



C-489-502

Administrative Review  
POR: 01/01/15 - 12/31/15  
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**DATE:** October 4, 2017

**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/Countervailing Duty Operations

**RE:** Decision Memorandum for Final Results of Countervailing Duty  
Administrative Review: Circular Welded Carbon Steel Pipes and  
Tubes from Turkey

## I. SUMMARY

The Department of Commerce (the Department) has completed its administrative review of the countervailing duty (CVD) order on circular welded carbon steel pipes and tubes (steel pipes) from Turkey from the Republic of Turkey (Turkey) for the period January 1, 2015, through December 31, 2015. The mandatory respondents are Borusan Holding, A.S. (Borusan Holding), Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, the Borusan Companies); and Tosçelik Profil ve Sac Endustrisi A.S. (Tosçelik Profil), Tosyali dis Ticaret A.S. (Tosyali) and Tosyali Holding (Tosyali) (collectively, the Tosçelik Companies).

After analyzing the issues raised by the interested parties in their briefs, we determine that the Borusan Companies received a 0.49 percent *ad valorem* net countervailable subsidy rate and the Tosçelik Companies received a 6.64 percent *ad valorem* net countervailable subsidy rate during the period of review (POR).

## II. BACKGROUND

On April 7, 2017, the Department published the *Preliminary Results* for this review.<sup>1</sup> On May 8, 2017, the Tosçelik Companies and the Borusan Companies requested that the Department

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<sup>1</sup> See *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) (*Preliminary Results*), and accompanying Decision Memorandum (Preliminary Decision Memorandum).



conduct a hearing in this review. On May 15, 2017, the Department received a case brief from the Tosçelik Companies.<sup>2</sup> The Borusan Companies did not submit case or rebuttal briefs. On May 22, 2017, the Department received a rebuttal brief from the petitioner.<sup>3</sup> On July 19, 2017, the Department rejected the Tosçelik Companies' case brief because it contained new factual information that was untimely filed, and requested the company to resubmit the case brief with the untimely new factual information redacted.<sup>4</sup> The Tosçelik Companies resubmitted its case brief on July 23, 2017.<sup>5</sup>

On July 7, 2017, the Department extended the deadline for the final results of this administrative review until October 4, 2017.<sup>6</sup>

For these final results, we made modifications to certain findings from the *Preliminary Results*. The "Analysis of Programs" section below describes the methodology followed in this review with respect to the Borusan Companies and the Tosçelik Companies, producers/exporters of subject merchandise subject to individual examination in this review.

### **Erbosan's Claim of No Shipments**

On May 9, 2016, Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) submitted a letter certifying that Erbosan did not export, sell, or enter any subject merchandise during the POR. On May 13, 2016, the Department placed on the record and released to interested parties the proprietary results of a query performed on the Customs and Border Protection (CBP) database for calendar year 2015.<sup>7</sup> On October 4, 2016, we received information from CBP that contradicted Erbosan's claim of no sales, shipments, or entries of subject merchandise to the United States during the POR.<sup>8</sup> Therefore, in the *Preliminary Results*, we assigned the non-selected rate to Erbosan.<sup>9</sup>

On April 24, 2017, Erbosan requested an opportunity to clarify the discrepancy between the data

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<sup>2</sup> See Letter from Tosçelik Profil, "Welded Carbon Steel Standard Pipe and Tube from Turkey; Tosçelik case brief," dated May 15, 2017 (Rejected).

<sup>3</sup> The petitioner is Wheatland Tube (Wheatland). See Letter from Wheatland Tube, "Circular Welded Carbon Steel Pipes and Tubes from Turkey: Submission of a Rebuttal Brief," dated May 22, 2017 (Petitioner Rebuttal Brief).

<sup>4</sup> See Letter to Tosçelik Profil, "Countervailing Duty Administrative Review of Welded Carbon Steel Pipe and Tubes from Turkey: Rejection of Case Brief," dated July 19, 2017 (Rejection Letter).

<sup>5</sup> See Letter from Tosçelik Profil, "Welded Carbon Steel Standard Pipe and Tube from Turkey; Tosçelik redacted case brief," dated July 23, 2017 (Tosçelik Case Brief).

<sup>6</sup> See Memorandum regarding Countervailing Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes from Turkey: "Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated July 7, 2017. The Department corrected the final results deadline to October 4, 2017. See Memorandum to the File, "Circular Welded Carbon Steel Pipes and Tubes from Turkey: Correction to Final Results Deadline," dated July 13, 2017.

<sup>7</sup> See Memorandum to the File, "Results of Customs and Border Protection Query Results," dated May 13, 2016 (CBP Query Results Memorandum).

<sup>8</sup> See Memorandum to the File, "Placement of Customs and Border Protection (CBP) Query Results and Entry Documentation on Record of Review," dated December 22, 2016 (Entry Documents Memorandum). The information received from CBP is business proprietary.

<sup>9</sup> See *Preliminary Results*, 82 FR 16995.

from CBP and Erbosan's "no shipment" certification claim.<sup>10</sup> On May 1, 2017, the Department provided interested parties with an opportunity to submit factual information to rebut, clarify, or correct information in the entry documents provided by the CBP. On May 8, 2017, Erbosan submitted information to clarify its "no shipment" certification.<sup>11</sup> For the reasons discussed in Comment 5 below, in these final results, the Department continues to apply the non-selected rate to Erbosan.

### III. LIST OF COMMENTS

We analyzed the comments submitted by the interested parties in their case and rebuttal briefs in the "Analysis of Comments" section of this memorandum. Below is a complete list of the issues raised in this administrative review for which we received comments.

**Comment 1:** Attribution of the Tosçelik Companies' Subsidy Benefits

**Comment 2:** Short-Term Loan Benchmark

**Comment 3:** Calculation of Benchmark Used to Measure Whether Tosçelik Purchased Hot-Rolled Steel (HRS) for Less Than Adequate Remuneration (LTAR)

**Comment 4:** Whether the HRS Benchmark from the Preliminary Results Contains HRS Purchases that Are Not Comparable to the HRS Purchased from Erdemir

**Comment 5:** Erbosan's Clarification of Its "No Shipment" Certification

**Comment 6:** Correct Clerical Error in HRS Benchmark

### IV. SCOPE OF THE ORDER

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

### V. SUBSIDIES VALUATION INFORMATION

#### A. Allocation Period

The Department made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation period or the allocation methodology used in the *Preliminary Results*. For a description of the allocation period and the methodology used for these final results, see the *Preliminary Results*.<sup>12</sup>

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<sup>10</sup> See Letter from Erbosan, "Request of Opportunity to Clarify No Shipment Certification of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. ("Erbosan") in the 2015 Administrative Review of the Countervailing Duty Order Involving Certain Welded Carbon Steel Standard Pipe from Turkey," dated April 24, 2017.

<sup>11</sup> See Letter from Erbosan, "Clarification on No Shipment Certification of ERBOSAN in the 2015 Administrative Review of the Countervailing Duty Order Involving Certain Welded Carbon Steel Standard Pipe from Turkey," dated May 8, 2017 (Erbosan Clarification Submission).

<sup>12</sup> See Preliminary Decision Memorandum at 3 and 4.

## B. Attribution of Subsidies

In their case brief, the Tosçelik Companies raised an issue regarding the Department's attribution of subsidies and calculation of the sales denominator in the *Preliminary Results*. After considering those arguments, the Department made a change to the attribution of subsidies and the sales denominators used in these final results. For a detailed discussion, *see* Comment 1.

### *Tosçelik Companies*

Tosçelik Profil and its affiliated foreign trading company, TDT, are owned by Tosyali, a Turkish holding company, and therefore are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).<sup>13</sup> Tosçelik Profil, which produces subject merchandise for both the domestic and export markets, was established in 1992;<sup>14</sup> TDT, founded in 1996, is a trading company with respect to Tosçelik Profil's export sales and sells subject merchandise to unaffiliated customers in the United States.<sup>15</sup> Tosçelik Profil also sold to its domestic and export markets through TDT.<sup>16</sup>

As explained in Comment 1 below, for these final results, as in past reviews, we are attributing subsidies received by Tosçelik Profil to the total sales or total export sales, as appropriate, of Tosçelik Profil and TDT, net of intra-company sales, consistent with 19 CFR 351.525(b)(6)(i) and (b)(2) and the Department's past practice.<sup>17</sup> For subsidies received by TDT, we applied the trading company rule at 19 CFR 351.525(c) by cumulating the benefits with those of Tosçelik Profil, using the two companies' combined total sales, net of intra-company sales, as a denominator. In this review, we find that Tosyali did not receive any subsidies.

### *Borusan Companies*

Borusan Holding is the parent holding company of the Borusan Companies. Borusan is affiliated with other companies in the Borusan Group through the direct and indirect ownership by Borusan Holding of the other companies. Borusan and its affiliated foreign trading company, Istikbal, are both part of the Borusan Companies and are cross-owned under 19 CFR 351.525(b)(6)(vi) by virtue of common ownership.<sup>18</sup> Borusan produces subject merchandise for

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<sup>13</sup> *See* Tosçelik Companies' July 15, 2016 QR at 2 – 6 and Exhibit 4.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *See* Tosçelik Companies' Supplemental Questionnaire dated January 17, 2017, (Tosçelik SQR) at 5.

<sup>17</sup> *See, e.g., Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*Welded Line Pipe from Turkey*) and accompanying Issues and Decision Memorandum (*Welded Lined Pipe from Turkey IDM*) at Comment 6.

<sup>18</sup> *See* Borusan Companies' August 1, 2016, QR at Exhibit 2 Exhibits 2 and 3. Our approach in this regard is consistent with our practice. *See, e.g., Circular Welded Carbon Steel Pipe and Tube Products From Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Intent To Rescind Countervailing Duty Administrative Review, in Part (Turkey Pipe 2012 Prelim Results)* and accompanying Preliminary Issues and Decision Memorandum at 5, unchanged in *Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Rescission of Countervailing Duty Administrative Review, in Part*, 79 FR 51140 (August 27, 2014) (*Turkey Pipe 2012 Final Results*), and accompanying Issues and Decision Memorandum at 2.

both the home and export markets. During the POR, Borusan accounted for all subject merchandise exported to the United States by the Borusan Companies. Additionally, Borusan and Istikbal exported identical merchandise to non-U.S. locations during the POR.<sup>19</sup> In keeping with our findings in these final results (see Comment 1 below), we are attributing subsidies received by Borusan to the total sales or total export sales, as appropriate, of Borusan and Istikbal, net of intra-company sales, consistent with 19 CFR 351.525(b)(6)(i) and past practice.<sup>20</sup> In this review, we find that Borusan Holding did not receive any subsidies.

### C. Loan Benchmark and Discount Interest Rates

The Tosçelik Companies raised an issue in their case brief regarding the short-term benchmark interest rates used to calculate the benefit for the “Short-Term Pre-Shipment Rediscount Program.” After considering those arguments, the Department made a change in the calculation of the short-term interest rate benchmark used in these final results. For a detailed discussion, see Comment 2.

## VI. NON-SELECTED RATE

The Tariff Act of 1930, as amended (the Act) and the Department’s regulations do not address the establishment of a rate to be applied to respondents not selected for individual examination when the Department limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. Generally, when determining the rate for such respondents in an administrative review, the Department looks to section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs the Department to use the average of the individually calculated rates as the all-others rate, excluding rates which are zero, *de minimis*, or based entirely on facts available. Accordingly, the Department’s usual practice in administrative reviews for determining the rate for respondents not selected for individual examination has been to average the weighted-average net subsidy rates for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.<sup>21</sup> However, section 705(c)(5)(A)(ii) of the Act provides that, where all the individually calculated rates are zero, *de minimis*, or based entirely on facts available, we may use “any reasonable method” for assigning the all-others rate, including averaging the estimated weighted-average net subsidy rates determined for the exporters and producers individually investigated.

Therefore, in keeping with our practice of basing the non-selected rate on the above-*de minimis* net subsidy rates calculated for the mandatory respondents, we used the net subsidy rates calculated for the Tosçelik Companies as the non-selected rate applicable to Guven Steel Pipe (also known as Guven Celik Boru San. Ve Tic. Ltd.) (Guven), Umran Celik Born Sanayii A.S. (also known as Umran Steel Pipe Inc.) (Umran) and Yucel Boru ye Profil Endustrisi A.S., Yucelboru Ihracat Ithalat ve Pazarlama A.S., and Cayirova Boru Sanayi ve Ticaret A.S.)

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<sup>19</sup> See the Borusan Companies’ August 1, 2016 QR at 2.

<sup>20</sup> See, *Welded Line Pipe from Turkey* and *Welded Lined Pipe from Turkey* IDM at Comment 6.

<sup>21</sup> See, e.g., *Certain Pasta from Italy: Final Results of the 13<sup>th</sup> (2008) Countervailing Duty Administrative Review*, 75 FR 37386, 37387 (June 29, 2010) (*2008 Review of Pasta from Italy*).

(collectively, the Yucel Companies).<sup>22</sup> As discussed above, Erbosan claimed no shipments during the POR; however, on the basis of contradictory information on the record, we are determining that Erbosan had shipments of subject merchandise during the POR. *See* Comment 5. Therefore, for purposes of these final results, we have also assigned the non-selected rate to Erbosan.<sup>23</sup>

## VII. ANALYSIS OF PROGRAMS

### A. Programs Determined to be Countervailable

#### 1. Deduction from Taxable Income for Export Revenue

No issues were raised by interested parties regarding this program. For the description, analysis, and calculation methodology for this program, see the *Preliminary Results*.<sup>24</sup> However, because the Department revised the Borusan Companies' sales denominator, as discussed in Comment 1, the *ad valorem* rate changed. There was no change in the program rate for the Tosçelik Companies. The final program rates for the mandatory respondents are as follows:

The Borusan Companies: 0.10 percent *ad valorem*<sup>25</sup>

The Tosçelik Companies: 0.08 percent *ad valorem*<sup>26</sup>

#### 2. Short-Term Pre-Shipment Rediscount Program

The Tosçelik Companies submitted comments in their case brief regarding the short-term interest rate benchmark, which are addressed at Comment 2. As a result, the Department revised the short-term interest rate benchmark for the Tosçelik Companies for these final results.<sup>27</sup> Because the Department revised the Borusan Companies' sales denominator, as discussed in Comment 1, the *ad valorem* rate for the Borusan Companies changed. The final program rates for the mandatory respondents are as follows:

The Borusan Companies: 0.05 percent *ad valorem*<sup>28</sup>

The Tosçelik Companies: 1.96 percent *ad valorem*<sup>29</sup>

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

The Tosçelik Companies and the petitioner submitted comments in their case and rebuttal briefs regarding the calculation for the benchmark of HRS, which are addressed at Comment 3, 4, and

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<sup>22</sup> *See, e.g., 2008 Review of Pasta from Italy*, 75 FR at 37387. *See also* Memorandum to File, "Calculation of Non-Selected Rate," dated concurrently with this memorandum (Non-Selected Rate Memo).

<sup>23</sup> *See* Non-Selected Rate Memo.

<sup>24</sup> *See* Preliminary Decision Memorandum at 8 – 9.

<sup>25</sup> *See* Borusan Companies Final Calculation Memorandum.

<sup>26</sup> *See* Tosçelik Companies Final Calculation Memorandum.

<sup>27</sup> *Id.*

<sup>28</sup> *See* Borusan Companies Final Calculation Memorandum.

<sup>29</sup> *See* Tosçelik Companies Final Calculation Memorandum.

6. The Department corrected a clerical error in the Tosçelik Companies' benchmark data and revised the sales denominator for the Tosçelik and Borusan Companies. The final program rates for the mandatory respondents are as follows:

The Borusan Companies: 0.04 percent *ad valorem*<sup>30</sup>

The Tosçelik Companies: 4.43 percent *ad valorem*<sup>31</sup>

#### 4. Inward Processing Certificate Exemption

No issues were raised by interested parties regarding this program. For the description, analysis, and calculation methodology for this program, see the *Preliminary Results*.<sup>32</sup> However, because the Department revised the Borusan Companies' sales denominator, as discussed in Comment 1, the final program rate for the Borusan Companies is 0.30 percent *ad valorem*. As explained in the *Preliminary Results*,<sup>33</sup> the Tosçelik Companies did not receive countervailable benefits from this program during the POR, and we continue to find no benefit to the Tosçelik Companies for the final results.

#### 5. Law 6486: Social Security Premium Incentive

No issues were raised by interested parties regarding this program. For the description, analysis, and calculation methodology for this program, see the *Preliminary Results*.<sup>34</sup> However, because the Department revised the sales denominator for the Tosçelik Companies, the final program rate for the Tosçelik Companies is 0.06 percent *ad valorem*.<sup>35</sup> The Borusan Companies did not report using this program during the POR, and we continue to find that the Borusan Companies did not use this program for the final results.

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

No issues were raised by interested parties regarding this program. For the description, analysis, and calculation methodology for this program, see the *Preliminary Results*.<sup>36</sup> However, because the Department revised the sales denominator for the Tosçelik Companies, the final program rate for the Tosçelik Companies is 0.09 percent *ad valorem*.<sup>37</sup> The Borusan Companies did not report using this program during the POR, and we continue to find that the Borusan Companies did not use this program for the final results.

#### 7. Export Financing: Export-Oriented Working Capital Program

No issues were raised by interested parties regarding this program. For the description, analysis,

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<sup>30</sup> See Borusan Companies Final Calculation Memorandum.

<sup>31</sup> See Tosçelik Companies Final Calculation Memorandum.

<sup>32</sup> See Preliminary Decision Memorandum at 13 – 16.

<sup>33</sup> *Id.* at 15.

<sup>34</sup> See Preliminary Decision Memorandum at 13 – 16.

<sup>35</sup> See Tosçelik Companies Final Calculation Memorandum.

<sup>36</sup> See Preliminary Decision Memorandum at 17 – 18.

<sup>37</sup> See Tosçelik Companies Final Calculation Memorandum.

and calculation methodology for this program, see the *Preliminary Results*.<sup>38</sup> However, because the Department revised the sales denominator for the Tosçelik Companies, the final program rate for the Tosçelik Companies is 0.02 percent *ad valorem*.<sup>39</sup> The Borusan Companies did not report using this program during the POR, and we continue to find that the Borusan Companies did not use this program for the final results.

## **B. Programs Found To Not Confer Countervailable Benefits**

The Department made no changes to, and interested parties raised no issues in their case briefs regarding, the preliminary finding that the “Organized Industrial Zone: Exemption from Property Tax” program did not confer a countervailable benefit to the mandatory respondents. For the description and analysis used for this program, see the *Preliminary Results*.<sup>40</sup>

## **C. Programs Determined To Not Be Used**

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

- Post-Shipment Export Loans
- Pre-Export Credits
- Pre-Shipment Export Credits
- Export Credit Bank of Turkey Buyer Credits
- Foreign Trade Companies Short Term Export Credits
- Law 5084: Withholding of Income Tax on Wages and Salaries
- Law 5084: Incentives for Employers’ Share in Insurance Premiums
- Law 5084: Energy Support
- Subsidized Turkish Lira Credit Facilities
- Subsidized Credit for Proportion of Fixed Expenditures
- Subsidized Credit in Foreign Currency
- Regional Subsidies
- VAT Support System (Incentive Premium on Domestically Obtained Goods)
- Investment Encouragement Program (IEP): Reductions in Corporate Taxes
- IEP: Customs Duty Exemptions
- IEP: Interest Support
- IEP: Social Security Premium Support
- IEP: Land Allocation
- National Restructuring Program
- Regional Incentive Scheme (RIS): Reduced Corporate Tax Rates
- RIS: Social Security Premium Contribution for Employees
- RIS: Allocation of State Land
- RIS: Interest Support

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<sup>38</sup> See Preliminary Decision Memorandum at 18.

<sup>39</sup> See Tosçelik Companies Final Calculation Memorandum.

<sup>40</sup> See Preliminary Decision Memorandum at 19.



- Organized Industrial Zones (OIZ): Waste Water Charges
- OIZ: Exemptions from Customs Duties, VAT, and Payments for Public Housing Fund, for Investments for which an Income Certificate is Received
- OIZ: Credits for Research and Development Investments, Environmental Investments, Certain Technology Investments, Certain “Regional Development” Investments, and Investments Moved from Developed regions to “Regions of Special Purpose”
- OIZ: Exemption from Building and Construction Charges
- OIZ: Exemption from Amalgamation and Allotment Transaction Charges
- Corporate Income Tax Exemption under the Free Zones Law
- Stamp Duties and Fees Exemptions under the Free Zones Law
- Customs Duty Exemptions Under the Free Zones Law
- Value Added Tax Exemptions Under the Free Zones Law
- Provision of Building and Land Use Rights for Less than Adequate Remuneration under the Free Zones Law

## VIII. ANALYSIS OF COMMENTS

### Comment 1: Attribution of the Tosçelik Companies’ Subsidy Benefits

#### *The Tosçelik Companies’ Case Brief Arguments*

- The Tosçelik Companies provided the Department a table containing sales information, including Tosçelik Profil’s sales to unaffiliated companies (*e.g.*, Tosçelik Profil’s sales net of sales to TDT) and Tosçelik Profil’s sales (inclusive of sales to TDT).
- In the *Preliminary Results*, the Department attributed the Tosçelik Companies’ benefits found under the OIZ Exemption from Property Tax, Provision of HRS for LTAR, and Law 5084 “Free Land” programs, to Tosçelik Profil’s sales to unaffiliated companies rather than attributing the benefits to the combined sales of Tosçelik Profil and TDT.
- The attribution methodology employed by the Department in the *Preliminary Results* therefore improperly understated the Tosçelik Companies’ sales and, thus, overstated the net subsidy rates calculated for each of the three subsidy programs.
- Under 19 CFR 351.525(b)(3), the Department will attribute a domestic subsidy to “all products sold by a firm, including products that are exported.” The Department’s preliminary method of attributing benefits under the three subsidy programs mentioned above, in which it limited the sales denominator to Tosçelik Profil’s sales, net of Tosçelik Profil’s sales via TDT, failed to allocate the benefits over “all products sold by the firm” as required by its regulations.
- In a prior review of this proceeding, the Department attributed domestic subsidies to sales of Tosçelik Profil, including sales by TDT.<sup>41</sup>
- As a matter of logic, it does not make any sense to allocate domestic subsidies over sales that exclude the 15 percent of total sales that were exported via TDT. If Tosçelik received a

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<sup>41</sup> See Tosçelik SQR at Exhibit 3 at 47, which contains the Memorandum to the File, “Remand Calculations for Tosçelik Profit ve Sac Endustrisi AS. (Tosçelik Profil) and its affiliated export trading company, Tasyali Dis Ticaret A.S. (Tasyali) (collectively referred to as Tosçelik),” generated as part of litigation stemming from the administrative review covering calendar year 2011.

subsidy for purchase of HRS at LTAR, that subsidy benefitted *all* of Tosçelik's sales, and not just its sales to home-market customers and unaffiliated exporters; the export sales through TDT clearly benefited as well. There is no logical basis for thinking that Tosçelik's sales via TDT did not benefit from the same domestic subsidies that benefitted all of its other sales.

- If, despite its precedent, the Department wrongly interprets "sold by a firm," as provided under 19 CFR 351.525(b)(3) to be taken literally to mean "sold only by Tosçelik," then the appropriate denominator is the FOB value of Tosçelik's arm's-length sales, plus the value of Tosçelik's sales to TDT.<sup>42</sup>
- In keeping with the arguments and precedent cited above, the Department should similarly attribute benefits under the Export-Oriented Working Capital Loan program to the combined exports of Tosçelik and TDT, as opposed to the approach from the *Preliminary Results* in which the Department limited the sales denominator to only export sales by Tosçelik.
- Further, record evidence indicates that the export commitment on which benefits under the Export-Oriented Working Capital Loan program are contingent may be met based on export sales made by TDT. Specifically, the Implementation Principals of the Export Oriented Working Capital program state:

It is possible to use exports by made group companies as defined under the Communiqué numbered 2008/6 on Exemptions from Taxes, Duties and Fees for Exports, Sales and Deliveries that are Considered Exports and Foreign Exchange Earning Services and Activities to settle export commitments of the borrower, provided that group relationship exists on the date of extension of the credit and the date of settlement of export commitment under that credit.<sup>43</sup>

- Therefore, under the terms of the loan itself, sales by TDT may be used to satisfy the export commitment of the loan and, thus, the use of a combined export sales denominator (comprised of sales by Tosçelik and TDT) is necessary when attributing benefits under the Export-Oriented Working Capital Program.

#### *The Petitioner's Rebuttal Arguments*

- The Tosçelik Companies' proposed denominator would lead to absurd results and is contrary to the Department's regulations. Under 19 CFR 351.525(b)(6), the Department "normally will attribute a subsidy to the products produced by the corporation that received the subsidy."
- There is no exception for attributing a firm's subsidies to the sales of its trading company, and for good reason. Such an outcome would lead to the absurd result that subsidies to a firm would also be attributed to sales by a trading company of products purchased from other companies that had nothing to do with the subsidies and never benefited from them.

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<sup>42</sup> This alternate denominator proposed by Tosçelik is lower than its preferred denominator because it includes the value of export sales that Tosçelik made to TDT during the POR, as opposed to the value of those sales, as sold by TDT.

<sup>43</sup> See Government of Turkey's Initial Questionnaire Response (GOT IQR) at Exhibit 41 at 6.

- The Tosçelik Companies' proposed denominator is also contrary to the Department's practice. The Department excludes intra-company sales from its CVD denominator calculations.<sup>44</sup>
- Aside from the double counting issues that arise from the use of inter-company sales, such sales that are not at arm's length do not represent a market price but merely a transfer price established by the company for arbitrary reasons.
- While the Department does seek to allocate benefits across the sales of goods produced that benefited from that subsidy, where a company transfers goods to its own affiliate, there is no reason to think that its transfer price reflects the benefit of the subsidy. It may instead reflect tax, duty, or other arbitrary considerations.
- If the Department included non-arm's length sales (such as those where an affiliated trading company was involved), nothing would prevent a company from selling goods to its trading company at an inflated price to reduce countervailing duties.
- The Tosçelik Companies are also wrong to argue that the Department's should attribute benefits under the Export Oriented Working Capital program to the combined sales of Tosçelik and TDT.
- Under 19 CFR 351.525(b)(2), the Department attributes an export subsidy to a firm only to products exported by that firm, not to products exported by other firms.
- Further, the Tosçelik Companies' proposed attribution method with regard to the Export Oriented Working Capital program is inappropriate for the same concerns as noted above with regard to the inclusion of non-arm's length sales in the sales denominator.

**Department's Position:** Under 19 CFR 351.525(b)(2) and (3), the Department will attribute export subsidies to "products exported by a firm" and domestic subsidies to "all products sold by a firm, including products that are exported." The *Preamble* states that the Department attributes "a subsidy to sales of the product or products to which it is tied. In this regard, one can view an 'untied' subsidy as a subsidy that is tied to sales of all products produced by a firm."<sup>45</sup>

In this review, Tosçelik Profil made domestic sales as well as export sales. Additionally, Tosçelik Profil made both domestic sales and export sales through TDT, its cross-owned affiliated trading company.<sup>46</sup> In the *Preliminary Results*, the total sales denominator the Department used for the OIZ Exemption from Property Tax, Provision of HRS for LTAR, and Law 5084 "Free Land" programs, and the total export sales denominator used for the Export Oriented Working Capital program, did not account for the fact that Tosçelik Profil made a portion of its export sales through TDT and, thus, we agree with the Tosçelik Companies that the Department failed to properly attribute the respective benefits for each program to "all products produced" or all products "exported" by the Tosçelik Companies, as relevant, based on 19 CFR 351.525(b)(6)(i) in combination with 19 CFR 351.525(b)(2) and (3). Further, we note that in prior Turkish CVD proceedings involving the Tosçelik Companies, the Department has

<sup>44</sup> See, e.g., *Certain Polyethylene Terephthalate Resin from the People's Republic of China*, 81 FR 13337 (March 14, 2016) (*Pet Resin from the PRC*) and accompanying Issues and Decision Memorandum at Comment 12.

<sup>45</sup> See *Countervailing Duties*, 63 FR 65348, 65400 (November 25, 1998) (*Preamble*).

<sup>46</sup> See Tosçelik SQR at 5 – 6.

incorporated sales by TDT when attributing subsidies received by the Tosçelik Profil. For example, in *Welded Line Pipe from Turkey*, the Department explained that “it calculated the subsidy rates for most of Tosçelik Profil’s reported programs using either the combined total sales or the export sales of Tosçelik Profil and Tasyali Dis Ticaret as the denominator.”<sup>47</sup> The Department further explained in *Welded Line Pipe from Turkey* that, with regard to the Tosçelik Companies, it only deviated from this sales denominator approach for programs requiring a broader denominator.<sup>48</sup> Moreover, in *Welded Line Pipe from Turkey*, the Department explained that its approach with regard to the Tosçelik Companies’ sales denominator was in keeping with its practice.<sup>49</sup> In addition, with respect to the petitioner’s argument that subsidies to a firm would also be attributed to sales by a trading company of products purchased from other companies that had nothing to do with the subsidies and never benefited from them, in the instant case there is no evidence that TDT exported other producers’ merchandise; instead, “{TDT} is the foreign trade company of the {Tosçelik} group. It is responsible for export sales of group products, including steel pipes produced by Tosçelik Profil.”<sup>50</sup>

Thus, we agree with the Tosçelik Companies that for subsidies received by Tosçelik Profil, the Department should revise the sales denominator from the *Preliminary Results* to include the combined, total sales of Tosçelik Profil and TDT (net of intra-company sales) when calculating the net subsidy rates under the OIZ Exemption from Property Tax, Provision of HRS for LTAR, and Law 5084 “Free Land” programs, and the combined, total export sales of Tosçelik Profil and TDT (net of intra-company sales) when calculating the net subsidy rate under the Export-Oriented Working Capital program.<sup>51</sup>

In analyzing this issue with regard to the Tosçelik Companies, we have recognized that we similarly failed to account for Borusan’s sales through its trading company in its sales denominator. Accordingly, in light of the determination discussed above for the Tosçelik Companies, we have similarly revised the total sales and total export sales denominators used to calculate the net subsidy rates of the Borusan Companies. Specifically, for subsidies received by Borusan, we have revised the sales denominators from the *Preliminary Results* to include the combined total sales or export sales, as relevant, of Borusan and Istikbal, net of intra-company sales.

## **Comment 2: Short-Term Loan Benchmark**

### *The Tosçelik Companies’ Case Brief Arguments*

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<sup>47</sup> See *Welded Line Pipe from Turkey* IDM at Comment 6.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*, “We note that we are calculating Tosçelik’s denominators in this investigation in the same manner as in the OCTG from Turkey Final,” citing to *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination in the Countervailing Duty Determination and Final Affirmation Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey*), and accompanying Issues and Decision Memorandum at Comment 10.

<sup>50</sup> See the Tosçelik Companies initial questionnaire response (IQR) dated July 15, 2016 at 4.

<sup>51</sup> Specifically, we will use the total sales and total export sales figures from the Tosçelik SQR at Exhibit 5 at page 8, summarized in the table on page 5 of the Tosçelik Companies’ case brief.

- The short-term loan benchmark contains a column indicating the number of reporting days. This column should be revised to indicate the number of days inside the POR during which the loan was active, in order to accurately calculate the weighting factor in the short-term interest rate.
- The Department erroneously excluded a loan from the short-term interest rate benchmark calculation that did not originate during the POR.<sup>52</sup>
- The Department erroneously excluded loans that originated in 2015, and interest payments were made on these loans in 2016 from the short-term interest rate benchmark calculation.
- The Department should have discounted the short-term interest benchmark because the subsidized Export-Import loans are *rediscount* loans, for which the interest is paid upon the origination of the loan rather than at some later date such as maturity.

The petitioner did not provide any comments on this issue.

**Department's Position:** Under 19 CFR 351.505(a)(2)(iv), when calculating a company-specific short-term benchmark interest rate, the Department will normally “use an annual average of the interest rates on comparable commercial loans during the year in which the loan was taken out, weighted by the principal amount of each loan.” The Department has previously rejected arguments advocating that it should have calculated a weighted-average benchmark interest rate based only on its commercial loans that actually had interest payments due during the POR. In *CFS from Korea*, for countervailable short-term loans that were issued and outstanding during the POR, the Department based its short-term benchmark on loans that were issued in the POR, regardless of whether interest on the benchmark loans were paid during the POR.<sup>53</sup> For these final results, the Department used short-term loans originating in the POR to calculate the short-term interest rate benchmark because these are commercial loans that the recipient could actually obtain on the market pursuant to 19 CFR 351.505(a)(3). Thus, the Department agrees that four of the six loans discussed by the Tosçelik Companies were erroneously omitted from the Department's short-term interest rate benchmark calculation in our *Preliminary Results*, and is correcting this error in these final results.

In its initial questionnaire response, the Tosçelik Companies indicated that “the lender retains the interest at the time the funds are credited to {the Tosçelik Companies}”;<sup>54</sup> thus, the Department also agrees with the Tosçelik Companies' argument to correct the calculations to discount the short-term interest rate consistent with *Welded Line Pipe from Turkey*<sup>55</sup> and utilize the days in

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<sup>52</sup> The details of the omitted loan contain business proprietary information, but are discussed on page 10 of Tosçelik's case brief. See Tosçelik Case Brief at 10.

<sup>53</sup> See *Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007) (*CFS from Korea*) and accompanying Issues and Decision Memorandum at Comment 19. See also *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 77 FR 13093 (March 5, 2012) (*CORE Korea*) and accompanying Issues and Decision Memorandum at Comment 1.

<sup>54</sup> See the Tosçelik Companies IQR at 24.

<sup>55</sup> See *Welded Line Pipe from Turkey* IDM at 22 – 23. See also, *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) (*Rebar from Turkey*) and accompanying Preliminary Decision Memorandum at 9, unchanged in the final results, *Steel Concrete Reinforcing Bar From the Republic of Turkey*:

the POR to account for the number of days the interest rate was in effect during the POR, instead of the total duration of the loan, to calculate the weighted-average short-term interest rate.<sup>56</sup> In light of this determination and similar record evidence, we are making the same revision to the Borusan Companies' calculation for this program.<sup>57</sup>

**Comment 3:** Calculation of Benchmark Used to Measure Whether Tosçelik Purchased HRS for LTAR

*The Tosçelik Companies' Case Brief Arguments*

- During the POR, Tosçelik Profil purchased HRS from Erdemir, which the Department found to be a government authority whose sale of HRS constitutes a financial contribution under section 771(D)(iv) of the Act.
- Under 19 CFR 351.511(a)(2)(i), the Department will “normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question,” which could include “prices stemming from actual transactions between private parties.” The regulation further specifies that any such comparison must consider “factors affecting comparability” (e.g., product similarity, quantities sold, whether they are imported or auctions, etc.).
- In the *Preliminary Results*, the Department compared the prices Tosçelik Profil paid to Erdemir for HRS to the HRS prices Tosçelik Profil paid to private suppliers, both domestic and imports.<sup>58</sup>
- However, the Department's HRS benchmark from the *Preliminary Results* was not comparable in terms of “quantity sold” because the per-transaction volumes of the imported and domestic HRS purchased by the Tosçelik Companies from private suppliers are much larger than the per-transaction volumes the Tosçelik Companies purchased from Erdemir.
- In contrast, the per-transaction volume of Tosçelik Profil's purchases of HRS from Erdemir are very similar to the per-transaction volume of Tosçelik Profil's sales of HRS to domestic customers. These latter transactions are “actual transactions between private parties,” and because they are very similar in per-transaction quantity to the purchases of Erdemir, they are comparable in terms of “quantities sold.”
- The record indicates that Tosçelik Profil's purchases of imported HRS involved a large number of steel coils whereas its purchases of HRS from Erdemir consisted of a relatively small number of coils. Meanwhile, during the POR, Tosçelik Profil's sales of HRS to domestic customers also consisted of a small number of coils per transaction.
- The Tosçelik Companies provided the data necessary to construct this proposed benchmark.
- In terms of quantities sold, the most comparable benchmark under 19 CFR 351.511(a)(2)(i) is the HRS prices that Tosçelik Profil charged to domestic customs.

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*Final Results and Partial Rescission of Countervailing Duty Administrative Review*; 2014, 82 FR 26907 (June 12, 2017).

<sup>56</sup> See *Rebar from Turkey* at 9.

<sup>57</sup> See the Borusan Companies' Final Results Calculation Memorandum.

<sup>58</sup> See Preliminary Decision Memorandum at 10, 13.

### *The Petitioner's Rebuttal Arguments*

- The benchmark method proposed by the Tosçelik Companies would result in a circular comparison. To the extent that the Government of Turkey (GOT) subsidizes Tosçelik, those subsidies would tend to benefit Tosçelik Profil's sales, including its sales of HRS.
- The Department has not considered Tosçelik Profil's receipt of HRS to be a subsidy tied to the production of subject merchandise. Thus, those provision-of-goods subsidies would tend to have the effect of allowing Tosçelik Profil to reduce the cost and the price at which it sells products, including HRS.
- Accordingly, using Tosçelik Profil's sale prices as a benchmark would amount to trying to determine whether the price Tosçelik Profil paid for HRS from Erdemir was subsidized by comparing that price to a price that was also subsidized. Such a circular comparison would naturally tend to understate the amount of the subsidy, or mask it completely.
- The Tosçelik Companies' argument that its sales of HRS to private parties is more comparable, in terms of quantities sold, also lacks support.
- The Department has previously rejected an argument that it should account for grade differentials in considering steel purchases for OCTG.<sup>59</sup>
- A respondent can always point to differences between products bought or sold from different customers, or at least to differences in terms of sale, such as quantity bought or date of purchase. That is why the Department uses broad averages as benchmarks, so as to account for variations.
- The Tosçelik Companies do nothing to substantiate, or quantify, their claim that larger batches of imports would naturally cost more per ton than smaller batches of domestic products, such that including the imports in the benchmark would overstate the subsidy amount or that these purported price differences would negate comparability.
- Rather, the converse would appear as likely: larger quantities of HRS imports would naturally allow for a discount, while smaller coil purchases would involve a higher per-unit price.

**Department's Position:** We disagree with the Toscelik Companies. As an initial matter, 19 CFR 351.511(a)(2)(i) imposes no preference for domestic transactions over imports, and the Department normally uses all appropriate tier-one benchmark data available on the record.<sup>60</sup> Accordingly, we continue to find it appropriate to include imports of HRS reported by the Tosçelik Companies in our benchmark calculations.

We do not reach the issue of whether the statute, the Department's regulations, and case precedent allows the Department the option to use respondent's sales of an input to measure the adequacy of remuneration for that input, because as explained below, we determine that our record lacks information regarding the Tosçelik Companies' sales such that they are not useable tier-one benchmarks in this review. Moreover, as explained below, we disagree with the

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<sup>59</sup> See *OCTG from Turkey* IDM at 42-43.

<sup>60</sup> See *Welded Line Pipe* IDM at 16. See also, *Certain Oil Country Tubular Goods From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) and accompanying Issues and Decision Memorandum at 28.

Tosçelik Companies' argument that the benchmark prices used in the *Preliminary Results* are not comparable to their purchases of HRS from Erdemir. Accordingly, we continue to use the same benchmark as in the *Preliminary Results* for the reasons described below.

Under 19 CFR 351.511(a)(2)(iv), “in measuring adequate remuneration under paragraph (a)(2)(i) or (ii)” of section 351.511—*i.e.*, whenever the Department applies a tier-one or tier-two benchmark—the Department “will adjust the comparison price to reflect the price that a firm actually paid or would pay if it imported the product.” Furthermore, that “adjustment will include delivery charges and import duties.” These adjustments are required because the Tosçelik Companies' purchases of HRS from Erdemir are inclusive of related costs, including shipping, and, thus the Department must compare those prices to a benchmark price that similarly includes (or is adjusted to include) all delivered costs. The Tosçelik Companies' purchases of HRS from other producers and imports are on a delivered basis. To do otherwise risks artificially creating or negating a benefit received through the provision of a good for LTAR.

We have reviewed the Tosçelik Companies' HRS sales data, and find that the Tosçelik Companies' HRS sales data do not specify whether the sales reported are on a delivered or free on board (f.o.b.) basis. Were Tosçelik Companies' sales made on a f.o.b. basis, the Department would be required to adjust those prices under its regulations to achieve an apples-to-apples comparison with its purchased HRS prices. As such, even if we were to find that the Tosçelik Companies' proposed benchmark was permissible under 19 CFR 351.511(a)(2)(i), we would lack the information required to ensure a comparable benchmark, as required under 19 CFR 351.511(a)(iv).<sup>61</sup> Thus, we find that the benchmark proposed by the Tosçelik Companies—*i.e.*, the prices at which the Tosçelik Companies sold HRS to other private parties—is not a viable benchmark on this record.

Further, to the extent that there are differences between the per-ton volumes of HRS that the Tosçelik Companies purchased from Erdemir and the HRS that the Tosçelik Companies imported or purchased from private parties, we find such differences do not warrant the rejection of those private and import prices for use as a tier-one benchmark. The Department is not required to rely upon an LTAR benchmark that is identical to the product sold by the government authority, and the application of such a standard would likely invalidate many, if not all, potential LTAR benchmarks from consideration.<sup>62</sup> Also, as the petitioner noted, large volume transactions would typically result in lower per-unit prices, and lower volume transactions would typically yield higher per-unit transactions.<sup>63</sup> Therefore, the Department's inclusion of all available transactions purchased from private parties produces a conservative benchmark. Here, we determine that the HRS purchased by the Tosçelik Companies from Erdemir and the HRS imported or purchased by the Tosçelik Companies from private parties are of the identical

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<sup>61</sup> See Tosçelik SQR at Exhibit 6 and CVD\_2015(01.01.2015\_31.12.2015)\_TOSCELIK\_SATISLAR-1 rel 02.xlsx

<sup>62</sup> See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923 (May 6, 2009) (*HRS from India 2007 AR*) and accompanying Issues and Decision Memorandum at 52: “There is no requirement that the benchmark used in the Department's LTAR analysis be identical to the good sold by the foreign government. See section 771(5)(E)(iv) and 19 CFR 351.511. In fact, the imposition of such a requirement would likely disqualify most, if not all, potential benchmarks under consideration in a LTAR analysis.”

<sup>63</sup> See Petitioner Rebuttal Brief at 7.



product (HRS), and are otherwise comparable because for each transaction, the terms of delivery are on the same basis, and thus those private and import purchase prices can serve as a tier-one benchmark under 19 CFR 351.511(a)(2)(i).

Accordingly, for these final results, we continue to use the Tosçelik Companies' imported and domestic private purchases of HRS during the POR as a tier-one benchmark.

**Comment 4:** Whether the HRS Benchmark from the *Preliminary Results* Contains HRS Purchases that Are Not Comparable to the HRS Purchased from Erdemir

*The Tosçelik Companies Case Brief Arguments*

- In examining the private HRS prices the Department used to calculate the tier-one benchmark in the *Preliminary Results*, the following pattern emerges: there are abundant purchases from benchmark suppliers in the 900-1100 TL/Mton range, and abundant purchases from benchmark suppliers in the 1500-1800 range, but, with one minor exception, there are no purchases from benchmark suppliers in the 1100-1500 TL/Mton range. There is a manifest discontinuity in price between these two price ranges. This is a very significant gap: if one considers the complete min-max price range to be about 900 TL/Mton (from 900 to 1800), the 400-TL/Mton gap occupies nearly half of the price range. This is the very opposite of a continuum; it is a price “dis-continuum.”
- This gap is largely driven by the fact that the Tosçelik Companies purchased high-grade HRS coils from private parties for use in producing pipes for a large gas pipeline contract, while the HRS they purchased from Erdemir was commodity-grade coils usable for pipes other than the pipeline project.
- Thus, to account for this disparity, the Department should segregate Tosçelik's purchases according to the pricing brackets, and compare the Erdemir prices only to HRS within the lower-unit-value bracket.
- The Tosçelik Companies acknowledge that in *OCTG from Turkey* the Department stated that it would not consider steel grades in its benchmark analysis because the record did not reflect the grades purchased or, equally important, the grades in the dataset used for the benchmark.<sup>64</sup> However, the facts of the instant review are distinct from the facts of *OCTG from Turkey* because here, the Tosçelik Companies are not focused on the grade of steel but, rather, on the pricing discontinuity within the benchmark database.
- In other words, the existence of two clearly separate pricing brackets within the benchmark database, combined with the fact that Tosçelik, as supplier to a major pipeline project, was buying large volumes of premium line-pipe-grade HRS during this POR, compel the conclusion that the upper-price-bracket coils within the benchmark dataset should be disregarded, in the interests of reaching an accurate result.

*The Petitioner's Rebuttal Argument*

- The Tosçelik Companies' arguments are not coherent. The Tosçelik Companies argue that the high-grade pipe produced for its major pipeline contract was necessarily produced from

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<sup>64</sup> See *OCTG from Turkey* IDM at 42-43.

high-priced HRS while the pipe produced for other customers utilized lower priced HRS from Erdemir.

- In making this claim, the Tosçelik Companies argue that the “steel” required for the pipeline project “is line pipe in grades X42 and above.” However, this statement makes no sense. X42 pipe is a grade of line pipe not steel. Further, there is nothing to prevent the steel used to make X42 from being used to make other types of pipe.
- None of the documentation provided by the Tosçelik Companies demonstrate that the major pipeline project only used X42 or higher-grade pipe, much less what type of HRS is required for the pipeline project, or that HRS suitable to make pipe for the project cannot also be used to make other types of pipe of different grades.
- In essence, the Tosçelik Companies argue that the fact that merchandise purchased from the government costs less than merchandise the Tosçelik Companies bought from private sources in itself proves the government merchandise was lower quality. If that were true, it would be impossible ever to prove that government authorities sold goods for LTAR.

**Department’s Position:** We disagree with the Tosçelik Companies. Despite their claim to the contrary, we find that the Tosçelik Companies’ arguments concerning the purported price discrepancies in the HRS that comprised the Department’s preliminary benchmark are, in essence, a request for the Department to account for grade differences when calculating the provision of HRS for LTAR benchmark. Indeed, the Tosçelik Companies’ argument would have us make a *per se* finding that price and grade are inexorably intertwined;<sup>65</sup> we do not agree that this is always or necessarily the case. Nonetheless, we agree with the petitioner that the Tosçelik Companies have failed to demonstrate that the HRS purchased by Tosçelik and used to manufacture the pipe in connection with a natural gas pipeline project are, in fact, of a grade that is higher than other types of HRS they purchased from private suppliers, or that the HRS purchased for the pipeline project may not be used to manufacture other types of pipe. In particular, we find that the Tosçelik Companies rely upon the grade of the manufactured pipe produced for the pipeline project to argue that the HRS from which the pipe was produced was also of a higher grade and, therefore, not comparable to the HRS they purchased from Erdemir. As the petitioner rightly notes, however, pipe and steel are not the same, and the grade of a particular pipe product does not necessarily identify the grade of HRS used to produce that grade of pipe. Thus, we find that the Tosçelik Companies’ arguments on this point fail to establish that the HRS they purchased from private parties was not comparable to the HRS they purchased from Erdemir.

Additionally, the Department is comparing a weight-averaged, monthly LTAR benchmark to Tosçelik’s monthly HRS purchases from Erdemir. We find the use of a weighted-average price ensures that outlier prices do not skew the benchmark. The Court has affirmed the Department’s use of weighted-average LTAR benchmarks in this regard, opining that

unlike simple averages, weighted averages assign each price a weight proportional to the quantity shipped at that price. What results are benchmarks that favor prices from large-

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<sup>65</sup> See Tosçelik Case Brief at 24-25.

quantity shipments. The method ensures that high prices from countries with low volume exports do not skew the benchmarks upward.<sup>66</sup>

Lastly, as noted above, the Department is not required to rely upon an LTAR benchmark that is identical to the product sold by the government authority.<sup>67</sup> Thus, in these final results, we have continued to calculate the LTAR benchmark using all of the HRS that Tosçelik purchased from private parties (including imports) during the POR.

**Comment 5:** Erbosan's Clarification of its No Shipment Certification

*Erbosan's Case Brief Argument*

- Erbosan did not make any sales to the United States during the POR, but did ship small quantities to the United States only for testing.
- A small sample shipment delivered for testing and not for sale cannot be the basis for a countervailing duty administrative review.
- The Department has already examined the sample shipment at issue in the parallel antidumping duty administrative review of pipes and tubes from Turkey, and determined that the administrative review of this shipment must be rescinded.

The petitioner did not provide any comments on this issue.

**Department's Position:** On May 8, 2017, Erbosan submitted Turkish exportation documents and invoices dated August 8, 2014, and January 30, 2015, and argued that these documents pertained to samples that entered the United States and, presumably, were showing up as shipments in the CBP data.<sup>68</sup> The *Initiation Notice* instructed producers or exporters named in the notice of initiation that had no exports, sales, or entries to notify the Department.<sup>69</sup> The Department has reviewed the U.S. entry documentation from CBP in the CBP Query Results Memorandum and Entry Documents Memorandum, and compared that documentation to the documentation provided by Erbosan. However, we conclude that record evidence contradicts Erbosan's assertions of no shipments, and demonstrates that subject merchandise produced by Erbosan entered the United States during the POR.<sup>70</sup> Therefore, the Department will continue to assign the non-selected rate to Erbosan for these final results.<sup>71</sup>

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<sup>66</sup> See *RZBC Group Shareholding Co., Ltd., RZBC Co., Ltd., RZBC Imp. & Exp. Co., Ltd., and RZBC (Juxian) Co., Ltd. v. United States*, Court No. 14-00041, Slip Op. 15-83 (August 5, 2015) (*RZBC Companies v. United States*) at 33.

<sup>67</sup> See *HRS from India 2007 AR IDM* at 52.

<sup>68</sup> See Erbosan Clarification Submission at Exhibit 1 and 2.

<sup>69</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 26203 (May 2, 2016).

<sup>70</sup> See CBP Query Results Memorandum at the Attachment and Entry Documents Memorandum at Attachment I.

<sup>71</sup> Because this discussion involves business proprietary information, see the Memorandum to the File, "Discussion Pertaining to BPI," dated concurrently with this memorandum.

**Comment 6:** Correct Clerical Error in HRS Benchmark

*The Tosçelik Companies' Case Brief Arguments*

- The Department should correct a clerical error in Tosçelik Profil's HRS import purchase file.

The petitioner did not provide any comments on this issue.

**Department's Position:** The Department agrees that the Tosçelik Companies provided sufficient documentary evidence to support this clerical error, and we will correct the clerical error in the HRS import purchase file.<sup>72</sup>

**IX. RECOMMENDATION**

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



Agree



Disagree

10/4/2017

X



Signed by: GARY TAVERMAN