



C-489-823

Administrative Review  
POR: 03/20/15 - 12/31/15  
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**DATE:** January 2, 2018

**MEMORANDUM TO:** Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance

**FROM:** Edward Yang  
Senior Director, Office VII  
Antidumping and Countervailing Duty Operations

**RE:** Decision Memorandum for the Preliminary Results of  
Countervailing Duty Administrative Review: Welded Line Pipe  
from Turkey; 2015

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty order (CVD) order on welded line pipe (WLP) from the Republic of Turkey (Turkey). The period of review (POR) is March 20, 2015, through December 31, 2015. We preliminarily determine that Borusan Holding A.S., Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB), and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, Borusan) received countervailable subsidies during the POR.

## II. BACKGROUND

On December 1, 2015, Commerce published in the *Federal Register* the CVD order on WLP from Turkey.<sup>1</sup> On December 1, 2016, Commerce published a notice of opportunity to request an administrative review of the CVD order on WLP from Turkey for the period of March 20, 2015, to December 31, 2015.<sup>2</sup>

Pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b)(1), (2) and (3), on December 30, 2016, Commerce received requests to conduct an administrative review of the CVD order on WLP from Turkey from three domestic interested parties, Maverick Tube Corporation (Maverick) and Stupp Corporation, a division of Stupp Bros., Inc. (Stupp Corp.) and American Cast Iron Pic Company (ACIPCO), (collectively, the

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<sup>1</sup> See *Welded Line Pipe from the Republic of Turkey: Countervailing Duty Order*, 80 FR 75054 (December 1, 2015).

<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 86697 (December 1, 2016).



petitioners), for numerous Turkish companies. Commerce also received a request to conduct an administrative review from Borusan. On February 13, 2017, Commerce published in the *Federal Register* a notice of initiation of administrative review.<sup>3</sup>

In the *Initiation Notice*, Commerce indicated that, in the event we would limit the respondents selected for individual examination in accordance with section 777A(c)(2) of the Act, we would select mandatory respondents for individual examination based on Customs and Border Protection (CBP) entry data.<sup>4</sup> We received no comments from interested parties concerning the CBP Query Results Memorandum. On March 2, 2017, the petitioners withdrew their request for administrative review on all companies with the exception of Borusan. On May 9, 2017, Commerce published a recession of the countervailing duty administrative review for all companies except for Borusan.<sup>5</sup>

On March 9, 2017, Commerce issued the initial questionnaire to Borusan and the Government of Turkey (GOT). On March 24, 2017, we received the affiliated companies' questionnaire response from Borusan.<sup>6</sup> On May 1, 2017, and May 5, 2017, we received initial questionnaire responses (QR) from Borusan and the GOT, respectively.<sup>7</sup> On May 30, 2017, we issued a supplemental questionnaire to Borusan, to which Borusan responded on June 30, 2017, and July 5, 2017.<sup>8</sup> On June 9, 2017, we issued a supplemental questionnaire to the GOT, to which the GOT responded on July 6, 2017.<sup>9</sup>

In July 2017, we conducted verification of Borusan in Istanbul, and the GOT in Ankara. On August 22, 2017, Commerce extended the deadline for the preliminary results of this administrative review until January 2, 2018.<sup>10</sup> On October 23, 2017, Commerce released verification reports for the verifications of Borusan and the GOT.<sup>11</sup>

### III. SCOPE OF THE ORDER

The merchandise covered by the order is circular welded carbon and alloy steel (other than stainless steel) pipe of a kind used for oil or gas pipelines (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end

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<sup>3</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 10457 (February 13, 2017) (*Initiation Notice*).

<sup>4</sup> *Id.* at 10457.

<sup>5</sup> See *Welded Line Pipe from Turkey: Recession, in Part, of Countervailing Duty Administration Review; 2015*, 82 FR 21511 (May 9, 2017).

<sup>6</sup> See Borusan's March 23, 2017 Affiliated Questionnaire Response (Borusan's March 23, 2017 AQR).

<sup>7</sup> See Borusan's May 1, 2017 Initial Questionnaire Response (Borusan's May 1, 2017 IQR); see also GOT's May 5, 2017, Initial Questionnaire Response (GOT's May 5, 2017, IQR).

<sup>8</sup> See Borusan's June 30, 2017 Supplemental Questionnaire Response (Borusan's June 30, 2017 SQR); see also Borusan's July 5, 2017 Supplemental Questionnaire Response (Borusan's July 5, 2017 SQR).

<sup>9</sup> See GOT's July 6, 2017, Supplemental Questionnaire Response (GOT's July 6, 2017 SQR).

<sup>10</sup> See Memorandum, "Welded Line Pipe from the Republic of Turkey: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated August 22, 2017.

<sup>11</sup> See Memorandum, "Verification of the Questionnaire Responses of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret," dated October 23, 2017 (Borusan Verification Report); and Memorandum, "Verification of the Questionnaire Responses of the Government of Turkey," dated October 23, 2017 (GOT Verification Report).

finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable foreign specifications, to proprietary grades, or can be non-graded material. All pipe meeting the physical description set forth above, including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of this investigation.

The welded line pipe that is subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.5000, 7305.12.1030, 7305.12.5000, 7305.19.1030, 7305.19.5000, 7306.19.1010, 7306.19.1050, 7306.19.5110, and 7306.19.5150. The subject merchandise may also enter in HTSUS 7305.11.1060 and 7305.12.1060. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

#### **IV. SUBSIDIES VALUATION INFORMATION**

##### **A. Allocation Period**

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

Further, for non-recurring subsidies, we applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total sales or total export sales, as appropriate) for the same year. If the amount of subsidies is less than 0.5 percent of the relevant sales, then the benefits are allocated to the year of receipt rather than allocated over the AUL period.

##### **B. Attribution of Subsidies**

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other

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

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

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

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

### Borusan

Borusan Holding is the parent holding company of BMB. BMB is affiliated with other companies in the Borusan Group through direct and indirect ownership of Borusan Holding. BMB and its affiliated foreign trading company, Istikbal, are both part of Borusan and are cross-owned under 19 CFR 351.525(b)(vi) by common ownership.<sup>14</sup> BMB produces subject merchandise for both the home and export markets. During the POR, BMB accounted for all subject merchandise exported to the United States by Borusan. Additionally, BMB and Istikbal exported subject merchandise to non-U.S. locations during the POR.<sup>15</sup> Consistent with 19 CFR 351.525(c), in these preliminary results, as in past reviews, we continue to attribute any subsidies received by Istikbal to the sales of BMB and Istikbal, net of intra-company sales. In accordance

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

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

<sup>14</sup> See Borusan's March 23, 2017 AQR at Exhibits 1, 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.

<sup>15</sup> See Borusan's March 23, 2017 AQR at 5.

with 19 CFR 351.525(b)(6)(i), we attributed subsidies received by BMB to the total sales of BMB.<sup>16</sup> Based upon the sales reconciliation performed at verification, we have revised BMB's reported export sales denominator and total sales denominator by deducting certain additional rebates and export sales expenses from BMB's reported sales figures.<sup>17</sup> The denominators we used to calculate the countervailable subsidy rate for the various subsidy programs described below are explained in further detail in the Preliminary Calculation Memorandum.<sup>18</sup>

### C. Benchmark Interest Rates

#### Short-Term Loan Interest Rate Benchmark

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market," indicating that a benchmark must be a market-based rate. To determine whether government-provided loans under review conferred a benefit, Commerce uses, where possible, company-specific interest rates for comparable commercial loans obtained by the company.<sup>19</sup> When loans are denominated in a foreign currency, 19 CFR 351.505(a)(2)(i) directs us to use a benchmark denominated in the same foreign currency as the loan. BMB reported receiving loans from the subsidy programs under examination that were denominated in U.S. Dollars. Therefore, in Borusan's May 1, 2017, IQR at Exhibit F-1, BMB submitted information regarding company-specific short-term interest rates on their comparable commercial loans. Thus, we calculated benchmark interest rates for short-term U.S. dollar denominated loans based on the data reported by BMB consistent with 19 CFR 351.505(a)(2)(ii). To calculate the short-term benchmark rates for BMB, we derived an annual average of the interest rates on comparable commercial loans that BMB obtained during the years in which the government loans were issued, weighted by the principal amount of each loan.

#### Long-Term Loan Interest Rate Benchmark

As discussed above, to determine whether government-provided loans under review conferred a benefit, Commerce uses, where possible, company-specific interest rates for comparable commercial loans.<sup>20</sup> Where such benchmark rates are unavailable, consistent with 19 CFR

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<sup>16</sup> Record evidence submitted by Borusan indicates that Borusan Holdings, Borusan Birlesik Boru Fabrikalari San ve Tic., Borusan Gemlik Boru Tesisleri A.S., Borusan Ihicat ve Dagitim A.S, Borusan Ihracat Ithalat ve Dagitim A.S., Istikbal, Borusan, and Tubeco Pipe and Steel Corporation did not receive any subsidies during the POR. *See* Borusan's March 23, 2017 AQR; *see also* Borusan's May 1, 2017 IQR.

<sup>17</sup> *See* Borusan Verification Report at 2 and 6-7. Specifically, we deducted post-sale discounts in the home market from the total sales denominator; and billing adjustments and overseas unloading expenses from the export sales denominator.

<sup>18</sup> *See* Memorandum to the File, "Preliminary Results Calculations for Borusan," dated concurrently with this memorandum (Preliminary Calculation Memorandum).

<sup>19</sup> *See* 19 CFR 351.505(a)(2)(ii).

<sup>20</sup> *See* 19 CFR 351.505(a)(2)(ii).

351.505(a)(3)(ii), we used lending rate data from the International Monetary Fund's (IMF's) *International Financial Statistics* as our national average benchmark.<sup>21</sup>

### Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government approved non-recurring subsidies.

## **VI. ANALYSIS OF PROGRAMS PRELIMINARILY DETERMINED TO BE COUNTERVAILABLE**

### **A. Deduction from Taxable Income for Export Revenue**

Pursuant to Article 40, Clause 1 of Income Tax Law No. 193, dated January 6, 1961, which was amended by Law No. 4108, dated June 2, 1995, all taxpayers engaged in export activities may claim a lump sum deduction from gross income resulting from exports, construction, maintenance, assembly, and transportation activities abroad in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings from such activities.<sup>22</sup> This deduction is to cover the expenditures without documentation incurred from exports, construction, maintenance, assembly, and transportation activities abroad.<sup>23</sup> The deduction for export earnings may be taken as a lump sum on a company's annual income tax return.<sup>24</sup> Under this program, marketing, selling, and distribution expenses are deductible expenditures for tax purposes.

Consistent with prior determinations, we preliminarily find that this tax deduction is a countervailable subsidy.<sup>25</sup> The income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, in the form of revenue forgone by the GOT. The deduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. It is also specific under section 771(5A)(B) of the Act because its receipt is contingent upon export earnings. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of Commerce's prior finding of countervailability for this program.

During the POR, BMB reported claiming the deduction for export earnings against its 2014 income in the tax returns filed during the POR.<sup>26</sup> In addition, BMB used a tax loss forward from

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<sup>21</sup> See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013) (CWP Turkey 2011 AR), and accompanying Issues and Decision Memorandum at "Benchmarks and Interest Rates."

<sup>22</sup> See GOT's May 5, 2017 IQR at II-29; see also Borusan's May 1, 2017 IQR at Exhibit D-1 and D-3.

<sup>23</sup> *Id.*

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

<sup>25</sup> See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review: Calendar Year 2013 and Rescission of Countervailing Duty Administrative Review, In Part* 80 FR 61361 (October 13, 2015) (*Turkey Pipe 2013 Final Results*), and accompanying Issues and Decision Memorandum at 5-6.

<sup>26</sup> See Borusan's May 1, 2017 IQR at Exhibits 8 and D-1.

2013, which it applied to further reduce its taxable income for 2014. BMB reports that this tax loss carry forward was inclusive of a 2013 deduction for export revenue that it could not claim against its 2013 income due to its tax loss position for that year.<sup>27</sup> Thus, BMB's 2014 tax return filed in the POR reflects 2 years of deductions for export earnings: (1) a 2013 deduction carried over to 2014 and (2) a deduction for 2014 itself, both of which were applied against BMB's 2014 taxable income.<sup>28</sup> Borusan reported that Istikbal was in a tax loss position for 2014 and, thus, did not receive benefits from this program during the POR.<sup>29</sup>

We preliminarily find that BMB received this benefit during the POR, consistent with 19 CFR 351.509(b). Commerce normally treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1).<sup>30</sup> The amount of the benefit is equal to the amount of tax that would have been paid absent the program. For BMB, we divided its tax savings by the total export sales of BMB. On this basis, we preliminarily determine the net countervailable subsidy for this program to be 0.12 percent *ad valorem* for Borusan.

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

The Short-Term Pre-Shipment Rediscount Program (SPRP) is administered by Turk EximBank (EximBank).<sup>31</sup> The SPRP is designed to provide financial support to Turkish exporters, manufacturer-exporters and manufacturers supplying exporters.<sup>32</sup> This program is contingent upon an export commitment. The SPRP requires a minimum loan amount of USD 50,000 per company.<sup>33</sup> Loan payments must be made within the credit period or at maturity to the EximBank. Companies can repay these loans either in the foreign currency in which the loan was obtained or in Turkish Lira (TL) equivalent of the principal by using the exchange rate determined by EximBank.<sup>34</sup> During the POR, BMB paid interest on U.S. dollar pre-shipment rediscount loans under this program.<sup>35</sup>

We preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between the payments that BMB made on the loans during the POR and the payments the companies would have made on comparable commercial loans. The program is specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance. These findings are consistent with Commerce's prior findings regarding this program.<sup>36</sup>

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<sup>27</sup> *Id.*, at Exhibit D-1 at 1, 4-5, and Exhibit D-2.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*, at Exhibits 12 and D-1.

<sup>30</sup> See e.g., *Turkey Pipe 2012 Final Results* and accompanying Issues and Decision Memorandum at 6.

<sup>31</sup> See GOT's May 5, 2017 IQR, at II-65 – II-74.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*, at II-68.

<sup>34</sup> *Id.*, at II-70.

<sup>35</sup> See Borusan's May 1, 2017 IQR at Exhibit F-1.

<sup>36</sup> See *Turkey Pipe 2013 Final Results* and accompanying Issues and Decision Memorandum at 6-7.

Pursuant to 19 CFR 351.505(a)(1), we calculated the benefit as the difference between the payments that BMB made on their short-term pre-shipment rediscount loans during the POR and the payments the companies would have made on comparable commercial loans. After computing the benefit amount, we subtracted from the benefit amount the fees which BMB paid to commercial banks for the required letters of guarantee, as provided under section 771(6)(A) of the Act. Our approach in this regard is consistent with Commerce's practice.<sup>37</sup> We divided the benefit amount by BMB's total export sales. On this basis, we preliminarily determine that the net countervailable subsidy for this program is 0.08 percent *ad valorem* for Borusan.

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

Commerce examined the provision of HRS to BMB during the POR. In *Turkey Pipe 2013 Final Results* and *Welded Line Pipe from Turkey*, Commerce found this program provides countervailable subsidies.<sup>38</sup> BMB reported purchasing HRS from Erdemir and Isdemir during the POR.<sup>39</sup>

The information submitted by the GOT, with regard to this program, remains consistent with our previous findings. The GOT provided information on Erdemir and Isdemir, suppliers of HRS, as well as Ordu Yardımlaşma Kurumu (OYAK), the Turkish military pension fund that is the controlling shareholder of Erdemir and Isdemir. During the POR, OYAK owned 49.29 percent of Erdemir's shares through a wholly-owned holding company, Ataer Holding A.S.<sup>40</sup> During the POR, Erdemir owned 95.07 percent of Isdemir.<sup>41</sup>

In its initial questionnaire response, the GOT responded to the Input Producer Appendix for Erdemir, Isdemir, and OYAK.<sup>42</sup> In addition, we asked the GOT to submit certain documents relevant to the Turkish flat steel industry.<sup>43</sup> The GOT claimed it could not submit these documents under its confidentiality agreements with the European Union.<sup>44</sup> However, the GOT did provide limited public summaries of the contents of these documents.<sup>45</sup>

The law establishing OYAK (the Military Personnel Assistance and Pension Fund Law), which was enacted on January 3, 1961, states that the GOT created OYAK "as an institution related to

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, and accompanying Issues and Decision Memorandum at 8 – 11. See also *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*Welded Line Pipe from Turkey*) and accompanying Issues and Decision Memorandum at 13 – 17.

<sup>39</sup> See Borusan May 1, 2017 IQR at 13 and Exhibit A-1.

<sup>40</sup> See GOT's May 5, 2017 IQR at II-22.

<sup>41</sup> *Id.* at Exhibits 6 and 6-N.

<sup>42</sup> *Id.*

<sup>43</sup> Specifically, we requested that the GOT provide: 1) Advanced assessment of Turkish state aids to the steel industry (the WYG Report); 2) The Turkish authorities' observations on the WYG Report; 3) the National Restructuring Plan for the Turkish Steel Industry (National Restructuring Plan) and its annexes; and 4) two reports drafted by the Commission in 2008 (Point 2: State aid of May 7, 2008, and Point 3: Capacity Changes of May 7, 2008). See Letter from Commerce to the GOT, dated June 9, 2017.

<sup>44</sup> See GOT's July 6, 2017 SQR at 4-5 and Exhibit 7.

<sup>45</sup> *Id.* at 5.



the Ministry of National Defense.”<sup>46</sup> Information in the GOT’s questionnaire responses indicates the GOT’s significant involvement in OYAK. For example, pursuant to the pension fund law, OYAK’s Representative Assembly shall be composed of not less than 50 and not more than 100 members of the Turkish Armed Forces “designated by their respective commanders or superiors.”<sup>47</sup> The Representatives Assembly, in turn, elects 20 of the 40 members of OYAK’s General Assembly.<sup>48</sup> Of the General Assembly’s other 20 members, 17 are by statute government officials (*e.g.*, Ministers of Finance and Defense). Members of the General Assembly elect the eight-person Board of Directors.<sup>49</sup> Also, OYAK’s property has, by law, the “same rights and privileges of state property,” OYAK is exempt from corporate and other taxes, and members of the armed forces must by law contribute part of their salaries to OYAK.<sup>50</sup>

Record evidence indicates that the GOT’s significant involvement in OYAK extends to Erdemir and Isdemir. For example, Erdemir’s 2013 Annual Report states, “Through . . . flat steel sales to exporting industries,” Erdemir “made a major contribution to the 4.6% increase in Turkey’s manufacturing exports in 2013” . . . and “continues to create value added for Turkish industry through its initiatives to increase the use of domestic sources of raw materials.”<sup>51</sup> These policies are in line with the GOT’s stated policy in its 2012-2014 Medium Term Programme to improve Turkey’s balance of payments.<sup>52</sup> Also, the GOT explained that the Turkish Privatization Administration (TPA) holds veto power over any decisions related to the closedown, sale, merger, or liquidation of both Erdemir and Isdemir.<sup>53</sup> Further, Erdemir’s 2013 Annual Report indicates that OYAK and the TPA both have members on Erdemir’s Board of Directors.<sup>54</sup>

During the POR, Erdemir’s 2015 Annual Report indicates continued growth, stating that it “broke a new record by producing 8.9 million tons of crude steel and 7.4 million tons of flat steel products... {a}s a result of these efforts, we achieved 8 {percent} growth in our revenues to US\$ 4.4 billion, which included US\$ 403 million of exports to 42 countries, demonstrating a successful performance at a time of volatility both in Turkey and in the world.”<sup>55</sup> Erdemir’s 2015 Annual Report indicates that OYAK and the TPA continue to have members on Erdemir’s Board of Directors.<sup>56</sup>

We preliminarily determine that the record evidence cited above indicates that the GOT exercises meaningful control over Erdemir and Isdemir through its control of OYAK. Therefore, consistent with the final CVD determination in *OCTG from Turkey*, we determine that Erdemir and Isdemir are public bodies, and hence “authorities,” pursuant to section 771(5)(B) of the

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<sup>46</sup> See GOT’s May 5, 2017 QR at Article 1 of Exhibit 6-G.

<sup>47</sup> *Id.* at Article 3 of Exhibit 6-G.

<sup>48</sup> *Id.* at Article 4 of Exhibit 6-G.

<sup>49</sup> *Id.* at Articles 5 and 8 of Exhibit 6-G.

<sup>50</sup> *Id.* at Articles 18, 35, and 37 of Exhibit 6-G.

<sup>51</sup> *Id.* at Exhibit 6-C (Erdemir 2013 Annual Report at 34 and 19, respectively).

<sup>52</sup> See *Turkey Pipe 2013 Final Results* and accompanying Issues and Decision Memorandum at 8-11.

<sup>53</sup> See GOT’s May 5, 2017 IQR at Exhibit 6-A (Erdemir’s Articles 21, 22, 27 of Association).

<sup>54</sup> *Id.* at Exhibit 6-C (Erdemir 2013 Annual Report, pages 65-66).

<sup>55</sup> *Id.* at Exhibit 6-C (Erdemir 2015 Annual Report, page 10).

<sup>56</sup> *Id.* at Exhibit 6-C (Erdemir 2015 Annual Report, page 13).

Act.<sup>57</sup> Consequently, we find that the HRS supplied by Erdemir and Isdemir to BMB is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act.

Regarding the specificity of HRS for LTAR, the GOT provided a list of the industries that purchased HRS in Turkey during the POR.<sup>58</sup> Specifically, the GOT identified the following industries as purchasers of HRS during the POR: steel pipe and profile, rerolling producers, chain of distribution, machinery manufacturing, automotive, heavy industry, consumer products, pressure purposes (pressure vessels, steam boilers), panel radiator, white appliances, and shipbuilding.<sup>59</sup> Consistent with Commerce's determination in *OCTG from Turkey* and *Welded Line Pipe from Turkey*, we preliminarily determine that the financial contribution provided by the GOT under this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the number of industries or enterprises using HRS is limited in number.<sup>60</sup> We also preliminarily determine the financial contribution provided by the GOT under this program is specific within the meaning of section 771(5A)(D)(iii)(II) of the Act because the Steel Pipe and Profile industry is the predominant user of HRS.<sup>61</sup>

Regarding benefit, Commerce identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services, in accordance with 19 CFR 351.511(a)(2). This section of Commerce's regulations specifies potential benchmarks in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided at 19 CFR 351.511(a)(2), the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.<sup>62</sup> This is because such prices generally reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving Turkish buyers and sellers that can be used to determine whether Erdemir and Isdemir sold HRS to the respondents for LTAR. Notwithstanding the regulatory

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<sup>57</sup> See *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination in the Countervailing Duty Determination and Final Affirmation Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014). (*OCTG from Turkey*), and accompanying Issues and Decision Memorandum at Comment 1; see also *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. & Borusan Istikbal Ticaret v. United States*, Slip Op. 15-36 (CIT) (April 22, 2015) (*Borusan*) at 28, in which the Court upheld Commerce's finding that Erdemir and Isdemir are "authorities."

<sup>58</sup> See GOT's May 5, 2017 QR at II-18.

<sup>59</sup> *Id.*

<sup>60</sup> See *OCTG from Turkey* and accompanying Issues and Decision Memorandum at 20-26 and *Welded Line Pipe from Turkey* and accompanying Issues and Decision Memorandum at 11 - 14.

<sup>61</sup> See GOT's May 5, 2017 QR at II-18.

<sup>62</sup> See, *e.g.*, *Notice of Affirmative Countervailing Duty Determination and Final Negative Critical Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum at "Market Based Benchmark."

preference for the use of prices stemming from actual transactions in the country, where Commerce finds that the government owns or controls the majority or a substantial portion of the market for the good or service, Commerce will consider such prices to be significantly distorted and not an appropriate basis of comparison for determining whether there is a benefit.<sup>63</sup>

Consistent with Commerce's final CVD determination in *Turkey Pipe 2013 Final Results*, *Welded Line Pipe from Turkey*, and *Heavy Walled Pipe and Tube from Turkey*, we determine that the record evidence does not support a finding that the Turkish HRS market is so distorted that it cannot serve as a source for an appropriate benchmark.<sup>64</sup> The record information shows that for 2013, 2014 and 2015, the combined domestic HRS production of Erdemir and Isdemir accounted for 40.81, 44.78, and 40.34 percent of supply, respectively, while imports of HRS accounted for 35.43, 31.94, and 39.53 percent in the same years, respectively.<sup>65</sup> Given the minority share of government production and substantial levels of imports, and consistent with our prior determinations as noted, we preliminarily find that for this time period, the HRS market in Turkey was not distorted by the government's presence. Therefore, we determine that the respondent's reported prices for domestic HRS (other than from Erdemir and Isdemir) and imported HRS can serve as tier one benchmarks. Accordingly, pursuant to 19 CFR 351.511(a)(2)(i), we used the respondent's actual domestic and import prices for HRS to calculate the benefit from their respective purchases of HRS from Erdemir and Isdemir, where applicable, during the POR.

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

We then compared the monthly benchmark prices to BMB's actual purchase prices for HRS from Erdemir and Isdemir, including taxes and delivery charges, as appropriate. In instances in which BMB paid to Erdemir and Isdemir a lower unit price than the benchmark unit price, we multiplied the difference by the quantity of HRS purchased to calculate the benefit.<sup>66</sup> Under this methodology, we find that BMB received a benefit to the extent that the prices it paid for HRS produced by Erdemir and Isdemir were for LTAR.<sup>67</sup>

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<sup>63</sup> See CVD Preamble, 63 FR at 65277.

<sup>64</sup> See *Turkey Pipe 2013 Final Results* and accompanying Issues and Decision Memorandum at 10 – 11, *Welded Line Pipe from Turkey* and accompanying Issues and Decision Memorandum at 15 – 16. See also *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*Heavy Walled Pipe and Tube from Turkey*), and accompanying Issues and Decision Memorandum at 13.

<sup>65</sup> See GOT's May 5, 2017 QR at II-17.

<sup>66</sup> See Preliminary Calculation Memorandum.

<sup>67</sup> See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

To calculate the net subsidy rate attributable to Borusan, we divided the benefit by BMB's total sales during the POR. On this basis, we find that the Borusan received a countervailable subsidy of 0.04 percent *ad valorem*.<sup>68</sup>

#### D. Inward Processing Certificate Exemption

The Ministry of Economy is the authority responsible for granting the Inward Processing Certificate program (IPC).<sup>69</sup> Under the IPC program, companies are exempt from paying customs duties and VAT on raw materials and intermediate unfinished goods that are imported and used in the production of exported goods.<sup>70</sup> Companies may choose whether to be exempt from the applicable duties and taxes upon importation (*i.e.*, the Suspension System) or have the duties and taxes reimbursed after exportation of the finished goods (*i.e.*, the Drawback System). Under both systems, companies provide a letter of guarantee that is returned to them upon fulfillment of the export commitment.<sup>71</sup>

To participate in this program, a company must hold an IPC, which specifies the types and amounts of raw materials/intermediate unfinished goods to be imported and the amount of the resulting finished product to be exported.<sup>72</sup> To obtain an IPC, an exporter must submit an application, which provides information about the goods to be produced and the raw materials to be imported.<sup>73</sup> There are two types of IPCs: (1) D-1 certificates for imported raw materials or intermediate unfinished goods used in the production of exported goods, and (2) D-3 certificates for imported raw materials or intermediate unfinished goods used in the production of goods sold in the domestic market.<sup>74</sup> D-1 certificates provide for exemption or drawback of both import duties and VAT, while D-3 certificates only provide for exemption of import duties, *i.e.*, for D-3 the VAT is payable.<sup>75</sup>

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

In prior reviews, Commerce found that, in accordance with 19 CFR 351.519(a)(4)(i), the GOT has a system in place to confirm which inputs, and in what amounts, are consumed in the

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<sup>68</sup> See Preliminary Calculation Memorandum.

<sup>69</sup> See GOT's May 5, 2017 IQR at II-79.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at II-78 – II-79.

<sup>72</sup> *Id.* at II-77.

<sup>73</sup> *Id.* at II-80.

<sup>74</sup> *Id.* at II-77 – II-78, II-83; see also Borusan's May 1, 2017 IQR at Exhibits 19-20.

<sup>75</sup> See GOT's May 5, 2017 IQR at II-78 – II-79.

production of the exported product, and that the system is reasonable for the purposes intended.<sup>76</sup> Commerce also found that the exemption granted on certain methods of payments used in purchasing imported raw materials under this program does not constitute a subsidy pursuant to 19 CFR 351.517(a), because the tax exempted upon export does not exceed the amount of tax levied on like products when sold for domestic consumption.<sup>77</sup> No new information is on the record of this review to warrant a reconsideration of Commerce's earlier findings.

During the POR, BMB used D-1 certificates and received duty and VAT exemptions on certain imported inputs used in the production of exported pipes and tubes.<sup>78</sup> Consistent with Commerce's findings in *Turkey Pipe 2013 Final Results*, and based on our review of the information supplied by the respondents regarding this program, we preliminarily find no evidence on the record of this review indicating that the amounts of VAT and duty exemptions on inputs BMB imported under the program were excessive or that the companies used the imported inputs for any other product besides those exported, respectively.

Therefore, consistent with past cases,<sup>79</sup> we preliminarily determine that the tax and duty exemptions, which BMB received on imported inputs under D-1 certificates of the IPC program, did not confer countervailable benefits as the exemptions were applied only to the imported inputs consumed in the production of the exported product, making normal allowance for waste. We further preliminarily find that the VAT exemption did not confer countervailable benefits to BMB because the exemption does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

During the POR, BMB also used D-3 certificates for duty-free imports of raw materials for use in the production of carbon steel pipe and tube sold domestically.<sup>80</sup> The GOT states that all business activities under the D-3 certificate program are defined as "domestic sales and deliveries considered as exports" and that the holder of the D-3 certificates makes domestic sales instead of export sales.<sup>81</sup> The GOT also reported that there is no need for export commitments in connection with the use of D-3 certificates.<sup>82</sup> Based on our review of the information supplied by Borusan and the GOT regarding D-3 certificates, we preliminarily determine that the use of D-3 certificates themselves are not contingent upon export performance. However, we find that record evidence indicates that the receipt of D-3 certificates is contingent upon the firm holding an IPC, and that in granting IPCs, the GOT solicits information regarding applying firms' export activities.<sup>83</sup>

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<sup>76</sup> See, e.g., *Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey*, 71 FR 43111 (July 31, 2006), and accompanying IDM at 12 – 19.

<sup>77</sup> *Id.*; see also *Turkey Pipe 2013 Final Results* and accompanying IDM at 7-8.

<sup>78</sup> See Borusan's May 1, 2017 IQR at Exhibits 19-20.

<sup>79</sup> See *Turkey Pipe 2013 Final Results* and accompanying Issues and Decision Memorandum at 7-8.

<sup>80</sup> See Borusan's May 1, 2017 IQR at Exhibits 19-20; see also GOT's May 5, 2017 IQR at II-78 – II-79.

<sup>81</sup> See GOT's May 5, 2017 IQR at II-78, II-83, and Exhibit 22 (Turkish and English versions of the Resolution Concerning Inward Processing Regime (Resolution No. 2005/8391)).

<sup>82</sup> See Memorandum, "Verification of the Questionnaire Responses of the Government of Turkey," dated October 23, 2017, at 9.

<sup>83</sup> See GOT Verification Exhibit 5.

Concerning D-3 certificates, pursuant to 19 CFR 351.519(a)(1)(ii), a benefit exists to the extent that the import duty exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input.

We preliminarily find that this program is countervailable.<sup>84</sup> The duty exemption provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, in the form of revenue forgone by the GOT. Information on the record indicates that D-3 certificates allow for duty exemptions on imported items that are physically incorporated into products that are sold domestically.<sup>85</sup> Thus, per the criteria specified under 19 CFR 351.519(a), we preliminarily determine that duty exemptions received in connection with D-3 certificates provide over-rebates that result in a benefit within the meaning of section 771(5)(E) of the Act. We also find that the receipt of D-3 certificates are contingent upon firms receiving an IPC and that, in issuing IPCs, the GOT takes into account firms' export levels. Thus, because the receipt of D-3 certificates is ultimately contingent upon export activities as a part of one or more conditions, the program is specific under section 771(5A)(B) of the Act.

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

To calculate the net subsidy rate attributable to the BPM for their use of the D-3 certificate program, we divided the benefit by BMB's total export sales during the POR. On this basis, we find that the BMB received a countervailable subsidy of 0.38 percent *ad valorem*.<sup>86</sup>

#### E. Investment Encouragement Program (IEP): Customs Duty and Value Added Tax Exemptions

The Council of Ministers' Decree No. 2012/3305 in June 2012, provides certain producers with investment incentive certificates to receive customs duty and value added tax (VAT) exemptions on imported equipment/machinery and VAT exemptions on domestic purchases of equipment/machinery.<sup>87</sup> The Ministry of Economy administers this program.<sup>88</sup> According to the GOT, this scheme is designed to encourage investment in large scale, high value-added purchases and projects, and include, but are not limited to, machinery and equipment, building and construction projects. Additionally, the decree limits such exemptions for iron and steel investment to certain regions.<sup>89</sup> Companies applying for this program are subject to a minimum investment amount based on the geographic region of the project. Specifically, GOT officials stated that this minimum amount is 1 million TL for Turkey's developed regions and 500,000 TL for the less developed regions. Thus, the program is regionally specific under section

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<sup>84</sup> See, e.g., *Turkey Pipe 2013 Final Results* and accompanying Issues and Decision Memorandum at 5-6.

<sup>85</sup> See GOT's May 5, 2017 IQR at II-78 and II-83.

<sup>86</sup> See Preliminary Calculation Memorandum.

<sup>87</sup> See GOT's May 5, 2017 IQR at II-44 to II-45.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* at II-47 and Exhibit 10. See also GOT Verification Report at 11-12.

771(5A)(D)(iv) of the Act.<sup>90</sup> Additionally, this program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone by the GOT.

Borusan did not make imports under this program in 2015, as its IEP certificate expired prior to January 1, 2015.<sup>91</sup> However, Borusan applied for, and received, its “completion visa” in 2015.<sup>92</sup> In previous investigations of this program, Commerce has countervailed the amount of import duties and VAT that was exempted during the review or investigation period, based upon each purchase, and has performed the 0.5 percent test on the foregone taxes and duties and has either expensed the benefit in the year of receipt or allocated the benefit, in accordance with 19 CFR 351.524(c)(2)(iii) and (d)(1).<sup>93</sup> However, both BMB officials and GOT officials explained at verification that, under the IEP program, the exempted import duties and domestic VAT would have to be paid back to the GOT, with interest, if the company does not pass its final onsite inspection to close out the certificate.<sup>94</sup> At verification, GOT officials explained the process to close an IEP certificate:

In order to close the certificate, GOT officials stated that the company submits a “completion visa” application within six months of the end of the certificate’s validity. At this stage, according to GOT officials, the company opens up its factory to the GOT for a mandatory site visit (*i.e.*, to physically examine the equipment/machinery purchased). GOT officials explained that if the company is under the minimum investment amount criteria or if a piece of the equipment is missing, the GOT will not grant the completion visa; and the company is liable for the exempted fees it did not pay, plus interest. Otherwise, GOT officials stated that they will issue a letter to the company notifying that it completed its requirements.<sup>95</sup>

This was further corroborated by company officials who stated “that, if Borusan failed to fulfill the terms of the IEP certificate, then Borusan would owe the government all taxes and duties forgone, plus interest” and that “there is an outstanding liability associated with the fact that the duties, fees, and interest may still be owed.”<sup>96</sup>

It is Commerce’s practice to treat any balance on an unpaid liability that may be waived in the future as a contingent-liability interest-free loan pursuant to 19 CFR 351.505(d)(1).<sup>97</sup> Since the

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<sup>90</sup> See GOT’s May 5, IQR, at Exhibit 10, Annex 5, for a list of eligible HTS codes.

<sup>91</sup> See Borusan IQR at Exhibit H-1; *see also* Borusan Verification Report at 3 and 12-13; GOT Verification Report at 11-13.

<sup>92</sup> See Borusan Verification Report at 3 and 12-13; GOT Verification Report at 11-13.

<sup>93</sup> See, *e.g.*, *Pasta from Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2014*, 81 FR 52825 (August 10, 2016) and accompanying Preliminary Decision Memorandum at “Investment Encouragement Program (IEP): Customs Duty and VAT Exemptions,” unchanged in *Pasta from Turkey: Final Results of Countervailing Duty Administrative Review; 2014*, 81 FR 90775 (December 15, 2016).

<sup>94</sup> See GOT Verification Report, at 2 and 11-13 and Borusan Verification Report at 3 and 12.

<sup>95</sup> See GOT Verification Report, at 12.

<sup>96</sup> See Borusan Verification Report, at 12. Borusan officials also noted that Borusan does not track such a liability in its books and records, despite its existence.

<sup>97</sup> See, *e.g.*, *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11163 (March 2, 2015), and accompanying Issues and Decision Memorandum

unpaid duties are a liability contingent on subsequent events, we are changing our treatment of this program to match how Commerce handles the similar Export Promotion for Capital Goods Scheme (EPCGS) in India CVD cases.<sup>98</sup> As such, we regard the amount of unpaid duty liabilities as an interest-free contingent-liability loan, and we find the amount the respondent would have paid during the POR had it borrowed the full amount of the duty reduction or exemption at the time of importation to constitute the first benefit under the investment incentive certificate. Further, we find that a second benefit arises based on the amount of duty and VAT waived by the GOT on imports and domestic purchases of capital equipment covered by the IEP certificate when the GOT certifies that the investment requirements have been met and issues a completion visa. For those certificates for which the GOT has acknowledged that the company has completed its investment requirements, we treat the import duty and VAT savings as grants received in the year in which the GOT waived the contingent liability on the duty and VAT exemptions pursuant to 19 CFR 351.505(d)(2). Further, because the import duty and VAT exemptions under this program are approved for the purchase of capital equipment, in accordance with 19 CFR 351.524(c)(2)(iii), we are treating the total waived import duty and VAT exemptions as providing non-recurring benefits at the time of receipt of the completion visa from the GOT.<sup>99</sup>

BMB reported that it imported capital goods with waived duties and VAT under the IEP program.<sup>100</sup> Information provided by BMB indicates that their certificate was not tied to the production of pipe and that the plant where it was installing the equipment produces both subject and non-subject pipe,<sup>101</sup> so we are attributing the BMB benefits received to its total sales, consistent with 19 CFR 351.525(b)(3). BMB and the GOT reported that BMB met the capital investment requirement for its IEP license in the POR and the GOT completed its audit and certified that the requirements of the program had been met during the POR.<sup>102</sup> Therefore, BMB received a deferral from paying import duties and VAT for a portion of the POR and the final waiver of the obligation to pay the duties was demonstrated and certified by the GOT also during

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at 7-10; and *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 76 FR 3613 (January 20, 2011), and accompanying IDM at items A and B.

<sup>98</sup> See, e.g., *Steel Threaded Rod from India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014) and accompanying Issues and Decision Memorandum at “Export Promotion of Capital Goods Scheme (“EPCGS”)” (pages 14-16).

<sup>99</sup> See *Countervailing Duties*, 63 FR 65348, 65393 (November 25, 1998). The preamble of Commerce’s regulations states that, if a government provides an import duty exemption tied to major equipment purchases, “it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring....” See also, e.g., *Polyethylene Terephthalate Film, Sheet, and Strip from India: Final Results of Countervailing Duty Administrative Review*, 75 FR 6634 (February 10, 2010), and accompanying Issues and Decision Memorandum at Comment 9; see also *Certain Frozen Warmwater Shrimp from India: Preliminary Countervailing Duty Determination*, 78 FR 33344 (June 4, 2013) (*Shrimp India Preliminary Determination*), and accompanying Decision Memorandum at “Duty Incentives under the Export Promotion Capital Goods (“EPCG”) Program,” unchanged in *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) (*Shrimp from India*).

<sup>100</sup> See Borusan May 1, 2017 IQR at 37-38, Exhibits H-1, H-2, and 18. See also Borusan Verification Report at 12.

<sup>101</sup> *Id.*

<sup>102</sup> See Borusan May 1, 2017 IQR at 37 and Exhibit H-2 (“BMB applied to close this certificate on April 9, 2015 and the Ministry of Economy responded on August 12, 2015”). See also GOT Verification Report at 12-13 and GOT Verification Exhibit 6; and Borusan Verification Report at 12-13 and Borusan Verification Exhibit 11.



the POR. Consistent with Commerce's practice, we are calculating a subsidy rate based on (a) the interest otherwise payable on the amounts outstanding during the POR and (b) the full amount of the duties and VAT actually foregone during the POR, based upon Borusan's successful completion of the project, as certified by the GOT.<sup>103</sup>

As noted above, the time period for fulfilling the export requirement expires a certain number of years after importation of the capital good. As such, pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring the benefit is a long-term interest rate because the event upon which repayment of the duties depends (*i.e.*, the date of expiration of the time period to fulfill the export commitment) occurs at a point in time that is more than one year after the date of importation of the capital goods. As the benchmark interest rate, we used the long-term interest rates as discussed in the "Loan Benchmarks and Interest Rates" section, above. We calculated a daily interest rate based on the long-term benchmark interest rate for the year in which the capital good was imported; we multiplied the daily rate by the number of days the loan was outstanding during the POR and the unpaid duties under the certificate. We summed these amounts to determine the total benefit from the interest free liability. Additionally, we summed the total amount of duties and VAT which the GOT officially waived during the POR and performed the 0.5 percent test, pursuant to 19 CFR 351.524(b)(2) and, based on the test, determined to expense the waived duties and VAT in the year of receipt (*i.e.*, in 2015). To calculate the net subsidy rate attributable to Borusan, we divided the total benefit from the interest free liability and the waived duties and VAT by BMB's total sales during the POR. On this basis, we find that the Borusan received a countervailable subsidy of 0.16 percent *ad valorem*.<sup>104</sup>

## **VI. PROGRAMS PRELIMINARILY DETERMINED TO NOT BE USED**

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

- Provision of Land for Less Than Adequate Remuneration
- Provision of Lignite for Less Than Adequate Remuneration
- Incentives for Research & Development Activities
- Pre-Export Credits
- Post-Shipment Rediscount Credit Program
- Export Insurance Provided by Turk Eximbank
- Large-Scale Investment Incentives: Customs Duty Exemptions
- Large-Scale Investment Incentives: VAT Exemptions
- Large-Scale Investment Incentives: Tax Reductions
- Large-Scale Investment Incentives: Income Withholding
- Large-Scale Investment Incentives: Social Security and Interest Support
- Large-Scale Investment Incentives: Land Allocation
- Strategic Investment Incentives: Customs Duty Exemptions
- Strategic Investment Incentives: VAT Exemptions

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<sup>103</sup> See 19 CFR 351.505(d)(1); *see also, e.g., Shrimp India Preliminary Determination*, and accompanying Preliminary Decision Memorandum at EPCGS Program, unchanged in *Shrimp from India*.

<sup>104</sup> See Preliminary Calculation Memorandum.

- Strategic Investment Incentives: Tax Reductions
- Strategic Investment Incentives: Income Tax Withholding
- Strategic Investment Incentives: Social Security and Interest Support
- Strategic Investment Incentives: Land Allocation
- Law 5084: Withholding of Income Tax on Wages and Salaries
- Exemption from Property Tax
- Law 5084: Incentives for Employers' Share in Insurance Premiums
- Law 5084: Energy Support
- Export Loan Rediscount Program
- Export-Oriented Working Capital Program
- Law 6486: Social Security Premium Incentive

## VII. RECOMMENDATION

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



Agree



Disagree

1/2/2018

X 

Signed by: CHRISTIAN MARSH

Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance