to Habas as discussed in the “Denominators” section, below.

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<sup>29</sup> See *Countervailing Duties: Final Rule*, 63 FR 65348, 65399 (November 25, 1998) (*Preamble*).

<sup>30</sup> *Id.*

<sup>31</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 603 (CIT 2001).

<sup>32</sup> See Habas Affiliation Questionnaire Response at Exhibit 1.

In addition to its affiliates, Habas identified three unaffiliated subcontractors to which it outsourced the rolling of billets into rebar during the POI.<sup>33</sup> The business proprietary names of two of Habas's subcontractors are provided in the Preliminary Calculation Memorandum. The complete name of Habas's third subcontractor, publicly identified as "OSIT," is also in the Preliminary Calculation Memorandum. The Department sought additional information regarding Habas's relationship with each subcontractor, including Habas's contractual and/or practical capacity to use or direct each subcontractors' assets in the same way Habas would use its own assets (*i.e.*, whether or not Habas and any subcontractor fit the definition of cross-ownership under 19 CFR 351.525(b)(6)(vi)).<sup>34</sup> Habas reported that two of the subcontractors act as "tollers."<sup>35</sup> According to Habas, it provides billets to these subcontractors, who then roll the billets into rebar and deliver the finished goods to Habas for sale by Habas.<sup>36</sup>

The Department has reviewed the relationship between Habas and its reported "tollers." We preliminarily determine that the record reflects a relationship between Habas and its "tollers" that is akin to the relationship between a producer and its trading company under 19 CFR 351.525(c). Accordingly, we are preliminarily cumulating the benefits from subsidies provided to Habas's "tollers" with benefits from subsidies provided to Habas, in a manner similar to the attribution of a trading company's subsidies to an unaffiliated producer. We find that such a determination is consistent with the general understanding of attribution of subsidies, as reflected in the Department's regulations and further addressed in the *Preamble*, as cited above.

Additionally, based on business proprietary information on the record of this proceeding, we find that Habas and OSIT are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) because, under the relevant agreement, Habas has the capacity to use or direct OSIT's assets in the same way it would use its own assets.<sup>37</sup> As such, within the framework of the 19 CFR 351.525(b)(6), any subsidies received by OSIT are attributable to Habas.

### **C. Denominators**

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies (*e.g.*, to the respondent's export sales for export subsidies or to the respondent's total sales for domestic subsidies). For more information regarding the classification of subsidies as export or domestic, *see* the Preliminary Calculation Memorandum.

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<sup>33</sup> See Habas and Habas Elektrik Questionnaire Response at Exhibit 1; *see also* Habas Response to Petitioner Comments at 2-3.

<sup>34</sup> See Letter from the Department, "Countervailing Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey; Request for Additional Information Regarding Subcontractors," February 2, 2017.

<sup>35</sup> The names of Habas's toller subcontractors are protected as business proprietary information. A description of the relevant business proprietary evidence is included in the "Preliminary Calculation Memorandum" prepared for this investigation. See Department Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Calculations for the Preliminary Countervailing Duty Determination," dated concurrently and hereby adopted by this memorandum (Preliminary Calculation Memorandum).

<sup>36</sup> See Habas Response to Petitioner Comments at 2-3.

<sup>37</sup> See Habas Subcontractor Questionnaire Response at 1-2 and Exhibit 1. A complete discussion of the evidence pertaining the OSIT is provided in the Preliminary Calculation Memorandum.

Habas stated that Habas Elektrik did not produce or sell electricity during the POI and, furthermore, that Habas Elektrik's only revenue was for consultancy services.<sup>38</sup> Because Habas Elektrik did not provide Habas with any input during the relevant period, any subsidies it received are not attributable to Habas. Habas Endustrisi and Habas Petrol, however, provided Habas with inputs for rebar production during the POI.<sup>39</sup> Therefore, subsidies received by Habas Endustrisi and Habas Petrol are attributed to the combined sales of Habas and each input supplier, respectively, in accordance with 19 CFR 351.525(b)(6)(iv).

As noted, the Department is treating Mertas as a trading company that exported subject merchandise from Habas.<sup>40</sup> As a result, pursuant to 19 CFR 351.525(c), any subsidies received by Mertas are cumulated with the subsidies received by Habas. As discussed above, the Department also intends to attribute subsidies received by Habas's two toller subcontractors to Habas. Consequently, any subsidies received by the toller subcontractors will be cumulated with subsidies received by Habas.<sup>41</sup>

The record evidence pertaining to Habas's relationship with OSIT is business proprietary.<sup>42</sup> Therefore, the attribution of any subsidies received by OSIT is discussed in the Preliminary Calculation Memoranda.<sup>43</sup> The precise sales denominators used to calculate the countervailable subsidy rates for the various subsidy programs described below are also discussed in greater detail in the Preliminary Calculation Memorandum.

#### **D. Loan Benchmarks**

Section 771(5)(E)(ii) of the Act provides that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." In addition, 19 CFR 351.505(a)(3)(i) states that, when selecting a comparable commercial loan that the recipient "could actually obtain on the market," the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans, the Department "may use a national average interest rate for comparable commercial loans," pursuant to 19 CFR 351.505(a)(3)(ii). 19 CFR 351.505(a)(2)(ii) further stipulates that the Department will not consider a loan provided by a government-owned special purpose bank in its calculation of a benchmark interest rate. Finally, under 19 CFR 351.505(a)(2)(i), when a loan is

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<sup>38</sup> See Habas and Habas Elektrik Questionnaire Response at 5 and 9.

<sup>39</sup> See Habas Affiliation Questionnaire Response at 2.

<sup>40</sup> See Habas and Habas Elektrik Questionnaire Response at 9.

<sup>41</sup> At the time of this preliminary determination, the Department has not yet received program usage information in regard to Habas's tollers. Therefore, benefit calculations for any of the investigated subsidies received by the tollers will be attributed to Habas in the Department's final determination.

<sup>42</sup> See Habas Subcontractor Questionnaire Response at 1-2 and Exhibit 1.

<sup>43</sup> At the time of this preliminary determination, the Department has not yet received program usage information in regard to OSIT. Therefore, benefit calculations for any of the investigated subsidies received by OSIT will be attributed to Habas in the Department's final determination.



denominated in a foreign currency, the Department will use a benchmark denominated in the same foreign currency to calculate the relevant benefit.

The Department is examining short-term export financing provided by the GOT. As discussed below at “Rediscount Program,” Habas reported that it paid interest against U.S. dollar (USD) rediscount loans from the Export Credit Bank of Turkey (Turk Eximbank), which were disbursed during the POI. Habas also submitted the weighted-average interest rate paid on comparable short-term USD commercial loans during the POI. Therefore, in accordance with 19 CFR 351.505(a)(2)(ii), we are preliminarily using the provided weighted-average interest rate as the benchmark to calculate Habas’s benefit under the Rediscount Program.

## **IX. ANALYSIS OF PROGRAMS**

Based upon our analysis of the record, we preliminarily make the following determinations regarding the alleged subsidy programs.

### **A. Programs Preliminarily Determined to be Countervailable**

#### **1. Natural Gas for Less than Adequate Remuneration**

Petitioner alleged that Turkish steel producers with vertically integrated power plants received countervailable subsidies by purchasing natural gas at discounted prices from Boru Hatlari ile Petrol Taşıma A.Ş. (BOTAS).<sup>44</sup> Habas owns and operates three power plants, one of which was operational during the POI and generated electricity for steel production.<sup>45</sup> Habas reported that it purchased natural gas from BOTAS during the POI for electricity generation, as well as other applications.<sup>46</sup> Habas Endustrisi, Habas Petrol, and Mertas did not purchase natural gas from BOTAS during the POI.<sup>47</sup>

The GOT reported that BOTAS was founded by the Ministry of Energy and Natural Resources as a “State Economic Enterprise.”<sup>48</sup> Therefore, in accordance with Decree Law No. 233, all of BOTAS’s board members are appointed by the Turkish President and the Turkish Prime Minister.<sup>49</sup> Furthermore, all investment decisions must be approved by the GOT’s Council of Ministers and “in line with determined government programs.”<sup>50</sup> All of BOTAS’s profits are “transferred to the Treasury.”<sup>51</sup> For these reasons, the Department finds BOTAS to be a

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<sup>44</sup> See Initiation Checklist at 8.

<sup>45</sup> See Habas and Habas Elektrik Questionnaire Response at 5, 16.

<sup>46</sup> *Id.* at Exhibit 9; see also Habas Supplemental Questionnaire Response at Exhibit 3 (including natural gas purchases used in Habas’s kitchen). At the Department’s request, Habas also reported all liquefied natural gas (LNG) purchased from BOTAS during the POI. See Habas Second Supplemental Questionnaire Response at Exhibit 1. The Department, however, has preliminarily determined that natural gas and LNG are different products and is not considering purchases of LNG in its analysis of this program.

<sup>47</sup> See Habas Endustrisi and Habas Petrol Questionnaire Response at 11; see also Mertas Questionnaire Response at 9; GOT Supplemental Questionnaire Response at 4.

<sup>48</sup> See GOT Initial Questionnaire Response at 8, 11, and Exhibit 3.

<sup>49</sup> *Id.* at 8-9 and Exhibit 6.

<sup>50</sup> *Id.* at 9 and Exhibit 6.

<sup>51</sup> *Id.*

government authority<sup>52</sup> providing a financial contribution in the form of goods or services under section 771(5)(D)(iii) of the Act.

Regarding specificity, Petitioner alleged that the power industry is the “predominant user” of natural gas in Turkey, thereby receiving a “disproportionately large amount” of the subsidy.<sup>53</sup> The GOT reported that, in 2015, the total consumption of natural gas in Turkey was 47,999,280,000 standard cubic meters (SM3) and that BOTAS sold a substantial majority of the natural gas consumed in Turkey during the same period.<sup>54</sup> The GOT also provided a breakdown of six industries/sectors that purchased natural gas during the POI,<sup>55</sup> which indicates that power producers (*i.e.*, the “Conversion Sector”) accounted for the highest sector-specific ratio of natural gas purchases in 2015 (*i.e.*, 39.61 percent or 19,010,670,000 SM3).<sup>56</sup> The “Industry Sector,” the “Service Sector,” the “Transportation Sector,” and the “Energy Sector” (*i.e.*, the other four non-miscellaneous industries/sectors) accounted for 29.10 percent, 6.58 percent, 0.88 percent, and 0.63 percent of all natural gas purchased during the POI, respectively.<sup>57</sup> Therefore, because power producers consumed 39.61 percent of natural gas during the POI, we determine that the natural gas sold by BOTAS is predominantly used by and specific to power producers, including Habas, within the meaning of section 771(5A)(D)(iii)(II) of the Act.

The Department’s regulations establish the basis for identifying appropriate market-determined benchmarks for calculating the benefit received from the provision of goods or services for less than adequate remuneration (LTAR).<sup>58</sup> Section 351.511(a)(2) of the Department’s regulations sets forth the hierarchy of potential benchmarks, listed in order of preference: (1) market prices from actual transaction of the good within the country under investigation (*e.g.*, actual sales, actual imports, or competitively run government auctions) (*i.e.*, “tier one”), (2) world market prices that would be available to purchasers in the country under investigation (*i.e.*, “tier two”), or (3) an assessment of whether the government price is consistent with market principles (*i.e.*, “tier three”). As provided in the regulations, the preferred benchmark is an observed market price for the good at issue based on actual transactions within the country under investigation.<sup>59</sup> Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government provides the majority or, in certain circumstances, a substantial portion of the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and

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<sup>52</sup> See section 771(5)(B) of the Act.

<sup>53</sup> See Initiation Checklist at 9.

<sup>54</sup> See GOT Initial Questionnaire Response at 13, 18. The actual volume of natural gas sold by BOTAS is business proprietary information and is discussed in greater detail in the Preliminary Calculation Memorandum.

<sup>55</sup> *Id.* at 16-17.

<sup>56</sup> *Id.* at 16.

<sup>57</sup> *Id.* at 17.

<sup>58</sup> See 19 CFR 351.511(a)(2).

<sup>59</sup> See, *e.g.*, *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum (IDM) at “Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark” (stating, “Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier.”).

will not be an appropriate basis of comparison for determining whether or not there is a benefit.<sup>60</sup> As explained above, BOTAS's natural gas sales account for a substantial majority of Turkey's natural gas consumption during the POI.<sup>61</sup> The GOT also reported that domestically produced natural gas, half of which is produced by a GOT entity, accounts for only 0.79 percent of Turkey's total natural gas consumption in 2015.<sup>62</sup> Furthermore, all natural gas consumed in Turkey, regardless of whether it is produced domestically or imported, is transported via pipelines owned and operated by BOTAS.<sup>63</sup> Due to the GOT's overwhelming involvement in the Turkish natural gas market, the use of Turkish private transaction prices to calculate a benefit would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the GOT's presence in the market).<sup>64</sup> Therefore, we determine that there is no viable tier one benchmark for natural gas in Turkey during the POI.

Under 19 CFR 351.511(a)(2)(ii), if there is no useable market-determined tier one benchmark price, the government price will be compared to a tier two benchmark (*i.e.*, a world market price that would reasonably be available to purchasers in the country under investigation). In this proceeding, Petitioner provided a set of annual industrial natural gas prices published by the International Energy Agency (IEA).<sup>65</sup> Habas subsequently filed factual information to rebut Petitioner's IEA data, including alternative natural gas prices.<sup>66</sup> However, because such "additional, previously absent-from-the-record" information is prohibited under 19 CFR 351.301(c)(3)(iv), the Department rejected Habas's alternative natural gas prices as untimely.<sup>67</sup>

The IEA publication provided by Petitioner includes country-specific industrial natural gas prices for all Organisation for Economic Co-operation and Development (OECD) countries, as well as "zone aggregate" natural gas prices for OECD regional groups (*e.g.*, OECD Europe), for 2007 through the second quarter of 2016.<sup>68</sup> Because, in its gaseous form, natural gas can only be transported via pipeline,<sup>69</sup> the Department finds that Turkish natural gas consumers would not be able to purchase natural gas outside of OECD Europe (*e.g.*, from the United States or Korea).<sup>70</sup>

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<sup>60</sup> See *Preamble*, 63 FR at 65377 (November 25, 1998).

<sup>61</sup> See GOT Initial Questionnaire Response at 13, 18; see also Preliminary Calculation Memorandum.

<sup>62</sup> See GOT Initial Questionnaire Response at 13 (reporting that GOT-owned natural gas producer Türkiye Petrolleri Anonim Ortaklığı produced 190,740,000 SM3 of natural gas during the POI, which accounts for 50.01 percent of Turkey's domestic natural gas production).

<sup>63</sup> See GOT Initial Questionnaire Response at 18.

<sup>64</sup> See *Softwood Lumber from Canada* and accompanying IDM at 38-39 (stating that such an analysis "would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect").

<sup>65</sup> See Petitioner Factual Information at Exhibit 2.

<sup>66</sup> See Department Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Rejection and Retention of Documents Containing Untimely New Factual Information in Countervailing Duty Investigation," February 2, 2017 (Rejection of Untimely Factual Information); see also Request for Resubmission; Habas Rebuttal to Factual Information.

<sup>67</sup> See Rejection of Untimely Factual Information; see also Request for Resubmission.

<sup>68</sup> See Petitioner Factual Information at Exhibit 2. The "Geographical Groupings" section of the IEA publication notes that Iceland and Latvia are not included in the reported data.

<sup>69</sup> See Preliminary Calculation Memorandum at Attachment III.

<sup>70</sup> OECD Europe is comprised of Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. See Petitioner Factual

Furthermore, because we have found that the market for natural gas in Turkey is distorted, we have removed the value for Turkey included in the publication from our calculations.

The IEA publication provides an annual value for natural gas. Although the Department has a preference for monthly values, there is no monthly benchmark information on the record of this proceeding. Accordingly, for purposes of this preliminary determination, we find that the OECD Europe natural gas prices for 2015, as published by IEA, are useable under 19 CFR 351.511(a)(2)(ii) as a tier two benchmark. However, because monthly benchmark prices would enable the Department to account for price fluctuations during the POI in calculating a benefit, and because of the Department's well-established preference for using monthly benchmarks,<sup>71</sup> we are reopening the record for submission of *monthly* natural gas benchmark information, as well as comments on the appropriateness of continuing to use the existing OECD prices. As stated in the *Preliminary Determination*, all parties are invited to file such comments and new factual information with the Department, within ten days of publication of the *Preliminary Determination* in the *Federal Register*. Rebuttal comments will be accepted within five days of the deadline for submission of initial comments and new factual information. Alternative benchmark information will not be accepted as rebuttal information.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties (*i.e.*, a “delivered” price to the factory). Therefore, in order to ensure that the benchmark price reflects what the respondent would have paid if it had imported natural gas directly, the regulation stipulates that the average price be adjusted by adding any delivery charges for the transmission of natural gas within Turkey and any applicable taxes. Habas reported that it paid delivered prices for its purchases of natural gas from BOTAS.<sup>72</sup>

The benchmark price provided by Petitioner does not include various fees and taxes imposed within the borders of a foreign purchasing country.<sup>73</sup> To ensure that the benchmark price reflects the delivery charges in Turkey, we added the additional per-unit transmission/delivery fees charged by BOTAS (*e.g.*, service, capacity, and warehousing fees) to the tier two benchmark price. Furthermore, the GOT reported that, although there are no import duties on natural gas, there is an 18 percent domestic VAT.<sup>74</sup> As such, we adjusted the benchmark to include VAT and constructed a per-unit delivered price.

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Information at Exhibit 2. Denmark, Italy, and Norway did not report a natural gas price for 2015. *Id.* Because the Turkish natural gas market is distorted, the 2015 Turkish natural gas price is also excluded.

<sup>71</sup> See, *e.g.*, Countervailing Duty Investigation of Certain Amorphous Silica Fabric from The People's Republic of China: Final Affirmative Determination, 82 FR 8405 (January 25, 2017) and accompanying IDM at Comment 8.

<sup>72</sup> See Habas Supplemental Questionnaire Response at Exhibit 3; see also Habas and Habas Elektrik Questionnaire Response at Exhibit 11.

<sup>73</sup> See Petitioner Factual Information at Exhibit 2 (identifying the reported natural gas prices as “Retail” Harmonized Index of Consumer Prices statistics). There is no information on the record regarding domestic transmission fees, so the Department declines to speculate as to whether or not domestic transmission fees are included in the benchmark price.

<sup>74</sup> See GOT Initial Questionnaire Response at 15.

To calculate the program benefit, we compared the benchmark per-unit delivered price to the per-unit delivered price Habas actually paid BOTAS for natural gas during the POI. Where the benchmark price was greater than the actual price paid to BOTAS, we multiplied the difference by the quantity of natural gas purchased from BOTAS under that invoice to determine the benefit. We then summed the benefits and divided the total amount by Habas's total sales for the POI. On this basis, we preliminarily determine that Habas received a net countervailable subsidy rate of 3.33 percent *ad valorem* under this program.

Habas argues that “the provision of natural gas for LTAR is specific to the use of natural gas for power generation” and, therefore, only natural gas purchased and used to generate power (*i.e.*, reported as “energy” division purchases rather than “iron & steel,” “HRS,” or “kitchen” division purchases) should be included in the Department’s subsidy rate calculation.<sup>75</sup> However, 19 CFR 351.525(b)(3) requires the attribution of domestic subsidies to “all products sold by a firm,” and, pursuant to 19 CFR 351.525(b)(5)(i), the Department may depart from this rule and attribute a subsidy only to certain products sold by a firm only where that subsidy is “tied to the production or sale of a particular product.” The Department’s practice is to identify the type and monetary value of a subsidy at the time the subsidy is bestowed rather than examine the use or effect of subsidies (*i.e.*, to trace how the benefits are used by companies). A subsidy is only tied to a particular product when the intended use is known to the subsidy provider (*i.e.*, the GOT) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been previously upheld by the CIT.<sup>76</sup> In the present case, the record does not demonstrate that the GOT intended to limit the application of natural gas it provided for LTAR to electricity generation or any other purpose. Therefore, because the natural gas sold by BOTAS and the corresponding benefits are not tied to the production of electricity or any other output (*e.g.*, a company does not need to generate electricity, produce rebar, or sell surplus electricity to the national grid in order to purchase natural gas from BOTAS), we are countervailing all of Habas’s purchases of natural gas from BOTAS.

## 2. Deductions from Taxable Income for Export Revenue

Petitioner alleged that Turkish taxpayers are allowed to deduct 0.5 percent of income derived from export activities from their corporate income taxes.<sup>77</sup> As explained by the GOT, Addendum 4108 of Article 40 of Income Tax Law No. 193 allows exporters to claim a lump sum deduction from gross income from export, construction, maintenance, assembly, and transportation activities abroad at a rate of 0.5 percent of the exporters’ foreign exchange earnings from such activities.<sup>78</sup> This deduction is presumed to cover expenditures without

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<sup>75</sup> See Habas Supplemental Questionnaire Response at 2-3. To support its argument that the scope of the allegation of natural gas for LTAR in *this* investigation is limited to natural gas used to generate power, Habas cites to the Initiation Checklist in the Department’s 2014 investigation of rebar from Turkey, which is not relevant in this proceeding. *Id.* at 3.

<sup>76</sup> See, *e.g.*, *Essar Steel Ltd. v. United States*, 721 F. Supp. 2d 1285, 1296 (CIT 2010), *aff’d* 678 F.3d 1268, 1274 (Fed. Cir. 2012); *MTZ Polyfilms, Ltd. v. United States*, 659 F. Supp. 2d 1303, 1314-1315 (CIT 2009); *Royal Thai Government v. United States*, 441 F. Supp. 2d 1350, 1363-1364 (CIT 2006); *Samsung Electronics Co. v. United States*, 973 F. Supp. 2d 1321, 1329-1330 (CIT 2014).

<sup>77</sup> See Initiation Checklist at 25.

<sup>78</sup> See GOT Initial Questionnaire Response at 67.

documentation and appears as a lump sum on the participating exporter's annual income tax return.<sup>79</sup> The tax program is administered by the GOT's Ministry of Finance.<sup>80</sup> Habas, Habas Petrol, and Mertas reported claiming the 0.5 percent deduction during the POI.<sup>81</sup> Habas Endustrisi did not participate in this program.<sup>82</sup>

Consistent with prior determinations, the Department preliminarily finds this program to be countervailable.<sup>83</sup> The income tax deduction constitutes a financial contribution under section 771(5)(D)(ii) of the Act because it is revenue forgone by the GOT. Because receiving a deduction is contingent upon export revenue, we preliminarily determine that the program is specific within section 771(5A)(B) of the Act. The benefit received is equal to the amount of tax savings to the company (*i.e.*, the amount of additional taxes that would have been paid absent the program), in accordance with section 771(5)(E) of the Act and 19 CFR 351.509(a)(1).

Pursuant to 19 CFR 351.524(c)(1), the Department typically treats tax deductions as recurring benefits. Therefore, we preliminarily determine that this program provides a recurring benefit. To calculate a rate for this program, we divided the benefit received by each company by the relevant export sales figure.<sup>84</sup> Consistent with the methodology described in the "Denominators" section, above, we attributed the subsidies received by Habas Petrol to the combined export sales of Habas Petrol and Habas, in accordance with 19 CFR 351.525(b)(6)(iv). Likewise, pursuant to 19 CFR 351.525(c), the subsidies received by Mertas under this program were cumulated with the subsidies received by Habas. On this basis, we preliminarily determine that Habas received a net countervailable subsidy rate of 0.11 percent *ad valorem* under this program.

### 3. Assistance to Offset Costs Related to AD/CVD Investigations

Petitioner alleged that the Turkish Exporters' Assembly (TEA) provides financial support for legal fees incurred by Turkish exporters subject to foreign trade investigations.<sup>85</sup> According to the GOT, the TEA was created under "Turkish Law No. 5910 Regarding the Establishment of Turkish Exporters' Assembly and Exporters' Associations" (Law No. 5910), which places all exporters associations within the jurisdiction of the TEA and stipulates that they must carry out activities to defend the interests of their members.<sup>86</sup> Moreover, under Article 4 of the law, exporters are legally bound to join such associations, pay various specified contributions, and to comply with the decisions of the association. The TEA works in conjunction with the Ministry of Economy to approve, audit, and oversee industry-specific exporters' associations, such as the Turkish Steel Exporters' Association (TSEA) of which Habas is a member.<sup>87</sup> During the POI,

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 68.

<sup>81</sup> See Habas and Habas Elektrik Questionnaire Response at Exhibit 20; see also Habas Endustrisi and Habas Petrol Questionnaire Response at 40; Mertas Questionnaire Response at Exhibit 5.

<sup>82</sup> See Habas Endustrisi and Habas Petrol Questionnaire Response at 40.

<sup>83</sup> See, e.g., *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016), and accompanying IDM.

<sup>84</sup> See Preliminary Calculation Memorandum.

<sup>85</sup> See Initiation Checklist at 25-26.

<sup>86</sup> See GOT Initial Questionnaire Response at 77 and Exhibit 24.

<sup>87</sup> *Id.*; see also GOT Supplemental Questionnaire Response at 23.

two TEA directives instructing such exporters' associations to provide assistance to members participating in foreign trade remedy proceedings, such as Habas, were in effect: "The Directive Regarding the Supports Provided to Companies for Advocacy and Legal Counselling Services Purchased in Trade Remedy Investigations and Generalized System of Preferences Practices" and "Procedures and Principles Regarding the Supports Provided to Companies for Advocacy and Legal Counselling Services Purchased in Trade Remedy Investigations and Generalized System of Preferences Practices" (collectively, the Directives).<sup>88</sup> Habas applied for and received such assistance from the TSEA in 2015.<sup>89</sup> Habas Endustrisi, Habas Petrol, and Mertas did not participate in this program.<sup>90</sup>

The respondents state that the GOT, through the TEA or otherwise, did not directly contribute to the financial assistance provided to Habas, as the funds were disbursed from membership dues collected by the TSEA.<sup>91</sup> Under section 771(5)(B) of the Act, however, a financial contribution is provided by a government authority or, alternatively, when a government authority entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from the practices normally followed by governments. Pursuant to Law No. 5910, the TEA has jurisdiction over creation and regulation of all exporters' associations in Turkey, and as noted, exporters are legally required to join, and pay contributions to, such associations.<sup>92</sup> Within the framework of Law No. 5910, the TEA delegated its authority to assist exporters via the Directives. Accordingly, the authority to provide a financial contribution to exporters in the form of a direct transfer of funds, which would normally be vested in the GOT, was entrusted or directed to the private exporters' associations, including the TSEA, using funds from statutorily mandated contributions from members.

The Department preliminarily finds this program to be countervailable. For the reasons described above, the financial assistance received under this program constitutes a financial contribution under section 771(5)(B)(iii) of the Act because the TEA entrusted or directed, via the Directives, Turkish exporters' associations to make financial contributions to their members.<sup>93</sup> Because this program is only available to exporters,<sup>94</sup> the Department preliminarily determines that it is specific within the meaning of section 771(5A)(B) of the Act. The benefit received is equal to the amount of the financial assistance, in accordance with 19 CFR 351.504(a).

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<sup>88</sup> See GOT Initial Questionnaire Response at 78 and Exhibit 25. We note that the Directive Regarding the Supports Provided to Companies for Advocacy and Legal Counselling Services Purchased in Trade Remedy Investigations and Generalized System of Preferences Practices was replaced by Procedures and Principles Regarding the Supports Provided to Companies for Advocacy and Legal Counselling Services Purchased in Trade Remedy Investigations and Generalized System of Preferences Practices on June 1, 2015.

<sup>89</sup> See Habas and Habas Elektrik Questionnaire Response at 42, 45.

<sup>90</sup> See Habas Endustrisi and Habas Petrol Questionnaire Response at 31; *see also* Mertas Questionnaire Response at 24.

<sup>91</sup> See GOT Supplemental Questionnaire Response at 23; *see also* Habas and Habas Elektrik Questionnaire Response at 41.

<sup>92</sup> See GOT Initial Questionnaire Response at Exhibit 24.

<sup>93</sup> *Id.* at 78 and Exhibit 25.

<sup>94</sup> *Id.* at Exhibit 25, Article 1.

We preliminarily determine that this program provides a non-recurring benefit under 19 CFR 351.524(c). To calculate a rate for this program, we first applied the “0.5 percent test,” pursuant to 19 CFR 351.524(b)(2), for the year in which the assistance was received (*i.e.*, 2015). Because the total value of the assistance received by Habas was less than 0.5 percent of the relevant sales figure, we are expensing the grant to the year of receipt (*i.e.*, the POI), consistent with 19 CFR 351.524(b)(2). On this basis, we preliminarily determine that Habas received a net countervailable subsidy rate of 0.02 percent *ad valorem* under this program.

#### 4. Rediscount Program

Petitioner alleged that the Turk Eximbank, a “fully state-owned bank acting as the {GOT’s} major export incentive instrument,” provides various forms of countervailable export assistance to Turkish exporters.<sup>95</sup> In addition to the Turk Eximbank programs identified in the Petition, the GOT provided a questionnaire response in regard to Turk Eximbank’s “Rediscount Program.”<sup>96</sup> Habas also reported using the Rediscount Program during the POI.<sup>97</sup> Habas Endustrisi, Habas Petrol, and Mertas did not receive Rediscount Program loans.<sup>98</sup>

As explained by the GOT, the Rediscount Program, which was previously known as the “Short-Term Pre-Shipment Rediscount Program,” was established in 1999 and designed to support Turkish manufacturer-exporters producing goods for export or for use by exporters.<sup>99</sup> The program is administered by the Turk Eximbank and contingent upon export commitment.<sup>100</sup> Upon the Turk Eximbank’s approval of an exporter’s program application, the Turk Eximbank instructs the Central Bank of the Republic of Turkey (CBRT) to disburse the approved Turkish Lira (TRY) loan amount, minus interest, to the recipient.<sup>101</sup> Exporters can repay the principle value of the loan in either TRY or the foreign currency equivalent at any time prior to maturity.<sup>102</sup> As noted above, Habas reported receiving loans under the Rediscount during the POI.<sup>103</sup>

The Department preliminarily finds this program to be countervailable. The Rediscount Program loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, via the Turk Eximbank and CBRT, under section 771(5)(D)(i) of the Act. Consistent with the

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<sup>95</sup> See Initiation Checklist at 12-17.

<sup>96</sup> See GOT Initial Questionnaire Response at 32-35, 94.

<sup>97</sup> See Habas and Habas Elektrik Questionnaire Response at 24; *see also* GOT Supplemental Questionnaire Response at 16 (noting that Habas “mistakenly reported ‘Rediscount Program’ as ‘Short Term Export Credit Discounts Program’” in the Habas and Habas Elektrik Questionnaire Response); *see also* Habas Supplemental Questionnaire Response at 10 (confirming that Habas had initially mislabeled its Rediscount Program benefits).

<sup>98</sup> See Habas Endustrisi and Habas Petrol Questionnaire Response at 16; *see also* Mertas Questionnaire Response at 14.

<sup>99</sup> See GOT Initial Questionnaire Response at 94.

<sup>100</sup> *Id.* at 95, 99.

<sup>101</sup> *Id.* at 98. According to the GOT, even approved foreign currency loans are converted to TRY prior to disbursement.

<sup>102</sup> *Id.* at 99.

<sup>103</sup> See Habas and Habas Elektrik Questionnaire Response at 24; *see also* GOT Supplemental Questionnaire Response at 16; *see also* Habas Supplemental Questionnaire Response at 10.



Department's past practice,<sup>104</sup> we preliminarily determine that this program is specific, within the meaning of section 771(5A)(B) of the Act, because it is contingent upon export commitment.<sup>105</sup> The benefit received is equal to the difference between the amount Habas paid on the loans during the POI and the amount Habas would have paid on comparable commercial loans, in accordance with section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1).

Pursuant to section 771(6)(A) of the Act and 19 CFR 351.505(a)(1), in calculating the benefit received under this program, the Department applied a discounted benchmark interest rate, as discussed above at "Loan Benchmarks," because program participants pay all applicable interest upfront (*i.e.*, upon receipt each Rediscount Program loan).<sup>106</sup> Furthermore, in accordance with section 771(6)(A) of the Act, we subtracted fees paid for required loan guarantees from Habas's total calculated benefit.<sup>107</sup> We then divided Habas's benefit amount by its total export sales value for the POI to determine the applicable countervailable subsidy rate. On this basis, we preliminarily determine that Habas received a net countervailable subsidy rate of 0.01 percent *ad valorem* under this program.

## **B. Programs Preliminarily Determined to be Not Countervailable**

### **1. Electricity for More Than Adequate Remuneration**

Petitioner alleged that, during the POI, the GOT purchased electricity from Turkish steel producers with vertically integrated power plants for more than adequate remuneration.<sup>108</sup> According to Petitioner, the GOT subsidizes private companies with autoproducer and/or production licenses by purchasing their excess electricity at "relatively expensive" (*i.e.*, above-market) prices.<sup>109</sup> Petitioner claims that the GOT then purchases "relatively cheap" electricity from public power producers and sells all electricity, regardless of producer, at a uniform price.<sup>110</sup>

Habas is the only respondent company that produced and sold electricity during the POI.<sup>111</sup> Habas reported that, during the POI, it did not sell any electricity directly to the GOT or any government-owned entities.<sup>112</sup> Habas and the GOT also provided evidence that neither Habas

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<sup>104</sup> See, e.g., *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Affirmative Determination*, 81 FR 53433 (August 12, 2016), and accompanying IDM at 12; *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016), and accompanying IDM at 16; *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015), and accompanying IDM at 22.

<sup>105</sup> See GOT Initial Questionnaire Response at 99.

<sup>106</sup> *Id.* at 98.

<sup>107</sup> See Preliminary Calculation Memorandum.

<sup>108</sup> See Initiation Checklist at 8.

<sup>109</sup> *Id.*; see also Petition, Volume V at 8 (defining "autoproducer" as "a company which generates power primarily for its own consumption").

<sup>110</sup> See Initiation Checklist at 8.

<sup>111</sup> See Habas and Habas Elektrik Questionnaire Response at 18; see also Habas Endustrisi and Habas Petrol Questionnaire Response at 13; Mertas Questionnaire Response at 11.

<sup>112</sup> See Habas and Habas Elektrik Questionnaire Response at 16 and Exhibit 13.

nor any of its known private electricity purchasers participate in the GOT's Price Equalization Mechanism, which regulates the price of electricity sold by the GOT under a national tariff system.<sup>113</sup> However, Habas made multiple electricity sales through a marketplace operated by the Turkish Electricity Transmission Corporation (TEIAS), the government agency that operates the Turkish electricity grid, and, subsequently, the Energy Markets Operating Corporation (EPIAS).<sup>114</sup> The marketplace was created as the Market Financial Settlement Center (MFSC) with TEIAS as its "Market Operator."<sup>115</sup> In September 2015, EPIAS became the Market Operator, and the MFSC became known as Energy Exchange Istanbul (EXIST) (hereinafter, collectively referred to as the EXIST marketplace).<sup>116</sup> Sales of electricity on the EXIST marketplace are distributed via the national grid.<sup>117</sup>

The GOT and Habas reported that power producers and suppliers sell electricity to unidentified third parties through the EXIST marketplace's day-ahead market, intra-day market, and balancing power market, with the Market Operator handling the financial settlement (*e.g.*, managing of payments, invoicing, etc.) of all transactions.<sup>118</sup> According to the GOT, several of the top electricity consumers on the EXIST marketplace are state-owned companies.<sup>119</sup> The EXIST marketplace operates the Market Management System (MMS), an online software system used by market participants (*i.e.*, sellers and buyers) to place offers and bids for the quantity of electricity they wish to sell or buy on an hourly basis in all three markets.<sup>120</sup> The MMS generates hourly "equilibrium" (*i.e.*, market) prices, which are applicable to all purchases/sales made within that hour, based on competitive bidding among the parties.<sup>121</sup> The GOT reported that there are no floor or ceiling prices on the EXIST marketplace.<sup>122</sup> At the end of each month, the Market Operator issues a settlement notice to each market participant, which indicates the total amount of electricity that each seller should invoice and the total payment due from each buyer.<sup>123</sup> Because the market participants have no direct interaction (*i.e.*, they are unaware of the ultimate consumer/supplier of the electricity sold/bought), the Market Operator calculates the cumulated amount of receivables and payables and prepares the related invoices.<sup>124</sup> Accordingly, the Market Operator invoices participating power producers for their payables, participating power producers invoice the Market Operator for their receivables, and the Market Operator invoices the buyers. The Market Operator is not involved in the parties' actual payments and does not generate any revenue or disburse any funds as a result of its management of the EXIST marketplace.<sup>125</sup>

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<sup>113</sup> See GOT Initial Questionnaire Response at 31; *see also* Habas and Habas Elektrik Questionnaire Response at Exhibit 13; GOT Supplemental Questionnaire Response at Exhibit 16.

<sup>114</sup> See Habas and Habas Elektrik Questionnaire Response at 16.

<sup>115</sup> See GOT Initial Questionnaire Response at 23.

<sup>116</sup> *Id.* at 24.

<sup>117</sup> See GOT Supplemental Questionnaire Response at 8.

<sup>118</sup> *Id.* at 11; *see also* Habas and Habas Elektrik Questionnaire Response at 17.

<sup>119</sup> See GOT Second Supplemental Questionnaire Response at 2.

<sup>120</sup> See GOT Supplemental Questionnaire Response at 10-11.

<sup>121</sup> See Habas and Habas Elektrik Questionnaire Response at 19.

<sup>122</sup> See GOT Supplemental Questionnaire Response at 11.

<sup>123</sup> See Habas and Habas Elektrik Questionnaire Response at 19.

<sup>124</sup> *Id.* at 17.

<sup>125</sup> See GOT Initial Questionnaire Response at 24.

The Department examined the Balancing and Settlement Regulation and Electricity Market Law No. 6446, which explain TEIAS's role as the market and system operator.<sup>126</sup> Article 11(3) of the Balancing and Settlement Regulation states that the Market Operator "shall carry out the settlement transactions and calculate the amount of receivables and payables to be accrued for balancing mechanism and energy imbalances, and prepare the related receivable-payable notices."<sup>127</sup> Article 9(a) of the Balancing and Settlement Regulation further states that the Market Operator "shall not incur any loss or profit due to these procedures executed on behalf of wholesale electricity market."<sup>128</sup> Therefore, although the Market Operator does collect transmission and system usage fees,<sup>129</sup> as required under Electricity Market Law No. 6446, the Market Operator has no other debits or credits relating to the EXIST marketplace transactions or any other sales of electricity and, as such, can neither purchase nor sell electricity.<sup>130</sup>

Based on the record evidence, the Department preliminarily finds that the electricity sold via the EXIST marketplace and transmitted through the national grid is not purchased by the Market Operator, including TEIAS. Rather, the electricity is purchased by buyers participating in the EXIST marketplace, which acts as a bridge between the sellers and the buyers. As stated in the Balancing and Settlement Regulation, the Market Operator's responsibilities are to transmit electricity, serve as the market clearing agent, and maintain market equilibrium.<sup>131</sup> We find that, rather than purchasing or taking title to the electricity being sold by power producers, the Market Operator transmits the electricity from the sellers to the buyers and handles the related financial reconciliation, which involves issuing invoices. Information on the record indicates that market participants invoice the Market Operator because sellers invoice the net amount receivable to TEIAS/EPIAS based on the electricity consumption of unspecified buyers and, concurrently, the buyers receive an invoice from TEIAS/EPIAS on behalf of the sellers through the financial settlement process, not because TEIAS/EPIAS actually purchased any electricity.<sup>132</sup> Furthermore, as noted above, the Market Operator cannot incur losses or earn profit from its EXIST marketplace activities, nor does it have a cash flow aside from the collection of transmission and system usage fees. Accordingly, we preliminarily conclude that the Market Operator's role is to manage and operate the electricity market to facilitate the buying and selling of electricity by market participants, as outlined in the Balancing and Settlement Regulation.

In addition, we note that the hourly equilibrium price generated by the MMS is a set price for all sellers/buyers. Therefore, there is no evidence that GOT-owned consumers are purchasing electricity on the EXIST marketplace for more than adequate remuneration, because all sellers, regardless of ownership, are receiving the same price for electricity and all buyers, regardless of ownership, are paying the same price for electricity. Consequently, we find that the GOT's role in facilitating and/or making purchases of electricity through the EXIST marketplace does not constitute a government purchase of electricity for more than adequate remuneration and, as such, does not provide a financial contribution to power producers within the meaning of section 771(5)(D)(iv) of the Act.

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<sup>126</sup> *Id.* at Exhibit 14 and Exhibit 15.

<sup>127</sup> *Id.* at Exhibit 15.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at Exhibit 14.

<sup>130</sup> *Id.* at 25.

<sup>131</sup> *Id.* at Exhibit 15.

<sup>132</sup> *See* Habas and Habas Elektrik Questionnaire Response at 17; *see also* GOT Initial Questionnaire Response at 24.

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

The Department preliminarily determines that the programs listed below did not confer a measurable benefit during the POI. Consistent with the established practice, we are not including programs with non-measurable benefits (*i.e.*, calculated rates of less than 0.005 percent) in the respondent's net subsidy rate calculation.<sup>133</sup> Furthermore, because the benefits from these programs are non-measurable, we are not making preliminary determinations regarding financial contribution or specificity.

1. Social Security Premium Support
2. Investment Encouragement Program VAT and Import Duty Exemptions
3. R&D Income Tax Deduction

**D. Programs Preliminarily Determined to be Not Used During the POI**

The respondent reported that it did not receive benefits under the following programs during the POI or AUL, as applicable. The Department intends to verify non-use.

1. Land for Less than Adequate Remuneration
2. Pre-shipment Turkish Lira Export Credits
3. Pre-shipment Foreign Currency Export Credits
4. Foreign Trade Company Export Loans
5. Pre-export Credits
6. Short-term Export Credit Discounts
7. Regional Investment Scheme
8. Large-scale Investment Scheme
9. Investments Provided under Turkish Law No. 5746
10. Product Development R&D Support-UFT
11. Electricity for Less than Adequate Remuneration
12. Withholding of Income Tax on Wages and Salaries
13. Exemption from Property Tax
14. Employer's Share in Insurance Premiums Program
15. Tax, Duty, and Land Benefits for Turkish Rebar Producers Located in Free Zones
16. Turkish Development Bank Loans
17. Industrial R&D Projects Grant Program

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<sup>133</sup> See, e.g., *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016), and accompanying IDM at 31-32.

**X. CONCLUSION**

We recommend approval of the preliminary findings described above.

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\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

2/21/2017

**X** *Carole Showers*

Signed by: CAROLE SHOWERS

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Carole Showers  
Executive Director, Office of Policy  
Policy & Negotiations