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Sunset Review (2016)
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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Expedited Fourth Sunset Review of the Countervailing Duty Order
on Circular Welded Carbon Steel Pipes and Tubes from Turkey

Summary

We have analyzed the substantive responses and comments of the interested parties submitted on the record of this expedited fourth sunset review of the countervailing duty (CVD) order on circular welded carbon steel pipes and tubes from Turkey (steel pipes and tubes). We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of the issues in this review for which we received comments from interested parties:

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the Subsidy

History of the Order

The Department of Commerce (the Department) published its final affirmative CVD determination in the investigation on steel pipes and tubes from Turkey on January 10, 1986.¹ In the final determination, the Department calculated an estimated net subsidy, for all producers/exporters of steel pipes and tubes from Turkey, of 17.80 percent *ad valorem*. In the investigation, the Department found that the following programs conferred countervailable subsidies on Turkish producers/exporters of the subject merchandise: (1) Export Tax Rebate and

¹ See *Final Affirmative Countervailing Duty Determinations: Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 51 FR 1268 (January 10, 1986).



Supplemental Tax Rebate, (2) Preferential Export Financing, (3) Deduction from Taxable Income for Export Revenues, and (4) Resource Utilization Support Fund. On March 7, 1986, the *Order* was published.²

On April 3, 2000, the Department published a notice of the final results of the first sunset review of the *Order*.³ We found that countervailable subsidies would likely continue to be conferred on Turkish producers and exporters through the following programs: (1) Pre-Shipment Export Credits, (2) Deduction from Taxable Income for Export Revenue, (3) Foreign Exchange Loan Assistance, (4) Investment Allowance under the General Incentives Program (GIP), and (5) Value-Added Tax (VAT) Support Program (Incentive Premium on Domestically Obtained Goods under the GIP). We determined that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies at the following rates:

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (percent)</u>
Bant Boru ⁴	0.00 (<i>de minimis</i>)
Borusan Group ⁵	0.68
Erbosan ⁶	2.89
Yucel Boru Group ⁷	0.84
All Others	2.90

Subsequent to the *First Sunset Review Final Results*, the Department completed an administrative review for the period of review (POR) January 1, 1998, through December 31, 1998.⁸ The Department found that BBBF, of the Borusan Group, received countervailable subsidies under the Pre-Shipment Export Credit program and VAT Support Program (Investment Allowance under the GIP) and calculated a total net subsidy rate of 0.20 percent *ad valorem*. BBBF requested an administrative review for the POR January 1, 2001, through December 31, 2001, but later withdrew its request.⁹

² See *Countervailing Duty Order: Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 51 FR 7984 (March 7, 1986) (*Order*).

³ See *Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Full Sunset Review*, 65 FR 17486 (April 3, 2000) (*First Sunset Review Final Results*).

⁴ Bant Boru Sanayi ve Ticaret A.S.

⁵ At that time, the Borusan Group was Borusan Birlesik Boru Fabrikalari A.S. (BBBF) and Borusan Ihracat Ithalat ve Dagitim A.S.

⁶ Erciyas Boru Sanayi ve Ticaret A.S.

⁷ Yucel Boru and its affiliated companies: Cayirova Boru Sanayi ve Ticaret A.S. and Yucelboru Ihracat Ithalat ve Pazarlama A.S.

⁸ See *Certain Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 65 FR 49230 (August 11, 2000) (*Turkey Pipe 1998 Final Results*) and accompanying Decision Memorandum.

⁹ See *Certain Welded Carbon Steel Pipe and Tube from Turkey: Rescission of Countervailing Duty Administrative Review*, 67 FR 42541 (June 24, 2002).

On October 28, 2005, the Department published the expedited final results of the second sunset review of the *Order*.¹⁰ We found that countervailable subsidies would likely continue to be conferred on Turkish producers and exporters through the following programs: (1) Pre-Shipment Export Credits, (2) Deduction from Taxable Income for Export Revenue, (3) Foreign Exchange Loan Assistance, (4) Investment Allowance under the GIP, and (5) VAT Support Program (Incentive Premium on Domestically Obtained Goods under the GIP). We determined that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies at the following rates:

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (percent)</u>
Bant Boru	0.00
Borusan Group	0.68
Erbosan	2.89
Yucel Boru Group	0.84
All Others	2.90

After the *Second Sunset Review*, the Department completed several administrative reviews and a new shipper review. On July 31, 2006, the Department published the final results of the administrative review covering the POR January 1, 2004, through December 31, 2004.¹¹ The Borusan Group, which, at that time, consisted of BBBF, Mannesmann Boru Endustrisi T.A.S., Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB), and Borusan Istikbal Ticaret T.A.S. (Istikbal), was the only company reviewed.¹² We calculated a net subsidy rate of 0.27 percent *ad valorem* for the Borusan Group, which received countervailable subsidies from the following programs: (1) Deduction from Taxable Income for Export Revenue, (2) Pre-Shipment Export Credits, (3) Foreign Trade Companies Short-Term Export Credits, and (4) Pre-Export Credits. The 2004 administrative review was the first segment of this proceeding in which the Department found the following two programs to be countervailable export subsidies: Foreign Trade Companies Short-Term Export Credits and Pre-Export Credits.

On March 22, 2007, the Department published the final results of the administrative review covering the POR January 1, 2005, through December 31, 2005.¹³ The Borusan Group, which the Department found to consist of BMB and Istikbal, was the only respondent individually reviewed.¹⁴ We calculated a net subsidy rate of 0.23 percent *ad valorem* for the Borusan Group, which received countervailable subsidies from the following programs: (1) Deduction from Taxable Income for Export Revenue, (2) Foreign Trade Companies Short-Term Export Credits,

¹⁰ See *Final Results of Expedited Sunset Review: Circular Welded Carbon Steel Pipes and Tubes from Turkey*, 70 FR 62097 (October 28, 2005) (*Second Sunset Review*).

¹¹ See *Final Results of Countervailing Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes from Turkey*, 71 FR 43111 (July 31, 2006) (*Turkey Pipe 2004 Final Results*) and accompanying Decision Memorandum.

¹² *Id.*

¹³ See *Final Results of Countervailing Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes from Turkey*, 72 FR 13479 (March 22, 2007) (*Turkey Pipe 2005 Final Results*) and accompanying Decision Memorandum.

¹⁴ *Id.*

and (3) Pre-Export Credits.

On May 2, 2007, the Department published the final results of the new shipper review of Toscelik Profil ve Sac Endustrisi A.S. and its affiliated export trading company, Tosyali Dis Ticaret A.S. (collectively, Toscelik), covering the POR January 1, 2005, through December 31, 2005.¹⁵ We calculated a net subsidy rate of 0.20 percent *ad valorem* for Toscelik, which received countervailable subsidies from the following programs: (1) Deduction from Taxable Income for Export Revenue and (2) Pre-Shipment Export Credits.

On March 6, 2008, the Department published the final results of the administrative review covering the POR January 1, 2006, through December 31, 2006.¹⁶ The Borusan Group (*i.e.*, BMB and Istikbal) was the only respondent individually reviewed.¹⁷ We calculated a net subsidy rate of 0.23 percent *ad valorem* for the Borusan Group, which received countervailable subsidies from the following programs: (1) Deduction from Taxable Income for Export Revenue, (2) Foreign Trade Companies Short-Term Export Credits, and (3) Pre-Export Credits.

No interested party requested a review of this order for the POR January 1, 2007, through December 31, 2007.

On July 29, 2010, the Department published the final results of the administrative review covering the POR January 1, 2008, through December 31, 2008.¹⁸ For the 2008 administrative review, a review was requested of the following companies: Borusan Group (*i.e.*, BMB and Istikbal), Toscelik, and Yucel Boru Group (Yucel). Yucel certified that it had no sales, shipments, or entries of subject merchandise to the United States during the review period and, thus, we rescinded the review of Yucel.¹⁹ With regard to the Borusan Group and Toscelik, we found that both companies received countervailable subsidies from the following programs: (1) Deduction from Taxable Income for Export Revenue, (2) Foreign Trade Companies Short-Term Export Credits, (3) Pre-Export Credits, and (4) Pre-Shipment Export Credits. We calculated a total net subsidy rate of 0.12 percent *ad valorem* for the Borusan Group and 0.09 percent *ad valorem* for Toscelik.

No interested party requested a review of this order for the POR January 1, 2009, through December 31, 2009.

¹⁵ See *Final Results of Countervailing Duty New Shipper Review: Circular Welded Carbon Steel Pipes and Tubes from Turkey*, 72 FR 24278 (May 2, 2007) (*Turkey Pipe 2005 Final Results*) and accompanying Decision Memorandum.

¹⁶ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 73 FR 12080 (March 6, 2008) (*Turkey Pipe 2006 Final Results*) and accompanying Decision Memorandum.

¹⁷ *Id.*

¹⁸ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 75 FR 44766 (July 29, 2010) (*Turkey Pipe 2008 Final Results*) and accompanying Decision Memorandum.

¹⁹ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Notice of Rescission of Countervailing Duty Administrative Review, In Part*, 74 FR 47921 (September 18, 2009).

On October 19, 2011, the Department published the expedited final results of the third sunset review of the *Order*.²⁰ We found that countervailable subsidies would likely continue to be conferred on Turkish producers and exporters through the following programs: (1) Foreign Trade Companies Short-Term Export Credits, (2) Pre-Export Credits, (3) Pre-Shipment Export Credits, (4) Deduction from Taxable Income for Export Revenue, (5) Foreign Exchange Loan Assistance, (6) Investment Allowance under the GIP, and (7) VAT Support Program (Incentive Premium on Domestically Obtained Goods under the GIP).²¹ We determined that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies at the following rates:

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (percent)</u>
Bant Boru	3.01
Borusan Group	0.79
Erbosan	3.01
Yucel Boru Group	0.95
All Others	3.01 ²²

Since the *Third Sunset Review*, the Department has completed four administrative reviews of the *Order*, and is currently conducting a fifth administrative review of the *Order*, as set forth below.

On April 6, 2012, the Department published the final results of the administrative review for the POR January 1, 2010, through December 31, 2010, covering the Borusan Group (*i.e.*, BMB and Istikbal) and Toscelik.²³ We calculated a net subsidy rate of 0.22 percent *ad valorem* for the Borusan Group, which received countervailable subsidies from the following programs: (1) Deduction from Taxable Income for Export Revenue, (2) Foreign Trade Companies Short-Term Export Credits, and (3) Pre-Export Credits.

We calculated a net subsidy rate of 0.35 percent *ad valorem* for Toscelik, which received countervailable subsidies from the following programs: (1) Deduction from Taxable Income for Export Revenue; (2) Law 5084: Withholding of Income Tax on Wages and Salaries; (3) Law 5084: Incentive for Employers' Share in Insurance Premiums; (4) Law 5084: Allocation of Free Land; (5) Law 5084: Energy Support; and (6) OIZ: Exemption from Property Tax. The Department also found that there were no suspended entries of subject merchandise produced by Erbosan for the POR, January 1, 2010, through December 31, 2010, and, thus, we rescinded the review of Erbosan.²⁴

²⁰ See *Final Results of Expedited Sunset Review: Circular Welded Carbon Steel Pipes and Tubes from Turkey*, 76 FR 64900 (October 19, 2011) (*Third Sunset Review*) and accompanying Decision Memorandum.

²¹ See *Third Sunset Review* and accompanying Decision Memorandum at 11-12.

²² See *Third Sunset Review*, 76 FR at 64900.

²³ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 6, 2012) (*Turkey Pipe 2010 Final Results*) and accompanying Decision Memorandum.

²⁴ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Notice of Final Rescission of Countervailing Duty Administrative Review, In Part*, 77 FR 6542, at 6543 (February 8, 2012).

On October 30, 2013, the Department published the final results of the administrative review covering the POR January 1, 2011, through December 31, 2011.²⁵ The Borusan Group (*i.e.*, BMB and Istikbal), Erbosan Group (comprised of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. and Erbosan Erciyas Pipe Industry and Trade Co. Kayseri Free Zone Branch, collectively, Erbosan Group), and Toscelik were the respondents reviewed.²⁶ We found that the Borusan Group received countervailable subsidies from the following programs and calculated a total net subsidy rate of 0.19 percent *ad valorem*: (1) Deduction from Taxable Income for Export Revenue, and (2) Short-Term Pre-Shipment Rediscount Program. We calculated a total net subsidy rate of 0.30 percent *ad valorem* for the Erbosan Group, which received countervailable subsidies from the following programs: (1) Deduction from Taxable Income for Export Revenue (2) Short-Term Pre-Shipment Rediscount Program and (3) Organized Industrial Zone (OIZ): Exemption from Property Tax. We calculated a total net subsidy rate of 0.83 percent *ad valorem* for Toscelik, which received countervailable subsidies from the following programs: (1) Deduction from Taxable Income for Export Revenue (2) Short-Term Pre-Shipment Rediscount Program (3) Law 5084: Withholding of Income Tax on Wages and Salaries (4) Law 5084: Incentive for Employers' Share in Insurance Premiums (5) Law 5084: Allocation of Free Land and Purchase of Land for LTA and (6) Law 5084: Energy Support and (7) Investment Encouragement Program (IEP): Customs Duty Exemptions.

On August 27, 2014, the Department published the final results of the administrative review covering the POR January 1, 2012, through December 31, 2012.²⁷ This review covered multiple exporters/producers.²⁸ We calculated a total net subsidy rate of 0.13 percent *ad valorem* for the Borusan Group (*i.e.*, BMB and Istikbal), which received countervailable subsidies from the following programs: (1) Deduction from Taxable Income for Export Revenue and (2) Short-Term Pre-Shipment Rediscount Program. With regard to Erbosan and Toscelik, the two respondents not individually examined, we applied the net subsidy rates from the previous review, *i.e.*, *de minimis* and 0.83 percent *ad valorem*, respectively.²⁹ Additionally, the Department rescinded the review of three entities—Yucel Group (comprised of Yucel Boru ye Profil Endustrisi A.S, Yucelboru Ihracat Ithalat ye Pazarlama A.S, and Cayirova Born Sanayi ye Ticaret A.S.) (collectively, the Yucel Group), Umran Celik Boru Sanayii A.S. (Umran), and Guven Celik Boru San. Ve Tic. Ltd. (Guven)—which timely certified that they had no shipments of subject merchandise during the POR.³⁰

On April 8, 2015, the Department published the final results of the administrative review covering the POR January 1, 2013, through December 31, 2013.³¹ The Borusan Group (*i.e.*,

²⁵ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review: Calendar Year 2011*, 78 FR 64916 (October 30, 2013) (*Turkey Pipe 2011 Final Results*) and accompanying Decision Memorandum.

²⁶ *Id.*

²⁷ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review: Calendar Year 2012 and Rescission of Countervailing Duty Administrative Review, In Part*, 79 FR 51140 (August 27, 2014) (*Turkey Pipe 2012 Final Results*) and accompanying Decision Memorandum.

²⁸ *Id.*

²⁹ *Id.* and accompanying Decision Memorandum at 2-3.

³⁰ *Id.*

³¹ See *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*,

BMB, Istikbal, and Borusan Lojistik Dagitim Pepolama Tasimacilik ve Tic A.S. (Borusan Lojistik), was the only respondent individually reviewed. We calculated a total net subsidy rate of 0.91 percent *ad valorem* for the Borusan Group, which received countervailable subsidies from the following programs: (1) Deduction from Taxable Income for Export Revenue; (2) Short-Term Pre-Shipment Rediscount Program; (3) Investment Encouragement Program (IEP): Customs Duty Exemptions and (4) Provision of HRS for Less Than Adequate Remuneration (LTAR). Further, we applied the net subsidy rate calculated for the Borusan Group to the following three respondents not subject to individual review: Toscelik, Umran, and Guven. Additionally, the Department, based on corroborating information from CBP, rescinded the review of the Erbosan Group and the Yucel Group, which timely certified that they had no shipments.³²

No interested party requested a review of this order for the POR January 1, 2014, through December 31, 2014.

The Department is currently conducting the administrative review covering calendar year 2015. The results of the instant sunset review were signed prior to the completion of the 2015 review and, thus, we have not addressed the 2015 review in this expedited sunset review.

The Department rescinded the administrative review of the CVD order on steel pipes and tubes from Turkey for the period January 1, 2016, through December 31, 2016.³³

Background

On June 2, 2017, the Department initiated the fourth sunset review of this order pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).³⁴ Within the deadline specified in 19 CFR 351.218(d)(1)(i), the Department received a notice of intent to participate on behalf of the following domestic interested parties: Bull Moose, Exltube, TMK IPSCO, and Zekelman Industries (hereinafter referred to as the domestic interested parties).³⁵ The domestic interested parties claimed interested party status under section 771(9)(C) of the Act, as manufacturers, producers, or wholesalers in the United States of a domestic like product.³⁶ On June 30, 2017, the domestic interested parties submitted their substantive response.³⁷ On July 3, 2017, the Government of Turkey (GOT) submitted its substantive response in which it expressed its intent to participate in this review as the government of the country in which subject merchandise is

80 FR 61361 (October 13, 2015) (*Turkey Pipe 2013 Final Results*) and accompanying Decision Memorandum.

³² *Id.*

³³ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Rescission of Countervailing Duty Administrative Review*; 2016, 82 FR 24301 (May 26, 2017).

³⁴ See *Initiation of Five-Year Sunset Reviews*, 82 FR 25599 (June 2, 2017).

³⁵ See Letter from Domestic Interested Parties, “Fourth Five-Year (“Sunset”) Review of Countervailing Duty Order on Certain Circular Welded Carbon Steel Pipes and Tubes from Turkey: Domestic Industry Notice of Intent to Participate in Sunset Review,” dated June 15, 2017.

³⁶ *Id.*

³⁷ See Letter from Domestic Interested Party, “Fourth Five Year (“Sunset”) Review of Countervailing Duty Order on Certain Circular Welded Carbon Steel Pipes and Tubes from Turkey: Domestic Industry’s Substantive Response,” (Domestic Interested Party Substantive Response), dated June 30, 2017.

produced and exported.³⁸ The GOT noted that it participated in the CVD investigation, as well as the subsequent administrative, new shipper, and sunset reviews.³⁹ On July 10, 2017, the domestic interested parties submitted rebuttal comments to the GOT Substantive Response.⁴⁰ The Department did not receive any substantive responses from Turkish producers or exporters of the subject merchandise. Based on the fact that a government's response alone, normally, is insufficient for a full sunset review in which the underlying investigation was not done on an aggregate basis, we have conducted an expedited (120-day) sunset review of this order.⁴¹ This approach is consistent with Department's practice, including prior sunset reviews of this *Order*.⁴²

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the *Order* would likely lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the programs, which gave rise to the net countervailable subsidy, has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (the ITC) the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (ASCM).

Below we address the comments of the interested parties.

1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

Interested Parties' Comments

The domestic interested parties argue that in the two most recent administrative reviews of the *Order* (covering calendar years 2013 and 2015), the Department found that countervailable subsidies had been received by exporters under the following programs: (1) deduction from taxable income for export revenue, (2) short-term pre-shipment rediscount program, (3) investment encouragement program (IEP): customs duty exemptions, (4) provision of hot-rolled

³⁸ See Letter from GOT, "Response of the Government of Turkey in the Countervailing Duty 4th Sunset Review Involving Certain Welded Carbon Steel Pipe and Tube from Turkey," (GOT Substantive Response), dated July 3, 2017.

³⁹ See GOT Substantive Response at 2 (July 3, 2017).

⁴⁰ See letter from the Domestic Interested Party, "Five-Year ("Sunset") Review of Countervailing Duty Order on Certain Circulate Welded Carbon Steel Pipes and Tubes from Turkey: Domestic Industry's Rebuttal to the Government of Turkey's Substantive Response," dated July 10, 2017 (Domestic Parties Rebuttal Submission).

⁴¹ See section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

⁴² See, e.g., *Third Sunset Review*, 76 FR 64900; *Certain Pasta from Turkey: Final Results of Expedited Five-Year ("Sunset") Review of the Countervailing Duty Order*, 72 FR 5269 (February 5, 2007), and accompanying Issues and Decision Memorandum; and *Certain Carbon Steel Products from Sweden: Final Results of Expedited Sunset Review of Countervailing Duty Order*, 65 FR 18304 (April 7, 2000).

steel (HRS) for less than adequate remuneration, (5) inward processing certificate exemption, (6) law 6486: social security premium incentive, (7) law 5084: allocation of free land and purchase of land for less than adequate remuneration, and (8) export financing: export-oriented working capital program. Further, according to the domestic interested parties, the Department also found that additional countervailable programs continued to exist (but were not used by the exporters individually examined in the 2013 and 2015 reviews).⁴³ Accordingly, the domestic interested parties argue that the Department should find that revocation of the *Order* is likely to lead to the continuation or recurrence of countervailable subsidies.

The GOT stated that it is willing to participate fully in this sunset review and listed the following segments of this proceeding in which it has participated, in addition to the underlying investigation: the administrative reviews covering the review periods October 28, 1985 to December 31, 1986, and calendar years 1995, 1996, 1997, 1998, 2004, 2005, 2006, 2008, 2010, 2011, 2012, 2013, 2014, 2015; first Sunset Review initiated on May 1, 1999; third Sunset Review initiated on July 1, 2011, and the New Shipper Review covering the period January 1, 2005, to December 31, 2005.⁴⁴

In rebuttal, the domestic interested parties contend that there are no arguments in the GOT's submission for the domestic interested parties to rebut.⁴⁵ However, the domestic interested parties argue that the GOT's substantive response does not address whether countervailable subsidies are likely to continue or recur if the order were revoked, or the countervailing duty rates likely to prevail if the *Order* were revoked.⁴⁶ As a result, according to the domestic interested parties, its positions on those issues are uncontested. Thus, the domestic interested parties argue that the Department should find that countervailable subsidies are likely to continue or recur if the order is revoked for the reasons set forth in the domestic industry's substantive response, and it should report to the ITC the subsidy rates likely to prevail as set forth in the domestic industry's substantive response.⁴⁷

Department's Position: Since the *Third Sunset Review*, the Department completed four administrative reviews (calendar years, 2010, 2011, 2012, and 2013), as discussed in "History of the Order," above. The GOT has provided no evidence to the Department that the programs found to confer countervailable subsidies to Turkish producers and exporters of the subject merchandise have been terminated. In fact, record evidence demonstrates that countervailable subsidy programs from the prior sunset reviews, as well as additional subsidy programs discovered and countervailed by the Department during the current sunset review period, continue to exist and provide benefits to Turkish producers and exporters of the subject merchandise.

The continued existence of countervailable subsidy programs and the addition of new countervailable subsidy programs are sufficient to establish that revocation would be likely to

⁴³ See Domestic Interested Party Substantive Response at 5.

⁴⁴ See GOT Substantive Response at 7-8.

⁴⁵ See Domestic Parties Rebuttal Submission at 2.

⁴⁶ *Id.*

⁴⁷ *Id.*

lead to the continuation or recurrence of countervailable subsidies.⁴⁸ In both the first and second sunset reviews, the Department found that it was likely that countervailable subsidies would continue to be conferred on Turkish producers and exporters through the following five programs: (1) Pre-Shipment Export Credits, (2) Deduction from Taxable Income for Export Revenue, (3) Foreign Exchange Loan Assistance, (4) Investment Allowance under the GIP, and (5) VAT Support Program (Incentive Premium on Domestically Obtained Goods under the GIP). In its substantive response, the GOT addresses only one of these five programs, the VAT Support Program, asserting that this program was found to be terminated. While the VAT Support Program was found to be terminated in another case, the Department also found that the program provided residual benefits and, therefore, continues to exist.⁴⁹ Further, while we acknowledged in the *First Sunset Review Final Results* and the *Second Sunset Review* that the GOT terminated certain programs,⁵⁰ the termination of those programs does not detract from the fact that other subsidy programs continue to exist.

Since the *Third Sunset Review*, we have found that three additional programs to be countervailable – the Short-Term Pre-Shipment Rediscount Program,⁵¹ Provision of Hot-Rolled Steel (HRS) for Less Than Adequate Remuneration (LTAR),⁵² and the Investment Encouragement Program (IEP): Customs Duty Exemptions⁵³ programs – provide countervailable subsidies to Turkish producers and exporters of the subject merchandise. Thus, we find that various subsidy programs, many of which are prohibited export subsidies, continue to exist and provide benefits.

On the basis of the above facts, it is reasonable to determine that countervailable subsidy programs continue to exist and are being utilized. Because the continuation of programs is highly probative of the likelihood of the continuation or recurrence of countervailable subsidies, we determine that revocation of the order would likely lead to continuation or recurrence of countervailable subsidies for Turkish producers and exporters of the subject merchandise.

⁴⁸ See *Policies Regarding the Conduct of Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*; *Policy Bulletin*, 63 FR 18871, 18874 (April 16, 1998) (*Policy Bulletin*).

⁴⁹ See *Third Sunset Review* and accompanying Decision Memorandum at 7.

⁵⁰ Those programs are: Export and Supplemental Tax Rebate, RUSF, Deduction from Taxable Income for Export Revenue, Freight Program, Export Incentive Certificate Customs Duty and Other Tax Exemptions, and RUSP. See *Preliminary Results of Full Sunset Review: Welded Carbon Steel Pipes and Tubes From Turkey*, 64 FR 66895 (November 30, 1999), unchanged in *First Sunset Review Final Results*, 65 FR 17486; see also *Second Sunset Review*, 65 FR 17486, and accompanying Decision Memorandum at 5 where the Department referenced the aforementioned subsidy programs found to be terminated prior to the completion of the *First Sunset Review*.

⁵¹ See, e.g., *Turkey Pipe 2013 Final Results* and accompanying Decision Memorandum at 6.

⁵² *Id.* at 8.

⁵³ *Id.* at 7.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The domestic interested parties note that Section 752(b)(3) of the Act requires the Department to determine the countervailing duty rate that is likely to prevail if the order is revoked. According to the domestic interested parties, the SAA provides that the Department will normally select as the rate likely to prevail the rate determined in the original investigation, “because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place.”⁵⁴ The domestic interested parties also argue that the Department’s policy is normally to provide to the ITC the subsidy rates determined in the original investigation.⁵⁵

The domestic interested parties argue that for this 2016 (fourth) sunset review, the rates calculated in the 2011 (third) sunset review should be increased to reflect subsidies received under the additional programs found to be countervailable in the 2013 and 2015 administrative reviews, which preliminarily resulted in net subsidy rates of 8.63% for Erbosan, Guven, Toscelik, Umran, and Yucel.⁵⁶

The domestic interested parties argue that the GOT has failed to provide any evidence to show that the revocation of the order would not lead to the continuation or recurrence of countervailable subsidies above *de minimis* levels.

Department’s Position: When determining the net countervailable subsidy likely to prevail, the *Policy Bulletin* states that the Department normally will select a rate from the investigation, because that is the only calculated rate which reflects the behavior of exporters and foreign governments without the discipline of an order in place.⁵⁷ However, the Department notes that the rate from the investigation may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.⁵⁸

As reflected in the “History of the Order” section, in the *First Sunset Review Final Results* (i.e., the 2000 sunset review), we adjusted the company-specific rates to account for the fact that the benefits of several countervailable subsidy programs from the investigation and administrative reviews, such as the Freight Program, had been eliminated. Where company-specific rates are established in a sunset review, the Department may report those subsidy rates to the ITC as the estimate of the effect of revocation.⁵⁹ Regarding the company-specific rates reported to the ITC in the prior sunset reviews, we find that there is no evidence that changes have been made to any of those underlying subsidy programs since the *Second Sunset Review*.

⁵⁴ See SAA at 890.

⁵⁵ See *Policy Bulletin*, 63 FR at 18875.

⁵⁶ See domestic interested parties’ substantive response dated June 30, 2017, at page 6.

⁵⁷ See *Policy Bulletin*, 63 FR at 18875.

⁵⁸ *Id.* at 18876.

⁵⁹ See *Third Sunset Review* and accompanying Decision Memorandum at 9.

However, those company-specific rates do not reflect the three additional subsidy programs found to be countervailable in the administrative reviews of the current sunset review period. As such, we are adjusting the rate for each of the companies examined in the investigation and the “all others” rate to reflect the three additional subsidy programs that were found to be countervailable. This approach is consistent with Department’s established practice for adjusting the company-specific rates in sunset reviews when warranted by findings in the intervening administrative reviews.⁶⁰ As such, based on the Department’s program findings since the investigation, we have computed the following company-specific sunset rates for those companies examined in the investigation.⁶¹

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (percent)</u>
Bant Boru ⁶²	3.63
Borusan Group ⁶³	1.41
Erbosan ⁶⁴	3.63
Yucel Boru Group ⁶⁵	1.57
All Others	3.63

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department will provide the following information to the ITC concerning the nature of the subsidy, and whether the subsidy is a prohibited subsidy as described in Article 3 or Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000. Neither the domestic interested parties nor the GOT addressed this issue in their substantive responses.

We find that the following six programs are prohibited subsidies as described in Article 3 of the ASCM.

Foreign Trade Companies Short-Term Export Credits

⁶⁰ See, e.g., *Hot-Rolled Carbon Steel Flat Products from Argentina, India, Indonesia, South Africa, and Thailand: Final Results of Expedited Five-Year (Sunset) Reviews of the Countervailing Duty Orders*, 71 FR 70960 (December 7, 2006) (*Hot-Rolled Sunset Final*), and accompanying Issues and Decision Memorandum at “Net Countervailable Subsidy Likely to Prevail.”

⁶¹ See Memorandum to the File from Jolanta Lawska, International Trade Analyst, AD/CVD Operations, Office III, regarding “Calculation of the Net Countervailable Subsidy Rates Likely to Prevail,” dated concurrently with this memorandum. Because Toscelik was not a respondent in the investigation, we do not calculate a sunset rate for the company.

⁶² Bant Boru Sanayi ve Ticaret A.S. See *First Sunset Review Final Results*, 65 FR 17486.

⁶³ The Borusan Group includes the following entities: Borusan Group, Borusan Holding, A.S., Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret, A.S., and Borusan Lojistik Dagitim Pepolama Tasimacilik ve Tic A.S. See *Turkey Pipe 2013 Final Results*, 80 FR at 61362.

⁶⁴ Erbosan includes Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan AS) and Erbosan Erciyas Pipe Industry and Trade Co. Kayseri Free Zone Branch (Erbosan FZB). See *Turkey Pipe 2013 Final Results*, 80 FR at 61361.

⁶⁵ The Yucel Boru Group includes Yucel Boru ye Profil Endustrisi A.S, Yucelboru ihracat ithalat ye Pazarlama A.S, and Cayirova Born Sanayi ye Ticaret A.S. See *Turkey Pipe 2013 Final Results*, 80 FR at 61362.

The Turkish Eximbank's Foreign Trade Company (FTC) loan program was implemented to assist large export trading companies with their export financing needs. This program benefits Foreign Trade Corporate Companies (FTCC) and Sectoral Foreign Trade Companies (SFTC). An FTCC is a company whose export performance was at least US \$75 million in the previous year and an SFTC is a grouping of small- and medium-sized companies that operate together in a similar sector. Under this credit program, Eximbank directly extends short-term export credits based on FTCC's or SFTC's past export performance. The financing is provided in Turkish Lira and foreign currency and up to 100 percent of the free on board (f.o.b.) export commitment is covered. The program's interest rates are set by Eximbank and the maturity of the loans is usually 180 days.⁶⁶

Pre-Export Credit

This program is similar to the FTCC credit program; however, companies classified as either FTCC or SFTC are not eligible for pre-export loans. Under the pre-export credit program, a company's past export performance is considered in evaluating its eligibility and establishing a credit limit. Like FTC loans, Eximbank sets the interest rates and directly extends pre-export loans to companies, which are denominated in either Turkish Lira or foreign currency and have a maturity of 180 days.⁶⁷

Pre-Shipment Export Credit

Eximbank provides short-term pre-shipment export loans, denominated in Turkish Lira, to exporters through intermediary commercial banks. Loans are generally extended for a period of up to 180 days, and cover up to 100 percent of the f.o.b. export value. The interest rate charged on these pre-shipment loans is established by the Eximbank.⁶⁸

Deduction from Taxable Income for Export Revenue

In 1995, the Ministry of Finance amended the Income Tax Law to allow companies that export goods or services to deduct 0.5 percent of their foreign currency income derived from these export activities from their corporate income taxes.⁶⁹

⁶⁶ See *Turkey Pipe 2004 Final Results* and accompanying Decision Memorandum at 6.

⁶⁷ *Id.*

⁶⁸ See *Turkey Pipe Final 1995 Review*, 62 FR at 43985.

⁶⁹ See *Certain Welded Carbon Steel Pipe and Tube and Welded Carbon Steel Line Pipe from Turkey: Final Results and Partial Rescission of Countervailing Duty Reviews*, 63 FR 18885, 18886 (April 16, 1998) (*Turkey Pipe Final 1996 Review*).

Foreign Exchange Loan Assistance

Resolution Number 94/5782 (Article 4) concerns the encouragement of exportation, allowing commercial banks to exempt certain fees, provided that the loans are used in the financing of exportation and other foreign exchange earning activities. The exempted fees include a Resource Utilization Stabilization Fund fee of six percent of the loan principle, a Banking Insurance Tax equal to five percent of the interest paid, and a stamp tax equal to 0.6 percent of the principal.⁷⁰

Short-Term Pre-Shipment Rediscount Program:

The “Short Term Pre-Shipment Rediscount Program (SPRP)” is administered by the Export Credit Bank of Turkey (Export Bank). The SPRP is designed to provide financial support to Turkish exporters, manufacturer-exporters and manufacturers supplying exporters. This program is contingent upon an export commitment. The program requires a minimum loan amount of USD 50,000 per company. Loan payments must be made within the credit period or at maturity to the Export Bank. Companies can repay these loans either in the foreign currency in which the loan was obtained or in Turkish Lira (TL) equivalent of the principal by using the exchange rate determined by the Export Bank.⁷¹

The following programs do not fall within the meaning of Article 3 of the ASCM. However, they could be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the ASCM. They also could fall within the meaning of Article 6.1, if they constitute debt forgiveness or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this review for the Department to make such a determination. We, however, are providing the ITC with the following program descriptions.

Investment Allowance under the GIP

The purpose of the GIP is to increase investment and expand the Turkish economy. Under the GIP, companies may apply for investment incentive certificates which entitle them to a number of specified benefits, such as allowances related to an investment project. The investment allowance provides companies with a corporate tax exemption of between 30 and 100 percent of their total fixed investment depending upon the geographical location, sector, and the value of the investment.⁷²

Value Added Tax (VAT) Support Program (Incentive Premium on Domestically Obtained Goods under the GIP)

Companies holding investment incentive certificates under the GIP are eligible for a rebate of 15 percent VAT paid on locally-sourced machinery and equipment. Imported machinery and

⁷⁰ See *Turkey Pipe Final 1995 Review*, 62 FR at 43986.

⁷¹ See *Turkey Pipe 2013 Final Results* and accompanying Decision Memorandum at 6.

⁷² See *Turkey Pipe Final 1995 Review*, 62 FR at 43985.

equipment are subject to the VAT and are not eligible for the rebate.⁷³

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

The Department has determined that the GOT exercises meaningful control over Ordu Yardımlaşma Kurumu (OYAK), the Turkish military pension fund, and that OYAK, in turn, exercises meaningful control over Eregli Demir ve Celik Fabrikalari T.A.S. (Erdemir) and its subsidiary, Iskenderun Iron & Steel Works Co (Isdemir). Accordingly, the Department has determined that sales of HRS by Erdemir (produced and sold by Erdemir, and produced by Isdemir and sold by Erdemir) constitute a financial contribution and confer a benefit in the form of a government provision of a good under section 771(5)(D)(iii) and 771(5)(E)(iv) of the Act. The Department further determined that such sales are specific under section 771(5A)(D)(iii)I of the Act because the number of industries using HRS is limited.⁷⁴

Investment Encouragement Program (IEP): Customs Duty Exemptions

The GOT provides certificates through the IEP that qualified recipients use to import items at reduced duty rates. The Council of Ministers' Decision NO. 2009/15199, provides certain producers with Investment Encourage Certificates to receive customs duty and value added tax (VAT) exemptions on equipment imported for use. Under Article 3.2 of Decree No. 2009/15199, the customs duty and VAT exemption program is limited to firms that make an investment in excess of 50 million Turkish Lira. Additionally, the decree limits such exemptions for iron and steel investment to certain regions. The Ministry of Economy administers this program.⁷⁵

Final Results of Review

We determine that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy at the rates listed below:

<u>Producer/Exporter</u>	<u>Net Countervailable Subsidy (percent)</u>
Bant Boru	3.63
Borusan Group	1.41
Erbosan	3.63
Yucel Boru Group	1.57
All Others	3.63

⁷³ See *Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey: Preliminary Results and Partial Rescission of Countervailing Duty Reviews*, 62 FR 64808, 64811 (December 9, 1997), unchanged in the *Turkey Pipe Final 1996 Review*, 63 FR at 18886.

⁷⁴ See *Turkey Pipe 2013 Final Results* and accompanying Decision Memorandum at 8-10 and 22-30.

⁷⁵ See *Turkey Pipe 2013 Final Results* and accompanying Decision Memorandum at 7.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the final results of this expedited sunset review in the *Federal Register* and notify the ITC of our determination.



Agree



Disagree

10/2/2017

X



Signed by GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance