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

FROM: James Maeder
Senior Director
Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative 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) determines that countervailable subsidies are being provided to exporters and producers of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey), within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act). The petitioner in this investigation is the Rebar Trade Action Coalition and its individual members.[1] The respondents are the Government of Turkey (the GOT) and Habaş Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.Ş. (Habas). The period of investigation (POI) for which we are measuring subsidies is January 1, 2015, through December 31, 2015.

We analyzed the comments of the interested parties in this investigation. As a result of this analysis, and based on our findings at verification, we made changes to the subsidy rate calculations for Habas, the company respondent in this case. We recommend that you approve the positions developed in the "Discussion of the Issues" section of this memorandum.

A complete list of the issues in this investigation on which we received comments is provided below.

Comment 1: Financial Contribution in AD/CVD Investigation Assistance Program
Comment 2: Sales Denominators for Habas

[1] 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. *See* Letter from the 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; *see also* Letter from the petitioner, "Steel Concrete Reinforcing Bar from Japan, Taiwan, and Turkey: Notice Regarding Composition of the Petitioning Coalition," February 15, 2017.

Comment 3: Rejection of Habas' February 2, 2017, Rebuttal Benchmark Submission
Comment 4: Natural Gas Benchmark
Comment 5: Application of Adverse Facts Available for Discovered Program
Comment 6: Countervailability of Electricity for More Than Adequate Remuneration

II. BACKGROUND

On March 1, 2017, the Department published the *Preliminary Determination* in the countervailing duty (CVD) investigation of rebar from Turkey and aligned the final determination with the final determination in the companion antidumping duty (AD) investigation of rebar from Turkey.[2] The Department conducted a verification of the subsidy information submitted by Habas from February 27 through March 2, 2017.[3] Verification of subsidy information submitted by the GOT was conducted from March 20 through 22, 2017.[4]

Following the *Preliminary Determination*, interested parties filed timely responses to several outstanding questionnaires.[5] The Department also issued and received responses to additional supplemental questionnaires.[6] Pursuant to our invitation and the terms established in the

[2] *See Steel Concrete Reinforcing Bar from Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 82 FR 12195 (March 1, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).
[3] *See* Department Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Verification of Countervailing Duty Questionnaire Responses Submitted by Habaş Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.Ş.," March 24, 2017 (Habas Verification Report).
[4] *See* Department Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Verification of Countervailing Duty Questionnaire Responses Submitted by the Government of the Republic of Turkey," March 29, 2017 (GOT Verification Report).
[5] *See* Letter from Cebitaş Demir Çelik Endüstrisi A.Ş. (Cebitas), "Steel Concrete Reinforcing Bar from Turkey; Cebitas questionnaire response," March 13, 2017 (Cebitas March 13, 2017 IQR); *see also* Letter from Osman Sönmez (Inşaat Taahhüt Ticaret) (OSIT), "Steel Concrete Reinforcing Bar from Turkey; Osman Sonmez questionnaire response," March 13, 2017 (OSIT March 13, 2017 IQR); Letter from Ege Çelik Endüstrisi Sanayi ve Ticaret A.Ş. (Ege Celik), "Steel Concrete Reinforcing Bar from Turkey; EGE CELIK questionnaire response to Habas Investigation," March 17, 2017 (Ege Celik March 17, 2017 IQR); Letter from the GOT, "Countervailing Duty Questionnaire Response of the Government of Turkey Pertaining to Additional Companies on Steel Concrete Reinforcing Bar from the Republic of Turkey," March 24, 2017;
[6] *See* Letter from the Department, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Countervailing Duty Questionnaire for Osman Sonmez," March 15, 2017; *see also* Letter from the Department, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Countervailing Duty Questionnaire for Cebitas Demir Celik Edustrisi A.S.," March 15, 2017; Letter from the Department, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Countervailing Duty Questionnaire for Ege Celik Endustrisi San. ve Tic. A.S.," March 21, 2017; Letter from OSIT, "Steel Concrete Reinforcing Bar from Turkey; Osman Sonmez supplemental questionnaire response," March 22, 2017 (OSIT March 22, 2017 SQR); Letter from Cebitas, "Steel Concrete Reinforcing Bar from Turkey; Cebitas supplemental questionnaire response," March 22, 2017 (Cebitas March 22, 2017 SQR); Letter from the Department, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Countervailing Duty Questionnaire for Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.," March 22, 2017; Letter from the Department, "Steel Concrete Reinforcing Bar from the Republic of Turkey; Request for Additional Information," March 22, 2017; Letter from Ege Celik, "Steel Concrete Reinforcing Bar from Turkey; Ege Celik Supplemental Questionnaire response to Habas Investigation," March 28, 2017 (Ege Celik March 28, 2017 SQR); Letter from the GOT, "Countervailing Duty Questionnaire Response of the Government of Turkey Pertaining to Request for Additional Information on Steel Concrete Reinforcing Bar from the Republic of Turkey," March 29, 2017; Letter from Habas, "Steel Concrete Reinforcing Bar from Turkey; Habas: Fourth supplemental

Preliminary Determination,[7] Habas and the petitioner also submitted additional factual information for the purposes of calculating a benchmark for natural gas purchases during the POI.[8] Between April 11 and 17, 2017, the Department received case briefs from the petitioner, the GOT, and Habas.[9] The petitioner and Habas also filed rebuttal briefs.[10] We conducted a hearing on May 2, 2017.[11]

III. 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 *Federal Register* notice.

IV. SCOPE COMMENTS

On April 4, 2017, the Department set the schedule for comments on the scope of this investigation.[12] No interested parties submitted scope comments. Therefore, the scope of this investigation has not changed since the *Preliminary Determination*.[13]

V. SUBSIDIES VALUATION

A. Allocation Period

No party in this proceeding disputed the 15-year average useful life (AUL) period used in the *Preliminary Determination*. Therefore, the Department continues to rely on a 15-year AUL to allocate non-recurring subsidies. For a complete discussion of the allocation period and the methodology used for allocating non-recurring subsidies in this final determination, *see* the *Preliminary Determination*.[14]

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questionnaire response," March 29, 2017; Letter from Ege Celik, "Steel Concrete Reinforcing Bar from Turkey; EGE CELIK Certifications of Service dated April 10, 2017," April 12, 2017.

[7] *See Preliminary Determination*, 82 FR at 12196.

[8] *See* Letter from Habas, "Steel Concrete Reinforcing Bar from Turkey; Habas: natural gas data," March 2, 2017 (Habas March 2, 2017 Benchmark Submission); *see also* Letter from the petitioner, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Additional Benchmark Information," March 13, 2017 (Petitioner March 13, 2017 Benchmark Submission); Letter from Habas, "Steel Concrete Reinforcing Bar from Turkey; Habas: natural gas benchmark rebuttal comments," March 19, 2017 (Habas March 19, 2017 Benchmark Rebuttal).

[9] *See* Letter from the petitioner, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Case Brief," April 11, 2017 (Petitioner Case Brief); *see also* Letter from the GOT, "Case Brief of the Government of Turkey in CVD Investigation on Imports of Steel Concrete Reinforcing Bar from Turkey," April 11, 2017 (GOT Case Brief); Letter from Habas, "Steel Concrete Reinforcing Bar from Turkey; Habas: Fourth supplemental questionnaire response," April 11, 2017 (Habas Case Brief);

[10] Letter from the petitioner, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Rebuttal Brief," April 17, 2017 (Petitioner Rebuttal Brief); Letter from Habas, "Steel Concrete Reinforcing Bar from Turkey; Habas: rebuttal brief," April 17, 2017 (Habas Rebuttal Brief).

[11] *See* Hearing Transcript, filed by Neal R. Gross and Co., Inc. on May 9, 2017.

[12] Department Memorandum, "Scope Briefing Schedule for the Antidumping and Countervailing Duty Investigations of Steel Concrete Reinforcing Bar from Japan, the Republic of Turkey, and Taiwan," April 4, 2017.

[13] *See Preliminary Determination* at Attachment I.

[14] *See* PDM at 5.

B. Attribution of Subsidies

In the *Preliminary Determination*, the Department found that subsidies received by certain cross-owned companies and subcontractors, including Habaş Elektrik Üretim A.Ş. (Habas Elektrik), Habaş Endüstri Tesisleri A.Ş. (Habas Endustrisi), and Habaş Petrol A.Ş. (Habas Petrol), Mertaş Turizm Nakliyat ve Ticaret A.Ş. (Mertas), Cebitas, OSIT, and Ege Celik, should be attributed to Habas or cumulated with the subsidies received by Habas. As further discussed at Comment 2, however, the Department has determined that Mertas did not export subject merchandise during the POI and, as such, its subsidies are not attributable to Habas under 19 CFR 351.525(c). Therefore, for purposes of this final determination, subsidies received by Mertas are not cumulated with the subsidies received by Habas.

The Department has made no additional changes to its preliminary "Attribution of Subsidies" analysis.[15]

C. Denominators

In accordance with 19 CFR 351.525(b)(1) through (5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies (*e.g.*, to a respondent's export sales for export subsidies or to a respondent's total sales for domestic subsidies). For more information regarding the classification of the examined subsidies as export or domestic, *see* the Final Calculation Memorandum.[16]

Habas reported its sales figures for 2012 through 2015.[17] In the *Preliminary Determination*, the Department excluded sales between Habas and Mertas from the denominators used to calculate Habas' preliminary subsidy rates. In its case brief, Habas argues that, in accordance with 19 CFR 351.525(a), its sales denominator should be adjusted to include its sales to Mertas. We have considered Habas' arguments and, for the reasons discussed at Comment 2, have included Habas' indirect sales in Habas' total sales denominator.

The Department made no additional changes to the denominators used in the *Preliminary Determination*. Further information regarding denominators is provided in the Final Calculation Memorandum.

D. Loan Benchmarks

The Department made no changes to the benchmark interest rates used in the *Preliminary Determination*, and no issues regarding benchmark interest rates were raised by interested parties. For a description of the benchmark interest rates used for this final determination, *see* the *Preliminary Determination*.[18]

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[15] *Id.* at 6-7; *see also* Department Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Calculations for the Final Countervailing Duty Determination," May 15, 2017 (Final Calculation Memorandum).
[16] *See* Final Calculation Memorandum.
[17] *See* Letter from Habas, "Steel Concrete Reinforcing Bar from Turkey; Habas questionnaire response," December 12, 2016 (Habas December 12, 2016 IQR), at Exhibit 7.
[18] *See* PDM at 8-9.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

As discussed in detail at Comment 5, at verification, Habas stated that, during the POI, it participated in, and received benefits in the form of, import duty rebates/drawbacks under Article 22 of Turkey's Domestic Processing Regime (RDP) Resolution 2005/839 (RDP duty drawback program).[19] Habas did not report its use of this subsidy in its questionnaire responses. Consequently, the record information indicates that Habas used, and, thus, benefited from, a subsidy or subsidies during the POI that it failed to report in a timely manner in response to the Department's requests for information. Therefore, we have determined that the application of adverse facts available (AFA) is warranted with respect to this program in our calculations.

A. Legal Standard

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

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Under the Trade Preferences Extension Act of 2015 (TPEA), numerous amendments to the AD and CVD laws were made.[20] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[21]

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[22] Furthermore, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final

[19] *See* Habas Verification Report at 6.
[20] *See* TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015); *see also Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).
[21] *See Applicability Notice*, 80 FR at 46794-46795.
[22] *See* section 776(b)(1)(B) of the Act; *see also* section 502(1)(B) of the TPEA.

determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.[23]

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[24] Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[25] Furthermore, the Department is not required to corroborate any countervailing duty applied in a separate segment of the same proceeding.[26]

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.[27] The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[28]

Consistent with section 776(d) of the Act and our established practice, when choosing a rate to apply as AFA, we select the highest calculated rate for the same or similar program.[29] When selecting rates, we first determine if there is an identical program in the investigation and, if so, use the highest calculated rate, excluding zero rates, for the identical program. If there is no identical program with a rate above zero in the investigation, we then determine if an identical program was examined in another CVD proceeding involving the same country and apply the highest calculated rate, excluding rates that are *de minimis*, for the identical program.[30] If no identical program exists, we then determine if there is a similar or comparable program, based on the treatment of the benefit, in another CVD proceeding involving the same country and apply the highest calculated rate for the similar or comparable program.[31]

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[23] *See* section 776(b)(2) of the Act; *see also* 19 CFR 351.308(c).
[24] *See* section 776(c) of the Act; *see also* 19 CFR 351.308(d).
[25] *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, Vol. 1 at 870, reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (1994).
[26] *See* section 776(c)(2) of the Act; *see also* section 502(2) of the TPEA.
[27] *See* section 776(d)(1) of the Act; *see also* section 502(3) of the TPEA.
[28] *See* section 776(d)(3) of the Act; *see also* section 502(3) of the TPEA.
[29] *See, e.g., Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013), and accompanying Issues and Decision Memorandum (IDM) (Shrimp IDM) at 13; *see also Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").
[30] *See Pre-Stressed Concrete Steel Wire Strand from China, Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at 13.
[31] *See* Shrimp IDM at 13-14.

B. Application of Adverse Facts Available

We find the application of AFA is warranted with respect to Habas' failure to timely report government assistance received under the RDP duty drawback program.[32]

C. Selection of the Adverse Facts Available Rate

It is the Department's practice in CVD proceedings to compute an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for a cooperating respondent in the same investigation or, if such rates are not available, rates calculated in prior CVD cases involving the same country.[33] Specifically, pursuant to an established hierarchy for selecting AFA rates, the Department applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-*de minimis* rate for a similar program, based on treatment of the benefit, in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.[34]

Because Habas failed to act to the best of its ability in this investigation, we made an adverse inference in selecting from the facts available that Habas benefited from the RDP duty drawback program.[35] Using the methodology described above, we have applied an AFA rate to Habas for the RDP duty drawback program.[36]

Specifically, because Habas is the only respondent in this investigation, there is no calculated rate for an identical program in this proceeding. Accordingly, as AFA, we are applying the

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[32] For further discussion regarding our determination, as AFA, that Habas benefited from unreported government assistance during the POI and that such assistance constitutes a financial contribution pursuant to section 771(5)(D) of the Act and is specific pursuant to section 771(5A) of the Act, *see* Comment 5.

[33] *See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 4, 2008) (*Lawn Groomers from the PRC Preliminary Determination*) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009) (*Lawn Groomers from the PRC Final Determination*), and accompanying IDM at "Application of Facts Available, Including the Application of Adverse Inferences"); *Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC*), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

[34] *See, e.g., Lawn Groomers from the PRC Preliminary Determination*, 73 FR at 70975 (unchanged in *Lawn Groomers from the PRC Final Determination*); *see also Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at "Selection of the Adverse Facts Available Rate."

[35] For further information, *see* Comment 5.

[36] *See Final Affirmative Countervailing Duty Determinations; Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 51 FR 1268 (January 10, 1986) (*Welded Pipe and Tube from Turkey*).

14.01 percent *ad valorem* subsidy rate calculated for a similar program, "Export Tax Rebate," in *Welded Pipe and Tube from Turkey*.[37]

Section 776(c)(1) of the Act provides that, when the Department relies on secondary information, rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Section 776(c)(1), however, does not require corroboration when the information relied upon for adverse inferences is derived from the petition, a final determination in the investigation, any previous review under section 751 of the Act or determination under section 753 of the Act, or any other information placed on the record.

Furthermore, under section 776(d) of the Act, the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Therefore, in accordance with section 776(c)(1) and 776(d) of the Act, we have applied a subsidy rate which was calculated in a previous Turkey CVD investigation and have corroborated the AFA rate to the extent practicable.

VII. ANALYSIS OF PROGRAMS

A. Program Determined to be Countervailable

The Department made no changes to its preliminary analysis of, or the methodology used to calculate the subsidy rates for, the following programs, as described in the *Preliminary Determination*, except as noted. For a complete description, analysis, and explanation of the calculation methodology used for each program, *see* the *Preliminary Determination*.[38] All issues raised by interested parties are addressed in the "Discussion of the Issues" section, below.

1. Natural Gas for Less than Adequate Remuneration

As explained in the *Preliminary Determination*, 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).[39] 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

[37] *See Welded Pipe and Tube from Turkey*, 51 FR at 1268.
[38] *See* PDM at 9-17.
[39] *See* 19 CFR 351.511(a)(2).

transactions within the country under investigation.[40] We preliminarily determined that, 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).[41] Therefore, we found that there was no viable tier one benchmark for natural gas in Turkey during the POI and relied on country-specific industrial natural gas prices published by the International Energy Agency (IEA), which is part of the Organisation for Economic Co-operation and Development (OECD), as a tier two benchmark to calculate the benefit received by Habas under this program.[42]

In the *Preliminary Determination*, the Department provided interested parties with the opportunity to submit additional monthly benchmark information, as well as comments on the appropriateness of continuing to use an annual benchmark.[43] Habas submitted monthly natural gas export prices obtained from Global Trade Information Services (GTIS).[44] The petitioner supplemented the information filed by Habas with additional monthly GTIS data and, to support its argument in favor of relying on an annual benchmark, provided quarterly natural gas prices published by IEA.[45] In its case brief, Habas also requested that the Department reinstate certain benchmark information that was rejected from the record of this proceeding.[46] However, for the reasons discussed at Comment 3, the Department continues to find Habas' alternative natural gas prices, as filed on February 2, 2017, to be untimely.

Both the petitioner and Habas submitted arguments regarding the appropriate benchmark for measuring the adequacy of remuneration for Habas' natural gas purchases from BOTAS.[47] As fully explained at Comment 4, the Department continues to use the IEA annual data for purposes of calculating a benefit for this program. Although the Department has an established preference for monthly benchmark information,[48] the GTIS data on the record of this investigation is reported in several different units (*i.e.*, terajoules (TJ), tons (T), cubic meters (M3), cubic

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[40] *See, e.g., Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying IDM at "Provisional Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark."

[41] *See* PDM at 11 (citing *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")).

[42] *Id.* at 11.

[43] *Id.* at 12.

[44] *See* Habas March 2, 2017 Benchmark Submission at Exhibit 1.

[45] *See* Petitioner March 13, 2017 Benchmark Submission. Because the scope of this request was limited to monthly data, the Department considered the quarterly IEA prices only in the context of the petitioner's arguments in favor of relying on an annual benchmark, as discussed at Issue 4, and for purposes of adjusting the annual benchmark to exclude excise taxes.

[46] *See* Habas Case Brief at 4-7; *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.

[47] *See* Habas Case Brief at 7; *see also* Petitioner Case Brief at 13-22; Habas Rebuttal Brief at 14-19; Petitioner Rebuttal Brief at 6.

[48] *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; *see also* PDM at 12.

terameters (TM3), kilograms (KG), and liters (L)) and, furthermore, implies widely variable natural gas conversion factors. The inconsistent conversion factors suggest that the rates vary by shipment (*e.g.*, there are no "standard" rates for converting T or M3 of natural gas to TJ) or, alternatively, that the underlying data was improperly converted when reported. Additionally, the specific facts on the record of this investigation demonstrate that the GTIS data includes shipments of compressed natural gas (CNG).[49]

In the *Preliminary Determination*, the Department concluded that the IEA annual natural gas prices provided by the petitioner constitute a usable tier two benchmark under 19 CFR 351.511(a)(2)(ii).[50] As addressed at Comment 4, Habas challenges the "usefulness" of the IEA publication excerpts from which the annual natural gas prices were obtained, but the Department continues to find the IEA annual natural gas prices to be a usable benchmark.

The annual IEA data provided by the petitioner includes country-specific industrial natural gas prices for all 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.[51] As stated in the *Preliminary Determination*, standard (*i.e.*, not compressed or liquefied) natural gas can only be transported by pipeline, so the Department continues to find 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).[52] Furthermore, because the market for natural gas in Turkey is distorted, we have removed the value for Turkey included in the publication from our calculations.

As explained in the *Preliminary Determination*, under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier two, the Department adjusts 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 and any applicable taxes. Habas reported that it paid delivered prices for its purchases of natural gas from BOTAS.[53]

In the *Preliminary Determination*, we found that the IEA annual natural gas prices provided by the petitioner did not include various fees and taxes imposed within the OECD countries.[54] Based on information in the petitioner's subsequent benchmark submission, however, the Department finds that certain domestic taxes (*i.e.*, excise taxes) are included in the published IEA annual natural gas prices.[55] Therefore, for this final determination, we have adjusted the

[49] *See* Habas March 2, 2017 Benchmark Submission at Exhibit 1; *see also* GOT Verification Report at 7 (indicating that, because CNG is transported in canisters, it can be traded between countries not connected by pipelines).
[50] *See* PDM at 12.
[51] *See* Letter from Petitioner, "Certain Steel Concrete Reinforcing Bar from Turkey: Submission of Factual Information," January 23, 2017 (Petitioner January 23, 2017 Benchmark Submission), at Exhibit 2.
[52] *See* PDM at 11.
[53] *See* Letter from Habas, "Steel Concrete Reinforcing Bar from Turkey; Habas: Supplemental questionnaire response," January 26, 2017 (Habas January 26, 2017 SQR), at Exhibit 3; *see also* Habas December 12, 2016 IQR at Exhibit 11.
[54] *See* Petitioner January 23, 2017 Benchmark Submission at Exhibit 2 (identifying the reported natural gas prices as "Retail" Harmonized Index of Consumer Prices statistics).
[55] *See* Petitioner March 13, 2017 Benchmark Submission at Exhibit 1.

IEA annual natural gas prices to reach a benchmark per-unit base price exclusive of taxes that would be paid by purchasers within each reporting OECD country.[56]

Regarding delivery charges, the record indicates that, at least in Turkey, delivery charges have two components: "transmission" fees, which cover the cost of the national pipeline infrastructure, and "distribution" or "transportation" fees, which cover separate costs incurred by the regional distributor in transporting the gas from the national pipeline to the customer.[57] Transmission fees are embedded within the price of natural gas, itself, while distribution/transportation fees are a separate line item on the natural gas invoice (*i.e.*, separate from the price of natural gas), adding to the retail customer's overall expenses.[58] This division can be directly observed from the BOTAS invoices on the record of this proceeding.[59] In its report, the IEA clearly states that it has sought to provide "improved information" and, furthermore, that "considerable efforts have been made to ensure {data} comparability."[60] Therefore, in the absence of evidence to the contrary, we find that it is reasonable to conclude that the IEA annual natural gas prices published by the IEA include transmission fees (*i.e.*, the costs associated with use of the national pipeline infrastructure) but not the varying transportation fees (*i.e.*, the varying costs associated with use of the regional distribution networks).

To reflect the various taxes and delivery charges paid in Turkey, we then added the additional per-unit delivery fees (*i.e.*, distribution/transportation fees), special consumption taxes, and stamp taxes collected by BOTAS to the tax-exclusive benchmark per-unit value.[61] Finally, we adjusted the per-unit value to include the 18 percent domestic VAT reported by the GOT, thereby reaching a constructed a benchmark per-unit delivered price.[62]

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[56] *See* Final Calculation Memorandum at 3-4; *see also* Petitioner March 13, 2017 Benchmark Submission at Exhibit 1. The IEA quarterly publication lists 2015 excise tax values for industrial natural gas purchases in all of the OECD Europe countries except Portugal. Therefore, we have relied on Portugal's excise tax value for the second quarter of 2016, which is listed in the IEA annual publication, as the best available information. *See* Petitioner January 23, 2017 Benchmark Submission.

[57] *See* GOT Verification Report at 8 (stating that "{t}ransmission refers to the movement of natural gas along the national pipeline, while distribution involves movement from the pipeline to individual consumers through distributors' separate (*i.e.*, regional) infrastructures").

[58] *Id*. at 8-9 (stating: "The officials stated that BOTAS included its transmission service and capacity fees, which are noted as separate per-unit line items on each invoice, in the natural gas price paid by Habas. They further explained that the "transport" fee listed on Habas's invoice is not equivalent to a transmission fee. Rather, the transport fee is collected by BOTAS to pay for use of the local distribution company's distribution pipelines.") (citations omitted).

[59] *See, e.g.*, Letter from the GOT, "Verification Exhibits of the Government of Turkey in CVD Investigation on Imports of Steel Concrete Reinforcing Bar from the Republic of Turkey," March 27, 2017 (GOT Verification Exhibits), at Exhibit 6.

[60] *See* Petitioner January 23, 2017 Benchmark Submission.

[61] *See* Final Calculation Memorandum at 4.

[62] *Id.*; *see also* PDM at 12. In the *Preliminary Determination*, the Department added VAT to the per-unit value exclusive prior to delivery fees and taxes. At verification, However, Habas clarified that VAT is calculated based on the delivered price of natural gas. *See* Habas Verification Report at 9. Turkey did not collect import duties on natural gas during the POI. *See* PDM at 12 (citing Letter from the GOT, "Response from the Government of Turkey in Countervailing Duty Investigation on Steel Concrete Reinforcing Bar from the Republic of Turkey," December 12, 2016 (GOT December 12, 2016 IQR), 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'Habas' total sales for the POI. On this basis, we determine that Habas received a net countervailable subsidy rate of 1.99 percent *ad valorem* under this program.

2. Deductions from Taxable Income for Export Revenue

As explained in the *Preliminary Determination*, the Department finds this program to be countervailable.[63] The income tax deduction constitutes a financial contribution under section 771(5)(D)(ii) of the Act, is specific within the meaning of section 771(5A)(B) of the Act, and confers a benefit equal to the amount of the company's tax savings, in accordance with section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). The Department calculated a preliminary rate for this program based on benefits received by Habas, Habas Petrol, and Mertas.

For this final determination, the Department continues to countervail benefits received under this program by Habas and Habas Petrol, with no change in the rate calculation methodology.[64] As explained above, however, we find that Mertas does not meet the criteria for a trading company under 19 CFR 351.525(c) and, therefore, are not accounting for the benefits received by Mertas in our calculation of Habas' subsidy rate. Additionally, as stated in the *Preliminary Determination*, the Department is cumulating subsidies provided to Habas' "toller" subcontractors with the subsidies received by Habas.[65] Information on the record of this investigation indicates that Ege Celik received a benefit under this program.[66] Therefore, we are cumulating the subsidies received by Ege Celik under this program with those received by Habas.

As explained in the *Preliminary Determination*, we find that this program provides a recurring benefit.[67] To calculate a rate for this program, the Department divided the benefit received by each company by the relevant export sales figure.[68] 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, the Department attributed the benefit received by Ege Celik to Habas, as described in the Final Calculation Memorandum.[69] On this basis, we determine that Habas received a net countervailable subsidy rate of 0.18 percent *ad valorem* under this program.

[63] *See* PDM at 14. For a complete description of this program, *see* PDM at 13-14.
[64] *Id.* at 14.
[65] *Id.* at 7.
[66] *See* Ege Celik March 17, 2017 IQR at Exhibit 4.
[67] *See* PDM at 14.
[68] *See* Final Calculation Memorandum at 4-5.
[69] *Id.*

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

We continue to determine that Habas received a net countervailable subsidy rate of 0.02 percent *ad valorem* under this program.[70]

4. Rediscount Program

We continue to determine that Habas received a net countervailable subsidy rate of 0.01 percent *ad valorem* under this program.[71]

B. Programs Determined to be Not Countervailable

1. Electricity for More Than Adequate Remuneration

The Department preliminarily determined that this program is not countervailable because it does not provide a financial contribution within the meaning of section 771(5)(D)(iv) of the Act.[72] In its case brief, the petitioner argues that the GOT provides a direct financial contribution to private power producers selling electricity to government authorities and, as such, that this program provides a countervailable benefit.[73] However, for the reasons discussed at Comment 6, the Department's preliminary findings with respect to this program remain unchanged for this final determination.[74]

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

No interested parties commented on the Department's preliminary analysis of the following programs, which the Department verified as conferring no benefits to Habas.[75] Therefore, the Department's preliminary findings with respect to these programs remain unchanged for this final determination.[76]

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

D. Programs Determined to be Not Used During the POI

No interested parties commented on the Department's preliminary analysis of the following programs, which the Department verified as not used by Habas.[77] Therefore, the Department's

[70] *See* PDM at 14-16; *see also* Final Calculation Memorandum at 5.
[71] *See* PDM at 16-17; *see also* Final Calculation Memorandum at 5.
[72] *See* PDM at 17-19.
[73] *See* Petitioner Case Brief at 23-32.
[74] *See* PDM at 17-19.
[75] *See* Habas Verification Report at 15-18; *see also* GOT Verification Report at 10.
[76] *See* PDM at 20.
[77] *See* Habas Verification Report at 18-19.

preliminary findings with respect to these programs remain unchanged for this final determination.[78]

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

VIII. DISCUSSION OF THE ISSUES

Comment 1: Financial Contribution in AD/CVD Investigation Assistance Program

The GOT's Comments

- There is no entrustment or direction, as defined by Article 1.1(a)(1)(iv) of the Agreement on Subsidies and Countervailing Duties (SCM Agreement) and section 771(5)(B) of the Act, for financial contribution under this program, because the funding disbursed by the Turkish Steel Exporters' Association (TSEA) comes from the TSEA's own budget, which is comprised of exporter member contributions, rather than from the GOT.[79]
- The World Trade Organization (WTO) has stated that government entrustment and direction cannot be inadvertent or a by-product of regulation. There must be an indication that the payments were financed by virtue of government action.[80]
- In the 2014 investigation of rebar from Turkey, the Department found that this program provided no financial contribution because there was no record of monetary contribution to TSEA's accounts by the GOT.[81]

[78] *See* PDM at 20.
[79] *See* GOT Case Brief at 3-4.
[80] *Id.* at 4 (citing *United States – Countervailing Duty Investigation on Dynamic Random Access Memory Semiconductors (DRAMS) from Korea*, WT/DS296/AB/R (June 27, 2005) and *Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products (Recourse to Article 21.5 of the DSU by New Zealand and the United States)*, WT/DS103/AB/RW, WT/DS113/AB/RW (December 3, 2001)).
[81] *Id.* at 5.

Habas' Comments

- During the POI, the value of dues paid to TSEA by Habas was more than three times the value of the funds Habas received from TSEA under this program.[82]
- The Department previously found this program to be not countervailable because there is no financial contribution.[83] "The same result should apply here, as the same program is at issue."[84]

Petitioner's Rebuttal Comments

- The Department should continue to find that this program provides a financial contribution because the Turkish Exporters' Assembly (TEA) provided financial support to Habas.[85]
- The TEA was created by statute, under which it has jurisdiction over all exporters' associations and must defend the interests of their members.[86]
- Turkish exporters are legally required to join the exporters' associations within the TEA's jurisdiction.[87]
- The relevant grants constitute an indirect subsidy under section 771(5)(B)(iii) of the Act.[88]

Department's Position: The Department continues to find that the GOT entrusted or directed exporters' associations to provide a financial contribution to exporters, including Habas, and, as such, that this program is countervailable.[89] As stated in the *Preliminary Determination*, section 771(5)(B) of the Act states that 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.[90] The relevant laws and regulations legally direct exporters to join the exporters' associations for their sectors and to pay membership dues and other payments, and, in turn, specifically require the exporters' associations to provide financial assistance to their members to cover expenses associated with participation in foreign trade remedy proceedings.[91] Specifically, under Turkish Law No. 5910, the "Law on the Foundation and Duties of the Turkish Exporters Assembly and the Exporters' Associations," the GOT grants the TEA jurisdiction over creation and regulation

[82] *See* Habas Case Brief at 7.
[83] *Id.* at 8 (citing *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review in Part; 2014*, 81 FR 89057 (December 9, 2016)).
[84] *Id.* at 8.
[85] *See* Petitioner Rebuttal Brief at 9.
[86] *Id*.
[87] *Id*.
[88] *Id*.
[89] *See* PDM at 14-16
[90] *Id.* at 15.
[91] *See* GOT December 12, 2016 IQR at 77, Exhibit 24, and Exhibit 25; *see also* 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 January 17, 2017 SQR), at 23.

of exporters' associations in Turkey.[92] Furthermore, Article 4 of the Turkish Law No. 5910 states that all Turkish exporters are "obliged to be a member of the related association and affect the payments specified in the law."[93]

Within the framework of Turkish Law No. 5910, the TEA, in turn, delegated its authority to assist exporters to the individual exporters' associations through two directives: "Directive on Financial Support for the Attorney/Legal Consultancy Fees Paid by Companies as Part of Investigations of Trade Remedy Measures and Practices of Generalized System of Preferences" and "Implementing Procedures and Principles on Financial Support for the Attorney/Legal Consultancy Fees Paid by Companies as Part of Investigations of Trade Policy Measures and Practices of Generalized System of Preferences."[94] Accordingly, the GOT entrusted or directed the authority to provide a financial contribution to exporters (*i.e.*, reimbursement for legal fees) to the TEA and, through the TEA, to the exporters' associations, including the TSEA, using funds from statutorily mandated contributions from members. As a grant, the reimbursement is a financial contribution that falls squarely within the meaning of sections 771(5)(B)(iii) and 771(5)(D)(i) of the Act. Consequently, the funding disbursed to Habas under this program was not merely an inadvertent result or a by-product of government regulations, as suggested by the GOT.

With regard to the Department's findings in the 2014 review of the earlier rebar from Turkey investigation, we note that those were preliminary findings based on the record in that proceeding, and the final results of that review have not yet been issued.[95] Furthermore, the GOT's arguments regarding the ultimate source of the funding (*i.e.*, that the funding is provided by the TSEA rather than the GOT) are misplaced, since the entrustment or direction provision of the Act specifically addresses exactly the situations where a financial contribution is funded from private, non-governmental sources outside the state treasury, such as the TSEA membership funds provided to Habas under this program.[96] Finally, regarding Habas' comment that the value of its membership payments to the TSEA was much greater than the amount of funding it received under this program, this comparison is not germane to the Department's analysis of this program because membership payments are general revenues to the TSEA without specific limitation on its uses. Therefore, we do not address it.

[92] *See* GOT December 12, 2016 IQR at Exhibit 24.
[93] *Id.*
[94] *Id.* at 78 and Exhibit 25. Until June 1, 2015, the Directive was known as "The Directive Regarding the Supports to Companies for Advocacy and Legal Counselling Services Purchased in Trade Remedy Investigations and Generalized System of Preferences Practices," and the Implementing Procedures were known as "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."
[95] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review in Part; 2014*, 81 FR 89057 (December 9, 2016), and accompanying IDM at 10.
[96] *See* Habas Verification Report at 17; *see also* section 771(5)(B)(iii) of the Act.

Comment 2: Sales Denominator for Habas

Habas' Comments

- Habas reported its sales denominators based on the following equation: (grand total sales) – (sales to Mertas) + (resales by Mertas).[97]
- In the *Preliminary Determination*, the Department did not include resales by Mertas in Habas' sales denominators.[98]
- Pursuant to 19 CFR 351.525(a) and the *Preamble*, the Department should include resales by Mertas in Habas' sales denominators because Mertas provided a full questionnaire response in this investigation.[99]

Petitioner's Rebuttal Comments

- In accordance with the Department's regulations, Mertas's sales should be excluded from Habas' denominator because Mertas did not export rebar to the United States during the POI.[100]
- In this case, "subject merchandise" is rebar that is exported to the United States. Subject merchandise does not include rebar sold in Turkey or exported to third countries.[101]
- When a trading company *does* export subject merchandise, the Department attributes subsidies by applying a ratio rather than simply cumulating sales.[102]

Department's Position: Since the *Preliminary Determination*, the Department has further considered the information on the record of this proceeding and determined that, as noted by the petitioner,[103] Mertas was not an exporter of subject merchandise (*i.e.*, rebar to the United States) during the POI. Under 19 CFR 351.525(c), subsidies received by a trading company that exports *subject merchandise* will be attributed to the firm that produces the subject merchandise sold through the trading company. Therefore, including the subsidies received by Mertas in the preliminary subsidy rate calculation for Habas was inconsistent with the Department's regulations.[104] Accordingly, we have modified our calculations for this final determination.

For subsidies received by Habas, Habas' sales denominators should include *all* products produced and sold by Habas during the POI, in accordance with 19 CFR 351.525(a) and the *Preamble*.[105] Therefore, pursuant to 19 CFR 351.525(a) and the *Preamble*, Habas' sales to Mertas were improperly excluded from Habas' sales denominators in the *Preliminary*

[97] *See* Habas Case Brief at 2.
[98] *Id*
[99] *Id.* at 2-4 (citing *Countervailing Duties*, 63 FR 65348, 65399 (November 25, 1998) (*Preamble*)).
[100] *See* Petitioner Rebuttal Brief at 2.
[101] *Id.* at 2-3.
[102] *Id.* at 3.
[103] *Id.* at 2.
[104] *See* PDM at 6 (stating that, during the POI, Mertas acted as a trading company within the meaning of 19 CFR 351.525(c)).
[105] *See Preamble*, 63 FR at 65399.

Determination.[106] Accordingly, for purposes of this final determination, the Department adjusted Habas' sales denominators to reflect sales made by Habas to Mertas.[107]

Comment 3: Rejection of Habas' February 2, 2017, Rebuttal Benchmark Submission

Habas' Comments

- The Department improperly rejected Habas' February 2, 2017, submission of rebuttal benchmark information, which included Gazprom prices for valuation of a natural gas benchmark, as 19 CFR 351.301(c)(3)(iv), which states that an "interested party many not submit additional, previously absent-from-the-record" alternative information in a rebuttal submission, applies only to alternative surrogate value information.[108]
- The applicable regulation, for the most part, treats surrogate value information and benchmark information the same, but there is a clear distinction between its treatment of alternative surrogate value information in rebuttal submissions, which is expressly prohibited, and alternative benchmark information in rebuttal submissions, which, *sub silencio*, is permitted.[109]
- The Department should reinstate Habas' February 2, 2017, submission and use the pricing data contained therein as a benchmark for natural gas.[110]

Petitioner's Comments

- Habas' February 2, 2017. benchmark submission was untimely.[111]

Habas' Rebuttal Comments

- The regulation "requires the *petitioner* to submit benchmark LTAR data initially," and "*respondents* may then submit rebuttal information."[112]

Petitioner's Rebuttal Comments

- On its face, the regulation applies to both surrogate value information and benchmark information.[113]
- The Department's rejection of Habas' submission was consistent with longstanding practice.[114]

[106] *See* Department Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Calculations for the Preliminary Countervailing Duty Determination," February 21, 2017, at Attachment II; *see also Preamble*, 63 FR at 65399.
[107] *See* Final Calculation Memorandum at 2-3.
[108] *See* Habas Case Brief at 4-5.
[109] *Id.* at 5.
[110] *Id.* at 6 (citing GOT December 12, 2016 IQR at Exhibit 4).
[111] *See* Petitioner Case Brief at 17; *see also* Petitioner Rebuttal Brief at 4.
[112] *See* Habas Rebuttal Brief at 15 (citing 19 CFR 351.301(c)(3)(iv)).
[113] *See* Petitioner Rebuttal Brief at 4-5 (citing 19 CFR 351.301(c)(3)(iv)).
[114] *Id.* at 5 (citing *Citric Acid from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 72323 (December 5, 2012), and accompanying IDM at 47-48).

Department's Position: The Department continues to find that Habas' February 2, 2017, submission of alternative benchmark information, which was previously absent from the record, was untimely under our regulations. Pursuant to 19 CFR 351.301(c)(3)(i), "*all* submissions of factual information" to measure adequacy of remuneration in a countervailing duty investigation must be filed 30 days before the scheduled date of the preliminary determination.[115] Moreover, pursuant to 19 CFR 351.301(c)(3)(iv):

> An interested party is permitted one opportunity to submit publicly available information to rebut, clarify, or correct such factual information…10 days after the date such factual information is served on the interested party. An interested party may not submit additional, previously absent-from-the-record alternative surrogate value information under this subsection.

The Department carefully reviewed Habas' February 2, 2017, submission and determined that it violated 19 CFR 351.301(c)(3)(iv) because it contained "additional, previously absent-from-the-record" alternative data that did not rebut, clarify, or correct the factual information that had been timely submitted by the petitioner.[116] Accordingly, Habas' submission was rejected, and the company was granted the opportunity to resubmit its rebuttal arguments without the untimely new factual information.[117]

Habas contends that, because 19 CFR 351.301(c)(3)(iv) does not explicitly prohibit alternative data to measure the adequacy of remuneration (*i.e.*, benchmark data), the regulation's limitation on "additional, previously absent-from-the-record" information applies only to surrogate value data.[118] The Department disagrees. Under 19 CFR 351.301(c)(3), the time limits for the submission of surrogate value and benchmark information are the same, indicating that limitations on the submission of new, alternative information established under 19 CFR 351.301(c)(3)(iv) were intended to apply to both surrogate value information and benchmarking information. Furthermore, allowing parties to submit new benchmark information in a rebuttal submission would undermine the authority of a deadline for initial benchmark submissions, as established by 19 CFR 351.301(c)(3)(i), and deprive other interested parties of the opportunity to effectively comment on or rebut such alternative information. We also find that Habas' claim that 19 CFR 351.301(c)(3), or any subsection therein, requires the petitioner to make the initial benchmark data submission and allows respondents to then submit rebuttal benchmark data is wholly unsupported by the text and overall construction of the regulation.[119] The time limit set by 19 CFR 351.301(c)(3)(i) expressly applies to *all submissions*,[120] and 19 CFR 351.301(c)(3)(iv) pertains to rebuttal submissions made by interested parties, in general.

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[115] *See* 19 CFR 351.301(c)(3)(i) (emphasis added).
[116] *See* 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.
[117] *Id*.
[118] *See* Habas Case Brief at 4-5.
[119] *See* Habas Rebuttal Brief at 15.
[120] We note that, regardless of how the remainder of 19 CFR 351.301(c)(3) is interpreted, subsection 19 CFR 351.301(c)(3)(i), by itself, states that *all* benchmark information is due 30 days before the scheduled date of the preliminary determination. Therefore, information submitted in accordance with any other provision of 19 CFR 351.301 must, by definition, be something other than benchmark information.

Consistent with our findings in prior proceedings,[121] we find that the prohibition of new, alternative information under 19 CFR 351.301(c)(3)(iv) applies to both surrogate value information and benchmark information. Accordingly, our decision to reject the alternative data filed by Habas on February 2, 2017, remains unchanged in this final determination.

Comment 4: Natural Gas Benchmark

Habas' Comments

- The Department should use GTIS data as a benchmark for natural gas because they are accurate, monthly data and were used as a benchmark for natural gas in the 2014 investigation of rebar from Turkey.[122]

Petitioner's Comments

- The Department should continue to find natural gas for LTAR to be countervailable and should continue to use a tier two benchmark, because BOTAS controls an "extremely large share of the natural gas market" in Turkey and, therefore, private natural gas prices cannot be considered market-determined.[123]
- The IEA is a well-respected source for energy pricing data.[124] Turkey and the other major natural gas suppliers in Europe are IEA member countries.[125] The Department properly selected the IEA annual data as a benchmark in the *Preliminary Determination* and should continue to use IEA annual data as a benchmark for natural gas prices.[126]
- Although the Department has a preference for monthly pricing data to account for price fluctuations during the POI, it has the discretion to use annual pricing data where appropriate.[127] The Department has used annual benchmarks when they "established a comparable analysis" and "mirror" the purchases under investigation.[128] An annual or quarterly benchmark would be appropriate in this proceeding.[129]
- The quarterly natural gas prices reflected in the IEA quarterly data did not change significantly, increasing only three percent from the second quarter to the fourth quarter.[130]
- The GTIS data submitted by Habas are unusable because Habas did not provide the whole universe of data, the conversion factors are variable (*i.e.*, the conversion factors for

[121] *See, e.g., Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010*, 77 FR 72323 (December 5, 2012), and accompanying IDM at Comment 7 (finding that the Department properly rejected factual information that did not rebut, clarify, or correct information that had been previously submitted).
[122] *See* Habas Case Brief at 7.
[123] *See* Petitioner Case Brief at 13-16.
[124] *Id.* at 16.
[125] *Id.* at 17.
[126] *Id.* at 17-18.
[127] *Id.* at 18 (citing *Certain Amorphous Silica Fabric from the People's Republic of China*, 82 FR 8405 (January 25, 2017) (*Silica Fabric from the PRC*), and accompanying IDM).
[128] *Id.* at 18, 20; *see also* Petitioner Rebuttal Brief at 6.
[129] *See* Petitioner Case Brief at 19.
[130] *Id.* at 19-20.

M3 range from 0.5 to 1.77), and quantity or value data are missing for multiple countries.[131]

- The variable conversion rates within the GTIS data may be due to differences in energy content not captured in volume measurements, as neither GTIS nor Habas offers information regarding how the GTIS reporting countries made the relevant measurements.[132]
- The IEA annual data provide prices per unit of energy (*i.e.*, MWh), which is more accurate and matches Habas' reported natural consumption (*i.e.*, KWh).[133]
- The IEA report states that the agency ensures the comparability of its data, as all member countries report prices on the same basis.[134]
- The Department should include the stamp tax collected on Turkish natural gas purchases in its calculation of a subsidy rate for the GOT's provision of natural gas for LTAR.[135]

Habas' Rebuttal Comments

- The petitioner has provided no evidence that the IEA is a respected source for natural gas prices.[136]
- The petitioner's initial benchmark filing is "useless" because the petitioner only provided excerpts of the relevant IEA publication, so it is not clear whether the listed prices include delivery fees and taxes. The IEA discusses VAT and special taxes separate from the natural gas prices, which undermines adding them to the average unit benchmark price, as the Department did in its preliminary calculations.[137]
- The quarterly data submitted by the petitioner are unreliable and unusable. There are no directly observable data for each quarter of 2015, and the quarterly indices relied on by the petitioner are not available for all countries and are for wholesale and retail prices, which cannot be accurately applied to industrial price figures.[138]
- The petitioner does not argue that the unit conversion factors, which Habas provided and applied to the GTIS data, are incorrect.[139]
- The GTIS data are only missing information from three European countries: Russia, Poland, and France. The data provided by the petitioner is also missing information from several countries.[140]

Department's Position: As stated in the "Analysis of Programs" section of this memorandum, the Department continues to find that BOTAS provided a countervailable subsidy to Habas in the form of natural gas for LTAR and, furthermore, continues to use IEA annual natural gas prices as a tier two benchmark for measuring the benefit received under this program. As acknowledged in the *Preliminary Determination*, the Department has an established preference for *monthly*

[131] *Id.* at 21.
[132] *Id*.
[133] *Id.* at 22.
[134] *Id*.
[135] *Id*.
[136] *See* Habas Rebuttal Brief at 14.
[137] *Id.* at 15.
[138] *Id.* at 16.
[139] *Id.* at 18.
[140] *Id.* at 19.

benchmark information.[141] As noted by Habas, we have also relied on GTIS data to calculate a natural gas benchmark in prior proceedings, including the 2014 CVD investigation of rebar from Turkey.[142] Nevertheless, the Department must select a benchmark that will provide comparable values for *this* proceeding based on factual information specific to the POI and the novel arguments raised by parties in this investigation.[143] We are not precluded from selecting a benchmark in this proceeding that differs from benchmarks selected in prior proceedings, nor are we precluded from selecting an annual benchmark, where appropriate, based on the circumstances of a specific input material, time period, or investigation.[144]

As noted by the petitioner, the specific set of GTIS data on the record of this investigation contains pervasive problems that cannot be corrected without making assumptions that would be unwarranted and unsupported by the record. Specifically, the GTIS data are reported in six substantially different units of measure: M3, TM3, and L, which are units of volume; KG and T, which are units of mass; and TJ, which is a unit of energy.[145] Because, as indicated by the supplementary GTIS data provided by the petitioner, countries often reported their natural gas exports to GTIS in two units (*e.g.*, T and TJ), the Department was able to conduct a thorough analysis of the shipments and observed a wide variance in conversion rates across transactions reported in both weight units and energy units.[146] Among the line items reported in both T and TJ,[147] most conversion rates range from 0.04 to 0.08, with a few additional conversion rates as high as 5.00.[148] As noted by the petitioner, this disparity may indicate that the energy content of the shipments cannot be consistently determined based on mass (*i.e.*, one T of natural gas may have the capacity to generate more energy than another T of natural gas).[149] If the energy content varies by mass, then it likely also varies by volume. The conversion factors suggested by Habas do not address this problem.[150]

[141] *See* PDM at 12 (citing *Silica Fabric from the PRC*).
[142] *See* Habas Case Brief at 7 (citing *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014) (*2014 Rebar from Turkey*)).
[143] *See, e.g., Silica Fabric from the PRC* and accompanying IDM at Comment 8.
[144] The Department further notes that information on the record of this investigation indicates that natural gas prices were steady during the POI. Specifically, quarterly prices changed by less than three percent between the second and fourth quarters of 2015. *See* Petitioner March 13, 2017 Benchmark Submission. Moreover, Habas paid BOTAS one fixed, per-unit price for natural gas during the POI, which was set in under contract in September 2014. *See* Habas December 12, 2016 IQR at Exhibit 12; *see also* GOT Verification Report at 8.
[145] *See* Habas March 3, 2016 Benchmark Submission; *see also* Petitioner March 13, 2017 Benchmark Submission.
[146] *See* Petitioner March 13, 2017 Benchmark Submission.
[147] Each line item represents a separate country pair and the monthly average of the shipments from the first country to the second country. For example, shipments from the Czech Republic to Slovakia in February 2015, from the Czech Republic to Switzerland in February 2015, and from the Czech Republic to Switzerland in March 2015 constitute three separate line items in the GTIS data.
[148] *See* Petitioner March 13, 2017 Benchmark Submission. Habas is invoiced for its natural gas consumption in three units of measure: kilowatt hours (KWh), M3, and standard M3. Therefore, a comparison of the GTIS data to Habas's natural gas purchases, would require that 88 percent of the reported GTIS prices be converted from T or TJ to M3. Moreover, the record does not indicate whether the M3 quantities reported in the GTIS data were recorded in M3 or standard M3.
[149] *See* Petitioner Case Brief at 21.
[150] *See* Habas March 3, 2017 Benchmark Submission.

The following tables are comprised of sample GTIS line items. Table 1 illustrates the variance between weight units and energy units. Tables 2 and 3 illustrate how the reported units of natural gas differ among countries within the GTIS data source.

TABLE 1[151]				
Country Pair	**Month**	**TJ**	**T**	**Implied Conversion Rate**
Czech Republic/Denmark	06/2015	16	423	0.0378
Hungary/Bosnia and Herzegovina	12/2015	235	4,811	0.0488
United Kingdom/Belgium	09/2015	41,768	806,141	0.0518
Hungary/Croatia	09/2015	54	1,042	0.0518
Czech Republic/Denmark	03/2015	131	2,352	0.0557
Spain/Austria	09/2015	32	9	3.5556
Spain/Austria	08/2015	5	1	5.0000

TABLE 2[152]				
Country Pair	**Month**	**KG**	**KG**	**Implied Conversion Rate**
Switzerland/Germany	01/2015	353	353	1

TABLE 3[153]				
Country Pair	**Month**	**M3**	**KG**	**Implied Conversion Rate**
Norway/United Kingdom	01/2015	3,068,190,946	2,274,449,949	1.3490

Assuming, *arguendo*, that all of the transactions in Table 1 were correctly converted from energy units (TJ) to weight (T) by the reporting countries, it is unclear what conversion rate to apply to the other transactions, such as those between Switzerland and Germany (Table 2), which are only reported in KG, and those between Norway and the United Kingdom (Table 3), which are only reported in M3 and KG, in order to derive quantities in energy units, such as TJ or KWh. Even when ignoring possible outliers, such as the conversion rates for transactions between Spain and Austria, the bulk of the conversion rates for TJ to T are between 0.04 and 0.08, which constitutes a 100 percent difference between the lowest and highest conversion rates. If there is, in fact, no

[151] *See* Petitioner March 13, 2017 Benchmark Submission at Exhibit 2.
[152] *Id*.
[153] *Id*.

standard rate for the conversion of natural gas measurements from volume or mass to energy units due to variation in energy content,[154] the Department would have to estimate the rates needed to convert volume and mass quantities to energy quantities.[155] Conversely, we could attempt to convert all line items to M3, but, given that the record indicates shipments may vary by energy content,[156] a calculation on the basis of weight or volume would not create an apples-to-apples comparison, as one T or M3 of natural gas has more energy than another T or M3 of natural gas and, therefore, is presumably more valuable (*i.e.*, gas is valued by energy content rather than by weight or by volume).

The petitioner raised its conversion rate and energy content concerns in its case brief, as well as in earlier factual submissions.[157] However, no party suggested a method for standardizing the GTIS data. Rather, Habas focused its comments on rebutting the petitioner's suggestion that we continue to rely on the IEA,[158] as discussed below. Consequently, without additional information clarifying the nature of the variance in conversion rates, we find that the various units of measure in the GTIS data cannot be harmoniously converted to a single unit of measure that would enable a comparison of the GTIS natural gas prices to Habas' natural gas purchases without introducing unnecessary distortion into the calculations.

Moreover, information on the record of this proceeding indicates that the GTIS data includes shipments of CNG,[159] which, as explained by the GOT, is a different product that is shipped in canisters rather than through pipelines.[160] Based on this fact, it is evident that certain shipments included in the GTIS data (*e.g.*, shipments of natural gas from the Czech Republic to Cuba) are comprised entirely of CNG.[161] Because other shipments between countries connected by pipelines (*e.g.*, shipments of natural gas from Hungary to Croatia) also likely include CNG, it is impossible to identify and remove comprehensively all shipments of CNG from the GTIS data.

Therefore, we believe a more accurate gauge of natural gas prices in the POI is provided by the IEA data, which is reported in a unit comparable to the unit in which Habas was invoiced (*i.e.*,

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[154] Although the petitioner correctly claims that one possible explanation for the various implied conversion rates is that shipments vary by energy content, it is not clear to the Department that this is, in fact, the case. The Department's understanding is that natural gas is sold and shipped through a national grid (*i.e.*, a pipeline), which requires fungible gas. *See, e.g.*, GOT Verification Report at 8 (discussing how natural gas is pumped into the national grid through nine entry stations); *see also* Habas Verification Report at 10 (discussing the use of multiple input stations interchangeably). The Department reviewed numerous natural gas purchase/sale documents and saw no indication of "grads" of natural gas. However, the BOTAS invoices on the record of this proceeding indicate that customers' consumption is "corrected" or standardized to account for varying energy levels. *See, e.g.*, GOT Verification Exhibits at Exhibit 6. If the petitioner's explanation for the varying rates is not correct, then it is possible that the line items in the GTIS data were simply reported and/or converted incorrectly.

[155] Habas submitted a conversion rate for energy units, KWh, to volume units, M3, based on its own experience. However, for the reasons already explained, if energy content is shipment-specific, Habas's experience does not provide a reliable method for making conversions for other transactions.

[156] *See* Petitioner March 13, 2017 Benchmark Submission.

[157] *See* Petitioner Case Brief at 21; *see also* Petitioner March 13, 2017 Benchmark Submission.

[158] *See* Habas Rebuttal Brief at 15-19.

[159] *See* Habas March 3, 2017 Benchmark Submission; *see also* Petitioner March 13, 2017 Benchmark Submission. We note that in certain prior proceedings, including the 2014 investigation of rebar from Turkey, parties have provided only intra-European GTIS natural gas data, so the inclusion of CNG was not apparent.

[160] *See* GOT Verification Report at 7.

[161] *See* Habas March 3, 2017 Benchmark Submission; *see also* Petitioner March 13, 2017 Benchmark Submission.

MWh/KWh) and, as such, does not require any conversion. Furthermore, we note that the IEA data was compiled with "considerable efforts…to ensure comparability,"[162] thoroughly analyzed and annotated, and published and distributed as part of a comprehensive energy price report.[163] The Department scrutinized the IEA publications on the record and there is no evidence indicating that the IEA data contain CNG. Rather, the IEA's stated intent to provide standardized (*i.e.*, "comparable") natural gas prices suggests that CNG prices would not be conflated with standard (*i.e.*, not liquefied or compressed) natural gas prices, as the two items are substantially different products.[164]

Habas asserts that neither the IEA annual data nor the IEA quarterly data provided by the petitioner are usable benchmarks.[165] The IEA quarterly data were submitted in response to the Department's request for "*monthly* natural gas benchmark information, as well as comments on the appropriateness of continuing to use the existing {IEA annual} prices."[166] Accordingly, we find that the IEA quarterly data were outside the scope of the benchmark information requested in the *Preliminary Determination* and, for purposes of this investigation, can only be considered as support for the petitioner's argument in favor of an annual benchmark (*i.e.*, as evidence that natural gas prices did not fluctuate across the POI). Therefore, Habas' specific arguments regarding the reliability and utility of the IEA quarterly data as a tier two benchmark are moot.[167]

For the reasons explained in the *Preliminary Determination*, we continue to find that the annual OECD Europe natural gas prices for 2015, as published by the IEA, are usable as a tier two benchmark.[168] The IEA annual data do not suffer from the same inconsistencies as the GTIS data. Rather, as noted above, the IEA makes "considerable efforts…to ensure comparability" when publishing natural gas prices,[169] and all OECD member countries are required to report natural gas prices using the same parameters and in the same energy content-based unit (*i.e.*, MWh).[170] As noted by Habas, however, the publication containing the IEA annual data does not clearly indicate whether or not the listed natural gas prices include certain taxes.[171] Based on additional information provided after the *Preliminary Determination*, we find that the IEA annual data do, in fact, include certain domestic taxes collected by the reporting OECD Europe countries.[172] Therefore, for this final determination, the Department has used the best available information on the record (*i.e.*, the 2015 excise tax values reported in the IEA quarterly natural

[162] *See* Petitioner January 23, 2017 Benchmark Submission at Exhibit 2.
[163] *Id.*; *see also* Petitioner March 13, 2017 Benchmark Submission at Exhibit 1.
[164] *See* GOT Verification Report at 7.
[165] *See* Habas Rebuttal Brief at 15-16.
[166] *See* Petitioner March 13, 2017 Benchmark Submission; *see also* PDM at 12.
[167] We note that Habas's concerns with the IEA quarterly data (*i.e.*, incomplete data for the first quarter of 2015 and inconsistent retail/wholesale classification of price indices) are not transferrable to the IEA annual data. *See* Habas Rebuttal Brief at 16. The IEA annual data for the POI is complete and does not require any estimation or reliance on price indices. *See* Petitioner January 23, 2017 Benchmark Submission at Exhibit 2. Furthermore, the IEA annual data is clearly labeled as retail prices for industrial consumers. *Id.*
[168] *See* PDM at 12.
[169] *See* Petitioner January 23, 2017 Benchmark Submission at Exhibit 2.
[170] *Id.*
[171] *See* Habas Rebuttal Brief at 15.
[172] *See* Petitioner March 13, 2017 Benchmark Submission.

gas price publication, as available) to remove these taxes from the annual natural gas prices prior to making adjustments for Turkish taxes and delivery fees.[173]

Comment 5: Application of Adverse Facts Available for Discovered Program

Petitioner's Comments

- Because Habas impeded this investigation and failed verification by failing to report use of a subsidy program, application of AFA is warranted under section 776(a) of the Act.[174]
- Per *Nippon Steel Corp. v. United States*,[175] Habas did not act to the best of its ability to provide the Department with requested information and has "stonewalled" the Department regarding its relationship with certain subcontractors (*e.g.*, its identification of OSIT as a natural person instead of an entity).[176]
- During verification, Habas admitted that, during the POI, it benefitted from import duty rebates/drawbacks for billets and ferroalloys under the RDP duty drawback program, but it did not report these benefits because there is "no countervailable aspect" of the duty drawback program.[177]
- The Department's previous findings that the RDP duty drawback program is not countervailable were fact-specific determinations based on full reviews of the case records. The Department has since preliminarily found the program to be countervailable.[178]
- The factual information needed to determine countervailability in this case is missing from the record because Habas failed to provide it.[179]
- In the concurrent AD investigation of rebar from Turkey, the Department preliminarily found that Habas failed to demonstrate that it met the requirements for a duty drawback adjustment under the RDP duty drawback program.[180]
- Because Habas was uncooperative regarding this duty drawback program, the Department should apply AFA.[181] There is no above *de minimis* rate calculated for the same or similar program in this or any other proceeding, so the Department should assign an AFA rate of 14.01 percent, which was calculated for export tax rebates, or 4.68 percent, which was calculated for pre-shipment export loans.[182]

[173] *Id*.; *see also* Final Calculation Memorandum at 3-4. During verification, Habas corrected its natural gas purchase information to include payments of Turkish stamp taxes. *See* Letter from Habas, "Steel Concrete Reinforcing Bar from Turkey; Habas CVD verification exhibits," March 7, 2017, at Exhibit 1. Accordingly, the Department has included stamp taxes in its benchmark calculations for this final determination.
[174] *See* Petitioner Case Brief at 3.
[175] *Id*. at 3-4 (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003)).
[176] *Id*. at 3-4, 6.
[177] *Id*. at 6-7.
[178] *Id.* at 8 (citing *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 16994 (April 7, 2017), and accompanying IDM).
[179] *Id.* at 8-9.
[180] *Id.* at 9.
[181] *Id.* at 10.
[182] *Id.* at 12.

Habas' Rebuttal

- Habas has participated in this investigation in good faith,[183] despite constricted questionnaire response deadlines, an off-site verification in Serbia, and no extension of the preliminary determination deadline.[184]
- Since the Department's investigation of rebar in 1996, Habas has "successfully imposed a discipline on its pricing to be a fair trader in the U.S. market."[185]
- There is "abundant evidence" that the subcontractors under review did not receive subsidies and that they are other mills engaged in arm's-length rolling for Habas.[186]
- The Department has been inconsistent regarding its examination of the duty drawback program in Turkey, but it has never found that a company received a countervailable benefit.[187]
- The Department has never adjusted a duty drawback claim made by a Turkish respondent in an AD proceeding "by reason of an over-rebate of import duties."[188]
- The CVD questionnaire asks about "other forms of assistance." Habas has never received *assistance* under the relevant duty drawback program.[189]
- In light of prior proceedings, it is "disingenuous" to say that the Department and the petitioner had no reason to believe that Habas may have participated in the duty drawback program prior to verification.[190] The petitioner had an obligation to raise any concerns in the Petition.[191]
- If the Department decides to apply AFA, it should rely on the 1.81 percent subsidy rate calculated for "KKDF" tax exemptions because such exemptions are implemented under the same law (*i.e.*, RDP Resolution 2005/839). This rate would also reflect the *de minimis* rates for the duty drawback program found in previous CVD proceedings.[192]
- Contrary to the petitioner's claims, Habas could not have benefitted from property tax exemptions, so a rate calculated for property tax exemptions would be inappropriate.[193]

Department's Position: The Department finds that, by failing to report use of the RDP duty drawback program in response to the Department's requests for information, Habas did not cooperate in this investigation to the best of its ability and, therefore, the application of AFA in regard to the RDP duty drawback program is warranted.

As an initial matter, we note that Habas' subcontractors participated in this investigation as separate interested parties and that, in general, their relationship with Habas is not materially relevant to the Department's analysis of the RDP duty drawback program.[194] During

[183] *See* Habas's Rebuttal Brief at 5.
[184] *Id*.
[185] *Id*.
[186] *Id.* at 6.
[187] *Id*.
[188] *Id.* at 9.
[189] *Id.* at 10.
[190] *Id.* at 11.
[191] *Id.* at 11, 13.
[192] *Id.* at 13-14.
[193] *Id.* at 14.
[194] *See, e.g.*, Cebitas March 13, 2017 IQR; OSIT March 13, 2017 IQR; Ege Celik March 17, 2017 IQR.

verification, the Department discovered that Habas holds "inward processing certificates" issued under the RDP duty drawback program.[195] We did not collect any evidence and no party has argued that OSIT or any other subcontractor participated in or received benefits under the IPC program.

Furthermore, contrary to implications made by Habas and the petitioner,[196] the margins and subsidy rates calculated for Habas in prior AD and CVD proceedings, as well as the analysis conducted on the separate record of the concurrent AD proceeding, are not directly pertinent to this CVD investigation because, pursuant to 19 CFR 351.104(a)(1), the Department maintains an independent administrative record for each proceeding and limits its analysis in each case to the information on the corresponding official record. Similarly, Habas' efforts in other aspects of this proceeding (*e.g.*, timely questionnaire responses) are not germane to the issue at hand, which centers on the RDP duty drawback program and the information regarding Habas' participation in that program that was gathered at verification.[197] Accordingly, the Department has limited its analysis to whether or not Habas had a duty to disclose assistance received under the RDP duty drawback program prior to verification (*i.e.*, in its questionnaire responses).

In its initial questionnaire, the Department made the following request:

> Did the GOT, or entities wholly or partially owned by the GOT or any provisional or local government, provide, directly or indirectly *any other forms of assistance* to your company during the POI and the proceeding AUL period? If so, please describe such assistance, in detail, including the relevant benefit amounts, dates of receipt, and purposes and terms.[198]

During verification, in explaining a contract provision referring to "export-related incentives," Habas officials stated that the company "occasionally" received export-related incentives pursuant to the RDP duty drawback program.[199] Specifically, Habas officials stated that the company benefits from import duty rebates for imports of billets and ferroalloys.[200] When asked why such benefits were not reported in the company's questionnaire response, Habas officials asserted that there is "no countervailable aspect" of the duty drawback program.[201] Habas now further claims that because, in Habas' view, the RDP duty drawback program did not provide "assistance," it did not need to be reported as "other forms of assistance."[202] The Department rejects this argument. The Department, not the interested parties, determines whether or not a response is required. Accordingly, to ensure that interested parties do not prevent the Department from conducting an accurate and complete investigation, a respondent cannot

[195] *See* Habas Verification Report at 6.
[196] *See* Habas Rebuttal Brief at 5.
[197] We note that the Department is not precluded from applying AFA when an otherwise cooperative respondent completely fails to report financial assistance received from the government. *See, e.g., Changzhou Trina Solar Energy Co. v. United States*, 195 F. Supp. 3d 1334. 1347-1350 (CIT 2016) (upholding the Department's reliance on AFA in finding that subsidies discovered at verification were countervailable).
[198] *See* Letter from the Department, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Countervailing Duty Questionnaire," October 17, 2016, at III-18 (emphasis added).
[199] *See* Habas Verification Report at 6.
[200] *Id*.
[201] *Id*.
[202] *See* Habas Rebuttal Brief at 10.

unilaterally decide to withhold information from the Department that may require further analysis. In fact, the facts available provisions of section 776(a) of the Act specifically contemplate the application of facts available when interested parties withhold requested information and allow the Department to take action in response.

The Department has previously found that import duty rebate/drawback programs may provide countervailable assistance to companies importing goods.[203] Although, as noted by Habas, the Department has not consistently examined Turkey's duty drawback program and, in particular, the RDP program at issue in this case,[204] determining the countervailability of a duty drawback program requires a fact-intensive examination under 19 CFR 351.519. If a duty drawback system is found to be inadequate under 19 CFR 351.519(a)(4), then the entire amount of the rebate received is countervailable, not merely the amount rebated in excess of duties paid. The examination and analysis of a particular duty drawback system, including the RDP duty drawback program, hinges on the specific facts on the record of a CVD proceeding, such as how the government implemented and monitored the system during the POI and whether or not product-specific and company-specific yield factors, including waste rates, are accurate.

By failing to report its use of the RDP duty drawback program during the POI in response to the Department's initial questionnaire, Habas denied the Department and other interested parties the opportunity to collect and analyze the information necessary to determine the RDP duty drawback program's countervailability in this proceeding. As such, we find that Habas did not timely inform the Department about rebates received under the RDP duty drawback program and, as a result, did not cooperate to the best of its ability. Furthermore, Habas did not inform the Department of its belief that a complete response was unnecessary because of the Department's prior findings regarding the GOT's drawback program. Habas claims in its case brief that the particular drawback license under which it received rebates is not countervailable, but did not provide any indication of this conclusion before verification, nor did it provide any factual information in response to the questionnaire regarding the particular licenses its uses.

For these reasons, we find that necessary information is not available on the record, pursuant to section 776(a)(1) of the Act. Furthermore, pursuant to section 776(a)(2) of the Act, the Department finds that Habas withheld information that was requested, failed to provide such information by the appropriate deadlines, and significantly impeded the proceeding by not providing accurate or complete responses to the Department's questions about the company's receipt of government subsidies. Consequently, we determine that, in accordance with section 776(a)(1) and (2) of the Act, the use of facts available is warranted. We also find that, because it did not report the receipt of assistance under the RDP duty drawback program prior to verification (*e.g.*, in its initial questionnaire response), Habas did not act to the best of its ability in responding to the Department's requests for information. Because Habas impeded the investigation and precluded the Department from adequately examining the program (*i.e.*, the Department was unable to issue a supplemental questionnaire response to the GOT concerning

[203] *See, e.g., Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Final Affirmative Determination*, 81 FR 66925 (September 29, 2016), and accompanying IDM at Comments 1 and 2.
[204] *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 (October 13, 2015), and accompanying IDM at 13; *2014 Rebar from Turkey*.

the extent to which this program constitutes a financial contribution, is specific under sections 771(5)(D) and 771(5A) of the Act, and provides a benefit under section 771(5)(E) of the Act and 19 CFR 351.519), an adverse inference is warranted in selecting the from facts otherwise available. Therefore, we are applying AFA pursuant to section 776(b) of the Act.

Consistent with our findings in prior proceedings, we find, as AFA, that the unreported RDP duty drawback program meets the financial contribution and specificity criteria outlined under sections 771(5)(D) and 771(5A) of the Act, respectively.[205] As AFA, we also find that this subsidy program confers a benefit under section 771(5)(E) of the Act and 19 CFR 351.519.

Habas suggests that the Department should consider the fact that, in prior proceedings, we have often calculated *de minimis* rates for this program. The Department's selection of an AFA rate, however, is guided by an established hierarchy, which does not allow for the use of *de minimis* rates. As described in the "Use of Facts Otherwise Available and Adverse Inferences" section of this memorandum, under the hierarchy, the Department will select AFA rates in the following order of preference: the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program and the rate is not zero; if there is no identical program match within the investigation, or if the rate is zero, the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country; if no such rate is available, the highest non-*de minimis* rate for a similar program, based on treatment of the benefit, in another CVD proceeding involving the same country; absent an above-*de minimis* subsidy rate calculated for a similar program, the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.[206]

No non-*de minimis* rate has been calculated for an identical program in this or any other Turkey proceeding.[207] Pursuant to the rate selection hierarchy, as described above, we determine that it is appropriate to apply, as AFA, a rate of 14.01 percent *ad valorem*, which is the subsidy rate calculated for an export tax rebate program in *Welded Pipe and Tube from Turkey*.[208] This is the highest rate for a similar program in a proceeding involving Turkey. Because this rate constitutes secondary information, we have, according to section 776(c)(1) of the Act, corroborated the rate to the extent practicable. With regard to the reliability aspect of corroboration, we are relying on a subsidy rate calculated in another CVD proceeding. Furthermore, under the Department's CVD AFA methodology, when using secondary information, we seek to assign AFA rates that are the same in terms of the type of benefit (*e.g.*, grant to grant, loan to loan, indirect tax to indirect tax). Here, because the calculated rate was

[205] *See, e.g., Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015), and accompanying IDM at 17-20, 153-154.
[206] *See, e.g., Lawn Groomers from the PRC Preliminary Determination*, 73 FR at 70975 (unchanged in *Lawn Groomers from the PRC Final Determination*); *see also Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying IDM at "Selection of the Adverse Facts Available Rate."
[207] Habas identifies a separate tax exemption program under the same law, RDP Resolution 2005/839, that has a calculated rate of 1.81 percent *ad valorem*. Despite the fact that both the KKDF tax exemption program and the RDP duty drawback program are implemented under the same Turkish law, they are distinct programs. Accordingly, within the AFA hierarchy, the Department does not consider the KKDF tax exemption program to be preferential to other tax programs examined in prior Turkish proceedings.
[208] *See Welded Pipe and Tube from Turkey*, 51 FR at 1268.

based on information provided for another tariff rebate program (*i.e.*, export tax rebates), it reflects the actual behavior of the GOT with respect to a program that is similar to the RDP duty drawback program.

Habas suggests that the selected rate was calculated for property tax exemptions that it could not have benefitted from during the POI and, therefore, is not an appropriate AFA rate within the Department's hierarchy.[209] As stated above, however, the rate was calculated for export tax rebates in a prior proceeding and, only subsequently, selected as an AFA rate for property tax exemptions in a separate proceeding.[210] The export tax rebate program is similar to the RDP duty drawback program, in regard to treatment of the benefit, in that both programs provide tax rebates to exporters.[211] As such, we find that it is an appropriate AFA rate for the RDP duty drawback program. Finally, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there are typically no independent sources for data on company-specific benefits resulting from countervailable subsidy programs.

With respect to the relevance aspect of corroborating the rate selected, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that certain information on the record is not appropriate as AFA, the Department will not use it.[212] For these reasons, pursuant to section 776(c)(1) of the Act, the Department has applied a rate derived from another proceeding, and we find that the rate is both reliable and relevant for use as an AFA rate for the RDP duty drawback program. Accordingly, we have determined that his rate has been corroborated to the extent practicable.

Comment 6: Countervailability of Electricity for More Than Adequate Remuneration

Petitioner's Comments

- Turkey's power sector is dominated by state-owned enterprises.[213]
- Turkish Electricity Corporation (TEIAS) transmits electricity, purchases/sells/rents energy and capacity in the ancillary services market, and operates the Market Financial Settlement Center (*i.e.*, the Energy Exchange Istanbul or the EXIST marketplace).[214]
- Through TEIAS's operation of the EXIST marketplace, the GOT is responsible for forming electricity prices.[215]

[209] *See* Habas Rebuttal Brief at 14.
[210] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey*, 81 FR 47349 (July 21, 2016) (applying, as AFA, the calculated rate of 14.01 percent to property tax exemptions); *see also Welded Pipe and Tube from Turkey*, 51 FR at 1268 (calculating the rate of 14.01 percent for export tax rebates).
[211] *See Welded Pipe and Tube from Turkey*, 51 FR at 1268 (describing the program as providing rebates of indirect taxes paid by exporters).
[212] *See, e.g.*, *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).
[213] *See* Petitioner Case Brief at 23.
[214] *Id.* at 25.
[215] *Id.* at 26.

- TEIAS has the power to obtain electricity from electricity generators to ensure that the system is balanced.[216]
- The GOT's regulations stipulate that the Market Operator (*i.e.*, TEIAS or the Energy Markets Operating Corporation (EPIAS)) performs settlement and invoicing for the secondary real-time balancing market, which has become a primary market and distorts Turkey's electricity market to the benefit of private electricity producers.[217]
- The GOT provides a direct financial contribution because private producers sell electricity directly to TEIAS, which, as Market Operator, managed the EXIST marketplace and settled payments.[218] TEIAS "sets the price for electricity."
- The Department should use tier two import prices to measure the benefit provided under this program because the Turkish electricity market is distorted.[219] The GOT reported imports of electricity from Iran. Therefore, the Department should use Iranian electricity prices, as provided by the petitioner, to calculate a benefit.[220]

Habas' Rebuttal

- The Turkish electricity sector is not controlled by any state actor and is "a model of a market mechanism operating on supply and demand principles."[221]
- The Department thoroughly investigated this alleged program and the facts continue to support its preliminary findings.[222] The petitioner has ignored this evidence.[223]
- The Market Operator manages only invoicing and financial activities for the EXIST marketplace and acts as a bridge between sellers and buyers.[224]
- If the Department decides to countervail this program, there is no substantial government involvement in the Turkish electricity market, so use of a "tier two" benchmark is not justified.[225]

Department's Position: The Department continues to find that this program is not countervailable. The Department conducted a thorough preliminary analysis of the petitioner's allegation that the GOT purchased electricity from private power producers, including Habas, for more than adequate remuneration (MTAR) and concluded that this program does not provide a financial contribution within the meaning of section 771(5)(D)(iv) of the Act.[226] Since the *Preliminary Determination*, additional development of the record (*e.g.*, supplemental questionnaires, comments from parties, verification) has not disclosed any new information indicating that the GOT provides a direct or indirect financial contribution to electricity generators by purchasing electricity for MTAR. Furthermore, the petitioner has not made any arguments not previously addressed in the Department's preliminary analysis, nor has the

[216] *Id.* at 26.
[217] *Id.* at 27-28.
[218] *Id.* at 30.
[219] *Id.* at 31.
[220] *Id.* at 31-32.
[221] *See* Habas Rebuttal Brief at 19.
[222] *Id.* at 20.
[223] *Id*.
[224] *Id.* at 21.
[225] *Id.* at 22.
[226] *See* PDM at 17-19.

petitioner found support for its allegations in the information gathered by the Department after the *Preliminary Determination*.

According to the petitioner, the Turkish power sector is "dominated" by government authorities, which subsidize private power companies by purchasing their excess electricity at "relatively expensive" (*i.e.*, above-market) prices.[227] As discussed in the *Preliminary Determination*, Habas is the only respondent company that produced and sold electricity during the POI.[228] The information on the record of this proceeding indicates that, during the POI, Habas did not sell any electricity directly to the GOT or any government-owned entities.[229] Furthermore, there is no indication that Habas or 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.[230] Although Habas made multiple electricity sales through the EXIST marketplace, which is managed by the TEIAS, a government agency, and EPIAS (collectively, the Market Operator),[231] the respondents reported and the Department verified that all sales through the EXIST marketplace are to unidentified third parties and that the Market Operator handles *only* the financial settlement (*e.g.*, management of payments, invoicing, etc.) of such transactions.[232] The Market Operator publishes the electricity prices, including prices for electricity used to balance the Turkish electrical grid, that are determined using an algorithm based on actual bids and offers placed by market participants.[233] Therefore, the electricity prices for all participants are established based on supply and demand, rather than any floor or ceiling prices. Furthermore, the Market Operator does not make any actual electricity purchases,[234] nor does the Market Operator make any payments, generate any revenue, or disburse any funds as a result of its management of the EXIST marketplace.[235] Pursuant to the Balancing and Settlement Regulation and Electricity Market Law No. 6446, which explains the role of the Market Operator, the Market Operator can neither purchase nor sell electricity.[236] Accordingly, absent new evidence, the Department continues to find that the Market Operator's role is to manage the electricity market and facilitate the buying and selling of electricity by market participants at market-driven prices, rather than to buy or sell electricity itself, or to set the price of electricity.

Therefore, as stated in the *Preliminary Determination*, 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

[227] *See* Petitioner Case Brief at 23; *see also 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 at 8.
[228] *See* PDM at 17.
[229] *Id.* (citing Habas December 12, 2016 IQR at 16 and Exhibit 13); *see also* Habas Verification Report at 11-13; GOT Verification Report at 2-6.
[230] *See* PDM at 18 (citing GOT December 12, 2016 IQR at 31, Habas December 12, 2016 IQR at Exhibit 13, and GOT January 17, 2017 SQR at Exhibit 16); *see also* Habas Verification Report at 13; GOT Verification Report at 4-5.
[231] *See* PDM at 18 (citing Habas December 12, 2016 IQR at 16 and GOT December 12, 2016 IQR at 23-24).
[232] *Id.* (citing GOT January 17, 2017 SQR at 11 and Habas December 12, 2016 IQR at 17); *see also* GOT Verification Report at 2-3.
[233] *See* GOT Verification Report at 2-3.
[234] *See* PDM at 19.
[235] *Id.* at 18 (citing GOT December 12, 2016 IQR at 24).
[236] *Id.* at 19 (citing GOT December 12, 2016 IQR at Exhibit 14 and Exhibit 15).

provide a financial contribution to power producers within the meaning of section 771(5)(D)(iv) of the Act. Because we find this program to be not countervailable, the Department does not address the parties' arguments regarding the calculation of a benefit.

IX. CONCLUSION

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

☒	☐
Agree	Disagree

5/15/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance