



C-489-502

Administrative Review
POR: 01/01/15 - 12/31/15
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DATE: March 31, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

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

RE: Decision Memorandum for the Preliminary Results of
Countervailing Duty (CVD) Administrative Review: Circular
Welded Carbon Steel Pipes and Tubes from Turkey

I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order (CVD) order on circular welded carbon steel pipes and tubes (hereinafter referred to as steel pipe or pipe and tube) from the Republic of Turkey (Turkey). The period of review (POR) is January 1, 2015, through December 31, 2015. We preliminarily determine that Borusan Holding A.S., Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, the Borusan Companies) received countervailable subsidies at *de minimis* levels during the POR and that Toscelik Profil ve Sac Endustrisi A.S. (Toscelik Profil), Tasyali Dis Ticaret A.S. (TDT), and Tasyali Holding (Tasyali) (collectively, the Toscelik Companies) as wells producers/exporters not subject to individual review received countervailable subsidies at above *de minimis* levels during the POR.

II. BACKGROUND

On March 7, 1986, the Department published in the *Federal Register* the CVD order on certain welded carbon steel pipe and tube products from Turkey.¹ On March 1, 2016, the Department published a notice of opportunity to request an administrative review of this CVD order.² On March 30, 2016, we received a request from Wheatland Tube³ to conduct an administrative

¹ See *Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 51 FR 7984 (March 7, 1986) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 10580 (March 1, 2016).

³ Wheatland Tube, a division of the JMC Steel Group is a domestic producer and interested party.



review of the *Order* with respect to the following companies⁴:

1. Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan);
2. Guven Steel Pipe (also known as Guven Celik Boru San. Ve Tic. Ltd.) (Guven);
3. Umran Celik Boru Sanayii A.S. (also known as Umran Steel Pipe Inc.) (Umran);
4. Yucel Boru ve Profil Endustrisi A.S, Yucelboru Ihracat Ithalat ve Pazarlama A.S, and Cayirova Boru Sanayi ve Ticaret A.S.) (collectively, the Yucel Companies);
5. Borusan Birlesik Boru Fabrikalari San ve Tic., Borusan Gemlik Boru Tesisleri A.S., Borusan Ihicat ve Dagitim A.S, Borusan Ihracat Ithalat ve Dagitim A.S., Istikbal, Borusan , Tubeco Pipe and Steel Corporation; and
6. Toscelik Metal Ticaret A.S, Toscelik Profil, TDT

On May 2, 2016, the Department initiated an administrative review of the *Order* for the period January 1, 2015, through December 31, 2015, covering the Borusan Companies, Erbosan, the Toscelik Companies, Guven, Umran, and the Yucel Companies.⁵ On May 9, 2016, Erbosan submitted a letter to the Department timely certifying that it had no sales, shipments, or entries, directly or indirectly, of subject merchandise to the United States during the POR.⁶ Petitioners did not comment on Erbosan's claims of no sales, shipments, or entries.

On May 13, 2016, the Department placed on the record and released to interested parties the proprietary results of a query performed on the Customs and Border Protection (CBP) database for calendar year 2015.⁷ We requested that interested parties submit comments regarding the use of CBP data within seven calendar days of the date of that memorandum. We received no comments from interested parties concerning the CBP Query Results Memorandum. On June 7, 2016, the Department issued a memorandum limiting the number of respondents selected for individual examination to the Borusan Companies and the Toscelik Companies.⁸ On June 15, 2016, we transmitted a "No-Shipment Inquiry" to CBP regarding Erbosan. On July 28, 2016, the Department requested U.S. entry documents from CBP to substantiate Erbosan's no shipment claim.⁹ On October 4, 2016, we received information from CBP that contradicts Erbosan's claim of no sales, shipments, or entries of subject merchandise to the United States during the POR.¹⁰

⁴ See Wheatland Tube's Letter dated March 30, 2016.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 26203 (May 2, 2016).

⁶ See May 9, 2016, Letter from Erbosan RE: No Shipment Certification of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (ERBOSAN) in the 2015 Administrative Review of the Countervailing Duty Order Involving Certain Welded Carbon Steel Standard Pipe from Turkey Welded Carbon Steel Pipe & Tube Products from Turkey, dated May 9, 2016.

⁷ See Memorandum to the File from Patricia Tran, International Trade Compliance Analyst, Office III, AD/CVD Operations, Results of Customs and Border Protection Query Results (CBP Query Results Memorandum) dated May 13, 2016.

⁸ See Memorandum from Jolanta Lawska, Case Analyst, AD/CVD Operations, Office III, to Eric B. Greynolds, Acting Director, AD/CVD Operations, Office III, "Countervailing Duty Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Turkey: Respondent Selection," dated June 7, 2016, in which we named Borusan and Toscelik as the mandatory respondents.

⁹ See Memorandum to Alexander Amdur, Director, AD/CVD/Revenue Policy & Programs, "Request for U.S. Entry Documents - Certain Welded Carbon Steel Pipe and Tube from Turkey (C-489-502)," dated July 28, 2016.

¹⁰ See Memorandum to the File, "Placement of Customs and Border Protection (CBP) Query Results and Entry Documentation on Record of Review," dated December 22, 2016 (Entry Documents Memo). The information received from CBP is business proprietary in its entirety.

Therefore, as discussed further below, we are preliminarily assigning the non-selected rate to Erbosan.

On June 9, 2016, the Department issued the initial questionnaire to the Borusan Companies, the Toscelik Companies, and the Government of Turkey (GOT). On July 15, 2016, we received initial questionnaire responses (QR) from the Toscelik Companies. On August 1, 2016, we received initial questionnaire responses from the Borusan Companies and the GOT. On January 9, 2017, we issued a supplemental questionnaire to the GOT, to which the GOT responded on January 30, 2017.

We issued supplemental questionnaires to the Borusan Companies on August 31, 2016, to which they responded on September 21, 2016. We issued supplemental questionnaires to the Toscelik Companies on January 4, 2017, to which they responded on January 18, 2017.

On October 22, 2016, the Department extended the deadline for the preliminary results of this administrative review until March 31, 2017.¹¹

III. SCOPE OF THE ORDER

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

IV. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Under 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life (AUL) of the renewable physical assets used to produce the subject merchandise. Pursuant to 19 CFR 351.524(d)(2), there is a rebuttable presumption that the AUL is the AUL listed in the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (IRS Tables), as updated by the Department of Treasury. For the subject merchandise, the IRS Tables prescribe an AUL of 15 years. No interested party claimed and established that the IRS Tables do not reasonably reflect the AUL for the industry under investigation.

Further, for non-recurring subsidies, we applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a

¹¹ See Memorandum from Patricia Tran, International Trade Compliance Analyst, Office III, Antidumping and Countervailing Duty Operations through Erin Begnal, Office Director, Office III, Antidumping and Countervailing Duty Operations, to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, 2015 regarding Circular Welded Carbon Steel Pipes and Tubes from Turkey: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated October 27, 2016.

given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

B. Attribution of Subsidies

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

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

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.¹²

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

The U.S. Court of International Trade has upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.¹³

¹² See *Countervailing Duties; Final Rule*, 63 FR 65347, 65401 (November 25, 1998) (*CVD Preamble*).

¹³ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

Borusan Companies

Borusan Holding is the parent holding company of the Borusan Companies. Borusan is affiliated with other companies in the Borusan Group through direct and indirect ownership of Borusan Holding. Borusan and its affiliated foreign trading company, Istikbal, are both part of the Borusan Companies and are cross-owned under 19 CFR 351.525(b)(vi) by common ownership.¹⁴ Borusan produces subject merchandise for both the home and export markets. During the POR, Borusan accounted for all subject merchandise exported to the United States by the Borusan Companies. Additionally, Borusan and Istikbal exported subject merchandise to non-U.S. locations during the POR.¹⁵ Consistent with 19 CFR 351.525(c), in these preliminary results, as in past reviews, we continue to attribute any subsidies received by Istikbal to the sales of Borusan and Istikbal, net of intra-company sales. In accordance with 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Borusan to the total sales of Borusan.¹⁶ The denominators we used to calculate the countervailable subsidy rate for the various subsidy programs described below are explained in further detail in the Borusan Companies Prelim Calculation Memorandum.¹⁷

Toscelik Companies

Toscelik Profil and its affiliated foreign trading company, TDT, are owned by Tosyali, a Turkish holding company and, therefore, are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).¹⁸ Toscelik Profil, which produces subject merchandise for both the domestic and export markets, was established in 1992;¹⁹ TDT, founded in 1996, is the exporter of record with respect to Toscelik Profil's export sales and sells subject merchandise to unaffiliated customers in the United States;²⁰ and as stated above, Tosyali, is a holding company which owns Toscelik Profil and TDT.

To attribute a subsidy received by Toscelik Profil, we used as the denominator the company's 2015 total sales or total export sales, as appropriate, consistent with 19 CFR 351.525(b)(6)(i) and

¹⁴ See Borusan Companies' August 1, 2016, QR at Exhibit 2 Exhibits 2 and 3. Our approach in this regard is consistent with our practice. See, e.g., *Circular Welded Carbon Steel Pipe and Tube Products From Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Intent To Rescind Countervailing Duty Administrative Review, in Part (Turkey Pipe 2012 Prelim Results)* and accompanying Preliminary Issues and Decision Memorandum at 5, unchanged in *Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Rescission of Countervailing Duty Administrative Review, in Part*, 79 FR 51140 (August 27, 2014) (*Turkey Pipe 2012 Final Results*), and accompanying Issues and Decision Memorandum at 2.

¹⁵ See the Borusan Companies' August 1, 2016 QR at 2.

¹⁶ Record evidence submitted by the Borusan Companies indicates that Borusan Holdings, Borusan Birlesik Boru Fabrikalari San ve Tic., Borusan Gemlik Boru Tesisleri A.S., Borusan Ihicat ve Dagitim A.S, Borusan Ihracat Ithalat ve Dagitim A.S., Istikbal, Borusan, and Tubeco Pipe and Steel Corporation did not receive any subsidies during the POR. See Borusan Companies' August 1, 2016 QR.

¹⁷ See Memorandum to the File, "Preliminary Results Calculations for the Borusan Companies," (Borusan Companies' Prelim Calculation Memorandum) dated concurrently with this memorandum.

¹⁸ See Toscelik Companies' July 15, 2016 QR at 2 – 6 and Exhibit 4.

¹⁹ *Id.*

²⁰ *Id.*

(b)(2).²¹ For subsidies received by TDT, we applied the trading company rule at 19 CFR 351.525(c) by cumulating the benefits with those of Toscelik Profil, using the two companies' combined total sales, net of intra-company sales, as the denominator. The denominators we used to calculate the countervailable subsidy rate for the various subsidy programs described below are explained in further detail in the Toscelik Companies' Prelim Calculation Memorandum.²²

C. Benchmark Interest Rates

Short-Term Loan Interest Rate Benchmark

Section 771(5)(E)(ii) of the Tariff Act of 1930, as amended (the Act) explains 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," indicating that a benchmark must be a market-based rate. To determine whether government-provided loans under review conferred a benefit, the Department uses, where possible, company-specific interest rates for comparable commercial loans obtained by the company.²³ 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. The Borusan Companies reported receiving loans from the subsidy programs under examination that were denominated in U.S. dollars. Therefore, in their August 1, 2016, questionnaire response at Exhibit 24, the Borusan Companies submitted information regarding company-specific short-term interest rates on their comparable commercial loans. Thus, we calculated benchmark interest rates for short-term U.S. dollar denominated loans based on the data reported by the Borusan Companies consistent with 19 CFR 351.505(a)(2)(ii). To calculate the short-term benchmark rates for the Borusan Companies, we derived an annual average of the interest rates on comparable commercial loans that the Borusan Companies obtained during the years in which the government loans were issued, weighted by the principal amount of each loan.

Similarly, the Toscelik Companies submitted their comparable commercial short-term U.S. dollar denominated loans in their July 15, 2016, questionnaire response at Exhibit 18.²⁴ Consistent with 19 CFR 351.505(a)(2)(ii), we calculated an annual average of the interest rates on comparable commercial loans obtained by the Toscelik Companies obtained during the years in which the government loans were issued, weighted by the principal amount of each loan.

Long-Term Loan Interest Rate Benchmark

As discussed above, to determine whether government-provided loans under review conferred a benefit, the Department uses, where possible, company-specific interest rates for comparable commercial loans.²⁵ Where such benchmark rates are unavailable, consistent with 19 CFR

²¹ Record evidence submitted by the Toscelik Companies indicates that Tosyali Holdings did not receive any subsidies during the POR. See Toscelik Companies' July 15, 2016, QR.

²² See Memorandum to the File, "Preliminary Results Calculations for the Toscelik Companies," (Toscelik Companies' Prelim Calculation Memorandum) dated concurrently with this memorandum.

²³ See 19 CFR 351.505(a)(2)(ii).

²⁴ See Toscelik Companies' July 15, 2016, QR at Exhibit 18 and Toscelik Companies' Prelim Calculation Memorandum.

²⁵ See 19 CFR 351.505(a)(2)(ii).

351.505(a)(3)(ii), we used lending rate data from the International Monetary Fund's (IMF's) *International Financial Statistics* as our national average benchmark.²⁶

V. NON-SELECTED RATE

The statute and the Department's regulations do not address the establishment of a rate to be applied to respondents not selected for individual examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, when determining the rate for such respondents in an administrative review, the Department looks to section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs the Department to use the average of the individually calculated rates as the all-others rate, excluding rates which are zero, *de minimis*, or based entirely on facts available. Accordingly, the Department's usual practice in administrative reviews for determining the rate for respondents not selected for individual examination has been to average the weighted-average net subsidy rates for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.²⁷ However, section 705(c)(5)(A)(ii) of the Act provides that, where all the individually calculated rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the all-others rate, including averaging the estimated weighted-average net subsidy rates determined for the exporters and producers individually investigated.

We preliminarily determine above-*de minimis* net subsidy rates for the Toscelik Companies for the POR that are not based entirely on facts available. Therefore, in keeping with our practice, we used net subsidy rates calculated for the Toscelik Companies as the non-selected rate applicable to Guven, Umran and Yucel Companies.²⁸ As discussed above, Erbosan claimed no shipments during the POR; however we have contradictory information on the record.²⁹ Therefore, for purposes of these preliminary results, we assigned to Erbosan the non-selected rate.³⁰

²⁶ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013) (CWP Turkey 2011 AR), and accompanying Issues and Decision Memorandum at "Benchmarks and Interest Rates."

²⁷ See, e.g., *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386, 37387 (June 29, 2010) (2008 Review of Pasta from Italy).

²⁸ See, e.g., *2008 Review of Pasta from Italy*, 75 FR at 37387. See also Memorandum to File, "Calculation of Non-Selected Rate," dated concurrently with this memorandum (Non-Selected Rate Memo).

²⁹ See Entry Documents Memo.

³⁰ See Non-Selected Rate Memo.

VI. ANALYSIS OF PROGRAMS PRELIMINARILY DETERMINED TO BE COUNTERAVAILABLE

A. Deduction from Taxable Income for Export Revenue

Pursuant to Article 40, Clause 1 of Income Tax Law No. 193, dated January 6, 1961, which was amended by Law No. 4108, dated June 2, 1995, all taxpayers engaged in export activities may 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.³¹ This deduction is to cover the expenditures without documentation incurred from exports, construction, maintenance, assembly, and transportation activities abroad.³² The deduction for export earnings may be taken as a lump sum on a company's annual income tax return.³³ Under this program, marketing, selling, and distribution expenses are deductible expenditures for tax purposes.

Consistent with prior determinations, we preliminarily find that this tax deduction is a countervailable subsidy.³⁴ The income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, in the form of 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. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of the Department's prior finding of countervailability for this program.

During the POR, Borusan reported receiving the deduction for export earnings with respect to its 2014 tax returns filed during the POR.³⁵ In addition, Borusan used a tax loss forward from 2013, which was applied to reduce its taxable income for 2013. Istikbal was in a tax loss position for 2014 and did not receive benefits from this program during the POR.³⁶ TDT reported receiving the deduction for export earnings with respect to its 2014 tax returns filed during the POR.³⁷

We preliminarily find that Borusan and TDT received this benefit during the POR, consistent with 19 CFR 351.509(b). The Department normally treats a tax deduction as a recurring benefit, in accordance with 19 CFR 351.524(c)(1).³⁸ The amount of the benefit is equal to the amount of tax that would have been paid absent the program. For Borusan, we divided its tax savings by the total export sales of Borusan. For TDT, we divided the tax savings realized by Toscelik

³¹ See GOT's August 1, 2016 QR at III-4, Borusan Companies' August 1, 2016, QR at 16, and Toscelik Companies' July 15, 2016, QR at 15 – 17.

³² *Id.*

³³ *Id.*

³⁴ See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review: Calendar Year 2013 and Rescission of Countervailing Duty Administrative Review, In Part* 80 FR 61361 dated October 13, 2015 (*Turkey Pipe 2013 Final Results*), and accompanying Issues and Decision Memorandum at 5-6.

³⁵ See Borusan Companies' August 1, 2016, QR at 17.

³⁶ *Id.*, at 9 and Exhibit 16.

³⁷ See Toscelik Companies' July 15, 2016, QR at 16 and Exhibit 13.

³⁸ See e.g., *Turkey Pipe 2012 Final Results* and accompanying Issues and Decision Memorandum at 6.

Profil and TDT's total export sales for the POR.

On this basis, we preliminarily determine the net countervailable subsidy for this program to be 0.12 percent *ad valorem* for the Borusan Companies and 0.08 percent *ad valorem* for the Toscelik Companies.

B. Short-Term Pre-Shipment Rediscount Program

The Short-Term Pre-Shipment Rediscount Program (SPRP) is administered by Turk EximBank (EximBank).³⁹ The SPRP is designed to provide financial support to Turkish exporters, manufacturer-exporters and manufacturers supplying exporters.⁴⁰ This program is contingent upon an export commitment. The SPRP requires a minimum loan amount of USD 50,000 per company.⁴¹ Loan payments must be made within the credit period or at maturity to the EximBank. Companies can repay these loans either in the foreign currency in which the loan was obtained or in Turkish Lira (TL) equivalent of the principal by using the exchange rate determined by EximBank.⁴² During the POR, Borusan, Toscelik Profil, and TDT paid interest on U.S. dollar pre-shipment rediscount loans under this program.⁴³

We preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between the payments that Borusan, Toscelik Profil, and TDT made on the loans during the POR and the payments the companies would have made on comparable commercial loans. The program is specific, in accordance with section 771(5A)(B) of the Act, because receipt of the loans is contingent upon export performance. These findings are consistent with the Department's prior findings regarding this program.⁴⁴

Pursuant to 19 CFR 351.505(a)(1), we calculated the benefit as the difference between the payments that Borusan, Toscelik Profil, and TDT made on their short-term pre-shipment rediscount loans during the POR and the payments the companies would have made on comparable commercial loans. After computing the benefit amount, we subtracted from the benefit amount the fees which Borusan, Toscelik Profil, and TDT paid to commercial banks for the required letters of guarantee, as provided under section 771(6)(A) of the Act. Our approach in this regard is consistent with the Department's practice.⁴⁵ For Borusan, we divided the benefit amount by Borusan's total export sales. For Toscelik Profil and TDT, we divided the total benefit amount by their total export sales for the POR.

On this basis, we preliminarily determine that the net countervailable subsidy for this program is

³⁹ See GOT's August 1, 2016 QR, at III-22 – III-30.

⁴⁰ *Id.*

⁴¹ *Id.*, at III-24.

⁴² *Id.*, at III-25.

⁴³ See Borusan Companies' August 1, 2016 QR at Exhibit 21. See also Toscelik Companies' July 15, 2016 QR at 22 and Exhibit 18.

⁴⁴ See *Turkey Pipe 2013 Final Results* and accompanying Issues and Decision Memorandum at 6-7.

⁴⁵ *Id.*

0.06 percent *ad valorem* for the Borusan Companies and 2.33 *ad valorem* for the Toscelik Companies.

C. Provision of Hot-Rolled Steel (HRS) for Less Than Adequate Remuneration (LTAR)

The Department examined the provision of HRS to the Borusan Companies and the Toscelik Companies during the POR. In *Turkey Pipe 2013 Final Results* and *Welded Line Pipe from Turkey*, the Department found that this program provides countervailable subsidies.⁴⁶ Borusan and Toscelik Profil reported purchasing HRS from Erdemir and Isdemir during the POR.⁴⁷

The information submitted by the GOT with regard to this program remains consistent with our previous findings. The GOT provided information on Erdemir and Isdemir, suppliers of HRS, as well as Ordu Yardımlaşma Kurumu (OYAK), the Turkish military pension fund that is a shareholder of Erdemir and Isdemir. During the POR, OYAK owned 49.29 percent of Erdemir's shares through a wholly-owned holding company, Ataer Holding A.S.⁴⁸ During the POR, Erdemir owned 95.07 percent of Isdemir.⁴⁹

In its initial questionnaire response, the GOT responded to the Input Producer Appendix for Erdemir, Isdemir, and OYAK.⁵⁰ In addition, we asked the GOT to submit certain documents relevant to the Turkish flat steel industry.⁵¹ The GOT claimed it could not submit these documents under its confidentiality agreements with the European Union.⁵² However, the GOT did provide limited public summaries of the contents of these documents.⁵³

The law establishing OYAK (the Military Personnel Assistance and Pension Fund Law), which was enacted on January 3, 1961, states that the GOT created OYAK “as an institution related to the Ministry of National Defense.”⁵⁴ Information in the GOT's questionnaire responses indicates the GOT's significant involvement in OYAK. For example, pursuant to the pension fund law, OYAK's Representative Assembly shall be composed of not less than 50 and not more than 100 members of the Turkish Armed Forces “designated by their respective commanders or superiors.”⁵⁵ The Representatives Assembly, in turn, elects 20 of the 40 members of OYAK's

⁴⁶ *Id.*, and accompanying Issues and Decision Memorandum at 8 – 11. See also *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*Welded Line Pipe from Turkey*) and accompanying Issues and Decision Memorandum at 13 – 17.

⁴⁷ See Borusan Companies' August 1, 2016 QR at 35 and Exhibit 26. See also Toscelik Companies' July 15, 2016 QR at 30 – 31 and Exhibit 23 and HRS purchase.xlsx.

⁴⁸ See GOT's August 1, 2016 QR at III-72 and Exhibits 29 and 29-N.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Specifically, we requested that the GOT provide: 1) Advanced assessment of Turkish state aids to the steel industry (the WYG Report); 2) The Turkish authorities' observations on the WYG Report; 3) the National Restructuring Plan for the Turkish Steel Industry (National Restructuring Plan) and its annexes; and 4) two reports drafted by the Commission in 2008 (Point 2: State aid of May 7, 2008, and Point 3: Capacity Changes of May 7, 2008). See Letter from the Department to the GOT, “Countervailing Duty (CVD) Order: Certain Welded Carbon Steel Standard Pipe from Turkey (January 1, 2015 – December 31, 2015): First Supplemental Questionnaire for the Government of the Republic of Turkey (GOT),” dated January 9, 2017.

⁵² See GOT's January 30, 2017 QR at 4 – 9 and Exhibit.

⁵³ *Id.*, at 6 – 9.

⁵⁴ See GOT's August 1, 2016 QR at Article 1 of Exhibit 29-G.

⁵⁵ *Id.*, at Article 3 of Exhibit 29-G.

General Assembly.⁵⁶ Of the General Assembly's other 20 members, 17 are, by statute, government officials (e.g., Ministers of Finance and Defense). Members of the General Assembly elect the eight-person Board of Directors.⁵⁷ Also, OYAK's property has, by law, the "same rights and privileges of state property," OYAK is exempt from corporate and other taxes, and members of the armed forces must, by law, contribute part of their salaries to OYAK.⁵⁸

Record evidence indicates that the GOT'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 These policies are in line with the GOT's stated policy in its 2012-2014 Medium Term Programme to improve Turkey's balance of payments.⁶⁰ Also, the GOT explained that the Turkish Privatization Administration (TPA) holds veto power over any decisions related to the closedown, sale, merger, or liquidation of both Erdemir and Isdemir.⁶¹ Further, Erdemir's 2013 Annual Report indicates that OYAK and the TPA both have members on Erdemir's Board of Directors.⁶²

During the POR, Erdemir's 2015 Annual Report indicates continued growth, stating that it "broke a new record by producing 8.9 million tons of crude steel and 7.4 million tons of flat steel products...{a}s a result of these efforts, we achieved 8 {percent} growth in our revenues to US\$ 4.4 billion, which included US\$ 403 million of exports to 42 countries, demonstrating a successful performance at a time of volatility both in Turkey and in the world."⁶³ Erdemir's 2015 Annual Report indicates that OYAK and the TPA continue to have members on Erdemir's Board of Directors.⁶⁴

We determine that the record evidence cited above indicates that the GOT exercises meaningful control over Erdemir and Isdemir through its control of OYAK. Therefore, consistent with the final CVD determination in *OCTG from Turkey*, we determine that Erdemir and Isdemir are public bodies, and hence "authorities," pursuant to section 771(5)(B) of the Act.⁶⁵ Consequently, we find that the HRS supplied by Erdemir and Isdemir to the Borusan and Toscelik Companies is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act.

⁵⁶ *Id.*, at Article 4 of Exhibit 29-G.

⁵⁷ *Id.*, at Articles 5 and 8 of Exhibit 29-G.

⁵⁸ *Id.*, at Articles 18, 35, and 37 of Exhibit 29-G.

⁵⁹ *Id.*, at Exhibit 29-C (Erdemir 2013 Annual Report at 35 and 18, respectively).

⁶⁰ See *Turkey Pipe 2013 Final Results* and accompanying Issues and Decision Memorandum at 6-7.

⁶¹ See GOT's August 1, 2016 QR at Exhibit 29-A (Erdemir's Articles 21, 22, 27 of Association).

⁶² *Id.*, at Exhibit 29-C_1 (Erdemir 2013 Annual Report, pages 65-66).

⁶³ *Id.*, at Exhibit 29-C_11 (Erdemir 2015 Annual Report, page 10).

⁶⁴ *Id.*, at Exhibit 29-C_11 (Erdemir 2015 Annual Report, page 13).

⁶⁵ 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 Issues and Decision Memorandum at Comment 1; see also *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. & Borusan Istikbal Ticaret v. United States*, Slip Op. 15-36 (CIT) (April 22, 2015) (*Borusan*) at 28, in which the Court upheld the Department's finding that Erdemir and Isdemir are "authorities."

Regarding the specificity of HRS for LTAR, the GOT provided a list of the industries that purchased HRS in Turkey during the POR.⁶⁶ Specifically, the GOT identified the following industries as purchasers of HRS during the POR: steel pipe and profile, rerolling producers, chain of distribution, machinery manufacturing, automotive, heavy industry, consumer products, pressure purposes (pressure vessels, steam boilers), panel radiator, white appliances, and shipbuilding.⁶⁷ Consistent with the Department's determination in *OCTG from Turkey* and *Welded Line Pipe from Turkey*, we preliminarily determine that the financial contribution provided by the GOT under this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the number of industries or enterprises using HRS is limited in number.⁶⁸ We also preliminarily determine the financial contribution provided by the GOT under this program is specific within the meaning of section 771(5A)(D)(iii)(II) of the Act because the Steel Pipe and Profile industry is the predominant user of HRS.⁶⁹

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.⁷⁰ This is because such prices generally reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving Turkish buyers and sellers that can be used to determine whether Erdemir and Isdemir sold HRS to the respondents for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where the Department finds that the government owns or controls the majority or a substantial portion of the market for the good or service, the Department will consider such prices to be significantly distorted and not an appropriate basis of comparison for determining whether there is a benefit.⁷¹

Consistent with the Department's final CVD determination in *Turkey Pipe 2013 Final Results*, *Welded Line Pipe from Turkey*, and *Heavy Walled Pipe and Tube from Turkey*, we determine that the record evidence does not support a finding that the Turkish HRS market is so distorted

⁶⁶ See GOT's August 1, 2016 QR at III-71.

⁶⁷ *Id.*

⁶⁸ See *OCTG from Turkey* and accompanying Issues and Decision Memorandum at 20-26 and *Welded Line Pipe from Turkey* and accompanying Issues and Decision Memorandum at 11 - 14.

⁶⁹ See GOT's August 1, 2016 QR at III-71.

⁷⁰ See, *e.g.*, *Notice of Affirmative Countervailing Duty Determination and Final Negative Critical Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum at "Market Based Benchmark."

⁷¹ See *CVD Preamble*, 63 FR at 65277.

that it cannot serve as a source for an appropriate benchmark.⁷² The record information shows that for 2013, 2014 and 2015, the combined domestic HRS production of Erdemir and Isdemir accounted for 40.81, 44.78, and 40.34 percent of supply, respectively, while imports of HRS accounted for 35.43, 31.94, and 39.53 percent in the same years, respectively. Given the minority share of government production and substantial levels of imports, and consistent with our prior determinations, as noted, we preliminarily find that, for this time period, the HRS market in Turkey was not distorted by the government's presence. Therefore, 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 POR.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, the Department will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Because we are using actual domestic and import prices paid by Borusan and Toscelik Profil, the benchmark includes the delivery charges, import duties (where applicable), and value-added tax (VAT) paid.

We then compared the monthly benchmark prices to Borusan's and Toscelik Profil's actual purchase prices for HRS from Erdemir and Isdemir, including taxes and delivery charges, as appropriate. In instances in which Borusan and Toscelik Profil paid to Erdemir and Isdemir a lower unit price than the benchmark unit price, we multiplied the difference by the quantity of HRS purchased to calculate the benefit.⁷³ Under this methodology, we find that Borusan and Toscelik Profil received a benefit to the extent that the prices each paid for HRS produced by Erdemir and Isdemir were for LTAR.⁷⁴

To calculate the net subsidy rate attributable to Borusan, we divided the benefit by Borusan's total sales during the POR. We divided the benefit amount received by Toscelik Profil by Toscelik Profil's total sales during the POR. On this basis, we find that the Borusan Companies and Toscelik Companies received a countervailable subsidy of 0.04 percent *ad valorem* and 5.87 *ad valorem*, respectively.⁷⁵

D. Inward Processing Certificate Exemption

The Ministry of Economy is the authority responsible for administering the Inward Processing

⁷² See *Turkey Pipe 2013 Final Results* and accompanying Issues and Decision Memorandum at 10 – 11, *Welded Line Pipe from Turkey* and accompanying Issues and Decision Memorandum at 15 – 16. See also *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) (*Heavy Walled Pipe and Tube from Turkey*), and accompanying Issues and Decision Memorandum at 13.

⁷³ See Borusan Companies' Prelim Calculation Memorandum and Toscelik Companies' Prelim Calculation Memorandum.

⁷⁴ See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

⁷⁵ See Borusan Companies' Prelim Calculation Memorandum and the Toscelik Companies' Prelim Calculation Memorandum.

Certificate program (IPC).⁷⁶ Under the IPC program, companies are exempt from paying customs duties and VAT on raw materials and intermediate unfinished goods that are imported and used in the production of exported goods.⁷⁷ Companies may choose whether to be exempt from the applicable duties and taxes upon importation (*i.e.*, the Suspension System) or have the duties and taxes reimbursed after exportation of the finished goods (*i.e.*, the Drawback System). Under both systems, companies provide a letter of guarantee that is returned to them upon fulfillment of the export commitment.⁷⁸

To participate in this program, a company must hold an IPC, which lists the amount of raw materials/intermediate unfinished goods to be imported and the amount of product to be exported.⁷⁹ To obtain an IPC, an exporter must submit an application, which provides information about the goods to be produced and the raw materials to be imported.⁸⁰ There are two types of IPCs: (1) D-1 certificates for imported raw materials or intermediate unfinished goods used in the production of exported goods, and (2) D-3 certificates for imported raw materials or intermediate unfinished goods used in the production of goods sold in the domestic market.⁸¹

Concerning D-1 certificates, pursuant to 19 CFR 351.519(a)(1)(ii), a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input. With regard to the VAT exemption granted under this program, pursuant to 19 CFR 351.517(a), in the case of the exemption upon export of indirect taxes, a benefit exists to the extent that the Department determines that the amount exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

In prior reviews, the Department found that, in accordance with 19 CFR 351.519(a)(4)(i), the GOT had a system in place to confirm which inputs, and in what amounts, are consumed in the production of the exported product, and that the system is reasonable for the purposes intended.⁸² The Department also found that the exemption granted on certain methods of payments used in purchasing imported raw materials under this program does not constitute a subsidy pursuant to 19 CFR 351.517(a), because the tax exempted upon export does not exceed the amount of tax levied on like products when sold for domestic consumption.⁸³ No new information is on the record of this review to warrant a reconsideration of the Department's earlier findings.

During the POR, Borusan and Toscelik Profil used D-1 certificates and received duty and VAT

⁷⁶ See GOT's August 1, 2016 QR at III-14.

⁷⁷ *Id.*

⁷⁸ *Id.*, at III-16 – III-19.

⁷⁹ *Id.*, at III-19.

⁸⁰ *Id.*, at III-16 – III-19.

⁸¹ *Id.*; see also Borusan's August 1, 2016 QR at Exhibits 19-20.

⁸² See, e.g., *Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey*, 71 FR 43111 (July 31, 2006), and accompanying Issues and Decision Memorandum at 12 – 19; see also GOT's August 1, 2016 QR at III-14 – III-21 and Exhibit 5 and 6.

⁸³ *Id.*; see also *Turkey Pipe 2013 Final Results* and accompanying Issues and Decision Memorandum at 7-8.

exemptions on certain imported inputs used in the production of exported pipes and tubes.⁸⁴ Consistent with the Department's findings in *Turkey Pipe 2013 Final Results*, and based on our review of the information supplied by the respondents regarding this program, we preliminarily find no evidence on the record of this review indicating that the amounts of VAT and duty exemptions on inputs Borusan and Toscelik Profil imported under the program were excessive or that the companies used the imported inputs for any other product besides those exported, respectively.

Therefore, consistent with past cases,⁸⁵ we preliminarily determine that the tax and duty exemptions, which Borusan and Toscelik Profil received on imported inputs under D-1 certificates of the IPC program, did not confer countervailable benefits, as the exemptions were applied only to the imported inputs consumed in the production of the exported product, making normal allowance for waste. We further preliminarily find that the VAT exemption did not confer countervailable benefits to Borusan or Toscelik Profil, because the exemption does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

During the POR, Borusan also used D-3 certificates for domestic sales associated with imports of raw materials for use in the production of carbon steel pipe and tube.⁸⁶ The GOT states that all business activities under the D-3 certificate program are defined as "domestic sales and deliveries considered as exports" and that the holder of the D-3 certificates makes domestic sales instead of export sales.⁸⁷ The GOT also reported that there is no need for export commitments in connection with the use of D-3 certificates.⁸⁸ Based on our review of the information supplied by Borusan and the GOT regarding D-3 certificates, we preliminarily determine that the use of D-3 certificates themselves are not contingent upon export performance. However, we find that record evidence indicates that the receipt of D-3 certificates is contingent upon the firm holding an IPC, and that in granting IPCs, the GOT solicits information regarding applying firms' export activities.⁸⁹

Concerning D-3 certificates, pursuant to 19 CFR 351.519(a)(1)(ii), a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input. With regard to the exemptions associated with D-3 certificates program, pursuant to 19 CFR 351.517(a), in the case of the exemption upon export of indirect taxes, a benefit exists to the extent that the Department determines that the amount exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

⁸⁴ See Borusan's August 1, 2016 QR at Exhibits 19 and 20. See also Toscelik Companies' July 15, 2016, QR at 18 – 21 and Exhibits 15 and 16.

⁸⁵ See *Turkey Pipe 2013 Final Results* and accompanying Issues and Decision Memorandum at 7-8.

⁸⁶ See Borusan's August 1, 2016 QR at Exhibits 19 and 20.

⁸⁷ See GOT's August 1, 2016 QR at III-15 and Exhibit 5 (Turkish and English versions of the Resolution Concerning Inward Processing Regime (Resolution No. 2005/8391)).

⁸⁸ *Id.*, at III-15.

⁸⁹ *Id.*, at Exhibit 18.

We preliminarily find that this program is a countervailable subsidy.⁹⁰ The tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, in the form of revenue forgone by the GOT. Information on the record indicates that D-3 certificates allow for duty exemptions on imported items that are physically incorporated into products that are sold domestically.⁹¹ Thus, per the criteria specified under 19 CFR 351.519(a), we preliminarily determine that duty exemptions received in connection with D-3 certificates provide over-rebates that result in a benefit within the meaning of section 771(5)(E) of the Act. We also find that the receipt of D-3 certificates are contingent upon firms receiving an IPC and that, in issuing IPCs, the GOT takes into account firms' export levels. Thus, because the receipt of D-3 certificates is ultimately contingent upon export activities as a part of one or more conditions, the program is specific under section 771(5A)(B) of the Act.

Therefore, we preliminarily determine that the duty exemptions Borusan received on domestically sold goods under D-3 certificate of the IPC program conferred countervailable benefits, as the exemptions were applied only to the domestically sold materials during the POR.

To calculate the net subsidy rate attributable to the Borusan Companies for their use of the D-3 certificate program, we divided the benefit by Borusan's total export sales during the POR. On this basis, we find that the Borusan Companies received a countervailable subsidy of 0.15 percent *ad valorem*.

E. Law 6486: Social Security Premium Incentive

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, 2013.⁹² The Social Security Institution of the GOT administers this program.⁹³ The purpose of this program, as set forth in Article 1 of Decree No. 2013/4966, is to support production and employment levels in certain provinces by reducing the cost of the insurance premiums paid by employers to thereby reduce unregistered employment.⁹⁴ Companies employing at least 10 workers and operating in the provinces determined by the Council of Ministers are eligible for this program.⁹⁵ Employers can benefit from this program by not paying the employers' share of long-term social security insurance premiums (11 percent in total).⁹⁶ The Toscelik Companies reported that both Toscelik Profil and TDT received benefits under this program during the POR because of their operations in Osmaniye and Hatay, which are eligible provinces.⁹⁷

Consistent with *Welded Line Pipe from Turkey*,⁹⁸ we find that the Toscelik Companies' exemption from paying their share of insurance premiums under this program during the POR constitutes a financial contribution in the form of revenue forgone to the GOT within the

⁹⁰ See, e.g., *Turkey Pipe 2013 Final Results* and accompanying Issues and Decision Memorandum at 5-6.

⁹¹ See GOT's August 1, 2016 QR at III-15 - III-16

⁹² *Id.*, at III-31 - III-32.

⁹³ *Id.*, at III-31.

⁹⁴ *Id.*, at III-31 - III-32 and Exhibit 15.

⁹⁵ *Id.*, at III-31.

⁹⁶ *Id.*

⁹⁷ *Id.*, at III-33.

⁹⁸ See *Welded Line Pipe from Turkey* and accompanying Issues and Decision Memorandum at 25.

meaning of section 771(5)(D)(ii) of the Act. We further determine that Toscelik Companies benefitted under this program pursuant to section 771(5)(E) of the Act in the amount of the insurance premiums that the Toscelik Companies 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 the Toscelik Companies received under the program, we summed the total amount of insurance premium savings reported by Toscelik Profil and TDT during the POR. To calculate the net subsidy rate, we preliminarily divided the total benefit by Toscelik Profil's and TDT's total sales, net intra-company sales, during the POR. On this basis, we determine Toscelik Companies' net subsidy rate under this program to be 0.06 percent *ad valorem*.

F. Law 5084: Allocation of Free Land and Purchase of Land for LTAR

In the *Turkey Pipe 2010 Final Results* and *Turkey Pipe 2011 Final Results*, the Department found that the Toscelik Companies received a countervailable subsidy under this program in 2008 and 2010.⁹⁹

In the *Turkey Pipe 2010 Final Results* and *Turkey Pipe 2011 Final Results*, we found that the subsidies provided under this program are regionally-specific under section 771(5A)(D)(iv) of the Act, because it is limited to companies located in the 49 eligible provinces. Also, we found that the provisions of land for LTAR constitute financial contributions in the form of a provision of a good, within the meaning of section 771(5)(D)(iii) of the Act. Further, we found that the Toscelik Companies benefitted from the provision of free land under this Organized Industrial Zones (OIZ) program, pursuant to section 771(5)(E)(iv) of the Act, in that they were able to obtain goods, *i.e.*, land, for less than they would otherwise pay in the absence of this subsidy.¹⁰⁰ On the record of the instant review, the GOT reported that there were no changes to this program during the POR.¹⁰¹

The U.S. Court of International Trade (CIT) remanded the Department to reconsider and explain in greater detail several aspects of the benchmarks it used to value land subsidies received by Toscelik Profil in the *Turkey Pipe 2011 Final Results*.¹⁰² Pursuant to the Court's remand, the Department reconsidered our initial findings in *Turkey Pipe 2011 Final Results*, and in the final redetermination, we: (1) restored the benchmark originally calculated for the 2008 land subsidy in the 2010 administrative review, and (2) further explained aspects of the benchmark used to value the 2010 land subsidy. In addition, the Department examined and corrected as necessary

⁹⁹ See *Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 6, 2012) (*Turkey Pipe 2010 Final Results*), and accompanying Issues and Decision Memorandum at 12 – 14; *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) (*Turkey Pipe 2011 Final Results*), and accompanying Issues and Decision Memorandum at 10 – 13.

¹⁰⁰ *Id.*

¹⁰¹ See GOT's August 1, 2016 QR at III-35 – III-45.

¹⁰² See *Toscelik Profil ve Sac Endustrisi AS v. United States* Court No. 13-00371; Slip Op. 14-126 (CIT October 29, 2014) (*Opinion and Remand Order*).

any duplication errors in the dataset.¹⁰³ Our analysis in *Turkey Pipe 2011 Amended Final* indicated that the benefit amount under this program exceeded the 0.5 percent threshold. Therefore, we allocated a portion of the benefit to the current POR using the Department's standard grant allocation formula.¹⁰⁴

To calculate the net subsidy rate in the instant review, we divided the benefits Toscelik Profil received in connection with the two land transactions by Toscelik Profil's total sales during the POR. On this basis, we preliminarily determine the Toscelik Companies' net subsidy rate under this program to be 0.11 percent *ad valorem*.

G. Export Financing: Export-Oriented Working Capital Program

The Export-Oriented Working Capital Program was established in January 2012. This program is administered by the Turk Eximbank.¹⁰⁵ This program is designed to provide financial support to manufacturer-exporters and manufacturers supplying exporters purchasing raw materials, intermediate goods, and machinery and equipment.¹⁰⁶ This program is contingent upon an export commitment.¹⁰⁷

Toscelik Profil reported that it had loans outstanding under this program during the POR.¹⁰⁸ Consistent with *Welded Line Pipe from Turkey*, we find that these loans confer a countervailable subsidy, within the meaning of section 771(5) of the Act.¹⁰⁹ The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT under 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amount paid by the company for the loans during the POR and the amount the company would have paid on comparable commercial loans. The program is also specific, in accordance with section 771(5A)(B) of the Act, because receipt of the loan is contingent upon export performance.

In computing the benefit pursuant to section 771(6)(A) of the Act and 19 CFR 351.505(a)(1), we calculated the difference between the interest rate Toscelik Profil paid on these loans and the benchmark long-term U.S. dollar interest rate obtained from the IMF's *International Financial Statistics*.¹¹⁰ To calculate the countervailable subsidy rate, we divided Toscelik Profil's benefit amount by Toscelik Profil's total export sales for the POR. On this basis, we determine that the net countervailable subsidy rate for this program is 0.18 percent *ad valorem* for the Toscelik Companies.

¹⁰³ See *Toscelik Profil Ve SAC Endustrisi A.S. v. United States*, Court No. 13-00371, Slip. Op. 15-28 (CIT April 1, 2015). See also *Circular Welded Carbon Steel Pipes and Tubes From Turkey: Notice of Court Decision Not in Harmony With Final Results of Countervailing Duty Administrative Review and Notice of Amended Final Results of Countervailing Duty Administrative Review*; 2011, 80 FR 43709 (July 23, 2015) (*Turkey Pipe 2011 Amended Final*). See also Toscelik Companies' January 18, 2017 QR at Exhibit 3.

¹⁰⁴ See 19 CFR 351.524(d).

¹⁰⁵ See GOT's August 1, 2016 QR at III-110 – III-125.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*, at III-14.

¹⁰⁸ See Toscelik Companies' July 15, 2016 QR at 26 and Exhibit 19.

¹⁰⁹ See *Welded Line Pipe from Turkey* and accompanying Issues and Decision Memorandum at 26 – 27.

¹¹⁰ See Toscelik Companies' Prelim Calculation Memorandum.

VII. PROGRAM FOUND TO CONFER COUNTERAVAILABLE BENEFIT THAT IS LESS THAN 0.005 PERCENT AD VALOREM

A. Organized Industrial Zone: Exemption from Property Tax

The program is administered by the Ministry of Finance pursuant to article 4 of Law No. 3365, which came into force on January 1, 1987. The program's objective is to increase the investment opportunities in OIZs. The GOT provides an exemption of property tax for the first five years following the completion date of the construction of buildings. According to the GOT, there are 252 OIZ in Turkey.

Toscelik Profil reported that it received an exemption from property tax during the POR with respect to its Osmaniye facilities because of their location in the OIZ.¹¹¹

We find that this program constitutes a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. We also determine that tax benefits under the program conferred a benefit under section 771(5)(E) of the Act. Further, we determine that this program is regionally-specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in the OIZ. Our findings in this regard are consistent with the Department's practice. No new information has been presented in this review that leads us to reconsider our prior findings in these preliminary results.

To calculate the benefit from the tax relief that Toscelik Profil received under the property tax exemption program, we summed the total amount of property tax savings reported by Toscelik Profil during the POR and divided the amount of the benefit by Toscelik Profil's total sales during the POR. On this basis, we determine the Toscelik Companies' net subsidy rate under this program to be less than 0.005 percent *ad valorem*. Consistent with our practice, we did not include this program in our net countervailing duty rate calculations.¹¹²

VIII. PROGRAMS PRELIMINARLY DETERMINED TO NOT BE USED

We examined and preliminarily determine that the Borusan and/or Toscelik Companies did not apply for or receive benefits under these programs during the POR:

- Post-Shipment Export Loans
- Pre-Export Credits
- Pre-Shipment Export Credits
- Export Credit Bank of Turkey Buyer Credits
- Foreign Trade Companies Short Term Export Credits

¹¹¹ See Toscelik Companies' July 15, 2016 QR at 28 and Exhibit 21.

¹¹² See *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying Issues and Decision Memorandum at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE;" see also *Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying Issues and Decision Memorandum at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District."

- Law 5084: Withholding of Income Tax on Wages and Salaries
- Law 5084: Incentives for Employers' Share in Insurance Premiums
- Law 5084: Energy Support
- Subsidized Turkish Lira Credit Facilities
- Subsidized Credit for Proportion of Fixed Expenditures
- Subsidized Credit in Foreign Currency
- Regional Subsidies
- VAT Support System (Incentive Premium on Domestically Obtained Goods)
- Investment Encouragement Program (IEP): Reductions in Corporate Taxes
- IEP: Customs Duty Exemptions
- IEP: Interest Support
- IEP: Social Security Premium Support
- IEP: Land Allocation
- National Restructuring Program
- Regional Incentive Scheme (RIS): Reduced Corporate Tax Rates
- RIS: Social Security Premium Contribution for Employees
- RIS: Allocation of State Land
- RIS: Interest Support
- Organized Industrial Zones (OIZ): Waste Water Charges
- OIZ: Exemptions from Customs Duties, VAT, and Payments for Public Housing Fund, for Investments for which an Income Certificate is Received
- OIZ: Credits for Research and Development Investments, Environmental Investments, Certain Technology Investments, Certain "Regional Development" Investments, and Investments Moved from Developed regions to "Regions of Special Purpose"
- OIZ: Exemption from Building and Construction Charges
- OIZ: Exemption from Amalgamation and Allotment Transaction Charges
- Corporate Income Tax Exemption under the Free Zones Law
- Stamp Duties and Fees Exemptions under the Free Zones Law
- Customs Duty Exemptions Under the Free Zones Law
- Value Added Tax Exemptions Under the Free Zones Law
- Provision of Building and Land Use Rights for Less than Adequate Remuneration under the Free Zones Law

IX. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the preliminary results of the review in the *Federal Register*.



Agree



Disagree

3/31/2017

X

Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance