



C-489-819

Administrative Review  
POR: 01/01/2015 - 12/31/2015

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April 9, 2018

**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  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for Final Results of Countervailing Duty  
Administrative Review of Steel Concrete Reinforcing Bar from the  
Republic of Turkey; 2015

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## **I. Summary**

The Department of Commerce (Commerce) has completed its administrative review of the countervailing duty (CVD) order on steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey) for the period January 1, 2015, through December 31, 2015. The two mandatory respondents are Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji A.S. (Colakoglu Metalurji) (collectively, Colakoglu), and Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas). After analyzing the comments raised by the interested parties in their briefs, we determine that the mandatory respondents each received a *de minimis* net countervailable subsidy rate for the period of review (POR). For the rate assigned to the non-selected companies, *see* “Non-Selected Rate,” below.

## **II. Background**

On December 6, 2017, Commerce published the *Preliminary Results* for this review.<sup>1</sup> On January 5, 2018, we received a case brief from the petitioner.<sup>2</sup> On January 10, 2018, we received

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<sup>1</sup> See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review in Part; 2015*, 82 FR 57574 (December 6, 2017) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> See Petitioner’s Case Brief, “Certain Steel Concrete Reinforcing Bar from the Republic of Turkey: RTAC’s Case Brief and Request for Hearing,” dated January 5, 2018 (Petitioner Case Brief). The petitioner is the Rebar Trade Action Coalition (RTAC). The members of RTAC are Byer Steel Group, Inc., Commercial Metals Company, Gerdau Ameristeel U.S. Inc., Nucor Corporation, and Steel Dynamics, Inc.

a rebuttal brief from Colakoglu.<sup>3</sup> On February 16, 2018, we held a public hearing, as requested by the petitioner.<sup>4</sup>

Commerce exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from January 20 through 22, 2018. If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final results of this review is now April 9, 2018.<sup>5</sup>

### **III. Comments**

We analyzed the comments submitted by the interested parties in their case and rebuttal briefs regarding the benchmark selected to determine whether natural gas was provided for less than adequate remuneration (LTAR). *See* "Analysis of Comments," below.

### **IV. Scope of the Order**

The merchandise subject to this order is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010.

The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size, or grade) and without being subject to an elongation test. HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

### **V. Partial Rescission of the 2015 Administrative Review**

#### **A. Agir Haddecilik A.S. (Agir)**

In the *Preliminary Results*, we stated Commerce's intention to rescind the administrative review with respect to Agir because the company timely filed a no-shipments certification and CBP informed us that there were no shipments of rebar to the United States from Turkey with Agir listed as the producer and/or exporter during the POR.<sup>6</sup> No interested party submitted comments

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<sup>3</sup> *See* Colakoglu's Rebuttal Brief, "Steel Concrete Reinforcing Bar from the Republic of Turkey; Colakoglu's Rebuttal Brief," dated January 10, 2018 (Colakoglu Rebuttal Brief).

<sup>4</sup> *See* Petitioner Case Brief at cover letter; and Hearing Transcript, placed on the record by Neal R. Gross and Co., Inc. on February 28, 2018.

<sup>5</sup> *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

<sup>6</sup> *See Preliminary Results* PDM at 5.

on this matter. Because there is no evidence on the record to indicate that Agir had entries, exports, or sales of subject merchandise to the United States during the POR, pursuant to 19 CFR 351.213(d)(3), we are rescinding the review with respect to Agir.

**B. Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas)**

Entries of merchandise produced and exported by Habas are not subject to countervailing duties under this *Order*<sup>7</sup> because the final determination in the investigation was negative with respect to subject merchandise produced and exported by Habas.<sup>8</sup> In the *Preliminary Results*, we stated Commerce's intention to rescind the administrative review of Habas, because the record indicates no entries of subject merchandise produced by another entity and exported by Habas, or entries of subject merchandise produced by Habas and exported by another entity.<sup>9</sup> No interested party submitted comments on this matter. Because there is no evidence on the record that Habas should be subject to this administrative review, we are rescinding the review with respect to Habas, pursuant to 19 CFR 351.213(d)(3).

**VI. Non-Selected Rate**

For these final results, we continue to determine *de minimis* countervailable subsidy rates for the mandatory respondents. No interested party submitted comments on the rate to be applied to those companies not selected for individual examination.<sup>10</sup> Therefore, consistent with Commerce's practice, as described in the *Preliminary Results*,<sup>11</sup> we continue to assign the rate of 0.02 percent *ad valorem* to Kaptan Demir Celik Endustrisi ve Ticaret A.S. and Kaptan Metal Dis Ticaret ve Nakliyat A.S. based on their rate calculated in the prior administrative review.<sup>12</sup> With regard to the 10 remaining non-selected companies, for which an individual rate was not calculated, we continue to assign the rate of 1.25 percent *ad valorem*, which is the sole above *de minimis* rate calculated within a segment of this proceeding.<sup>13</sup>

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<sup>7</sup> See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Countervailing Duty Order*, 79 FR 65926 (November 6, 2014) (*Order*).

<sup>8</sup> See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963, 54964 (September 15, 2014) (*Turkey Rebar Final Determination*).

<sup>9</sup> See *Preliminary Results* PDM at 5.

<sup>10</sup> The companies that were not individually examined are: Acemar International Limited, As Gaz Sinai ve Tibbi Azlar A.S., Asil Celik Sanayi ve Ticaret A.S., Ege Celik Endustrisi Sanayi ve Ticaret A.S., Izmir Demir Celik Sanayi A.S., Kaptan Demir Celik Endustrisi ve Ticaret A.S., Kaptan Metal Dis Ticaret ve Nakliyat A.S., Kocaeli Haddecilik Sanayi Ve Ticaret L, Mettech Metalurji Madencilik Muhendislik Uretim Danismanlik ve Ticaret Limited Sirketi, MMZ Onur Boru Profil A.S., Ozkan Demir Celik Sanayi A.S., and Wilmar Europe Trading BV.

<sup>11</sup> See *Preliminary Results* PDM at 5-6.

<sup>12</sup> See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 26907, 26908 (June 12, 2017).

<sup>13</sup> The rate of 1.25 percent *ad valorem* was calculated for Icdas in the underlying investigation. See *Turkey Rebar Final Determination*, 79 FR at 54964.

## VII. Subsidies Valuation Information

### A. Allocation Period

Commerce made no changes to, and the interested parties raised no issues in their 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>14</sup>

### B. Cross-Ownership

Commerce made no changes to, and the interested parties raised no issues in their briefs regarding, the attribution of subsidies as discussed in the *Preliminary Results*. For a description of the methodology applicable to these final results, *see* the *Preliminary Results*.<sup>15</sup>

### C. Denominators

Commerce made no changes to, and the interested parties raised no issues in their briefs regarding, the denominators we used to calculate the countervailable subsidy rates for the subsidy programs described below. For information on the denominators used in these final results, *see* the *Preliminary Results* and the calculation memoranda.<sup>16</sup>

### D. Benchmarks for Short-Term Financing

Commerce made no changes to, and the interested parties raised no issues in their briefs regarding, the benchmark interest rates used to calculate the benefit for the “Rediscount Program.” For information on the short-term interest rate benchmarks used in these final results, *see* the *Preliminary Results* and the calculation memoranda.<sup>17</sup>

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<sup>14</sup> *See Preliminary Results* PDM at 7.

<sup>15</sup> *Id.* at 7-9.

<sup>16</sup> *Id.* at 10; Memorandum, “Preliminary Results Calculations for Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji A.S.,” dated November 30, 2017 (Colakoglu Calculations), unchanged for these final results of review; and Memorandum, “Preliminary Results Calculations for Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.,” dated November 30, 2017 (Icdas Calculations), unchanged for these final results of review.

<sup>17</sup> *See Preliminary Results* PDM at 10; Colakoglu Calculations; and Icdas Calculations.

## VIII. Analysis of Programs

Commerce made no changes to the *Preliminary Results* with regard to the countervailability of the programs under review.

### A. Programs Determined To Be Countervailable

#### 1. Rediscount Program

No issues were raised by the interested parties regarding this program. For the description, analysis, and calculation methodology for this program, *see the Preliminary Results*.<sup>18</sup> The final program rates remain unchanged as follows:

Colakoglu: 0.14 percent *ad valorem*.<sup>19</sup>  
Icdas: 0.02 percent *ad valorem*.<sup>20</sup>

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

No issues were raised by the interested parties regarding this program. For the description, analysis, and calculation methodology for this program, *see the Preliminary Results*.<sup>21</sup> The final program rate remains unchanged as follows:

Colakoglu: 0.04 percent *ad valorem*.<sup>22</sup>

### B. Programs Determined To Not Confer Countervailable Benefits

#### 1. Provision of Natural Gas for LTAR

Interested parties raised issues with regard to the natural gas benchmark price that Commerce selected for use in the *Preliminary Results* to determine whether natural gas was provided to Colakoglu Metalurji for LTAR.<sup>23</sup> After considering those arguments, Commerce determined to make no changes to the world market price selected as the natural gas benchmark as discussed below in “Analysis of Comments.”

#### 2. Inward Processing Regime

#### 3. Assistance to Offset Costs Related to Antidumping/CVD Investigations<sup>24</sup>

#### 4. Investment Incentive Certificates

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<sup>18</sup> See *Preliminary Results* PDM at 11.

<sup>19</sup> See Colakoglu Calculations.

<sup>20</sup> See Icdas Calculations.

<sup>21</sup> See *Preliminary Results* PDM at 12.

<sup>22</sup> See Colakoglu Calculations.

<sup>23</sup> See *Preliminary Results* PDM at 12-17; and Colakoglu Calculations.

<sup>24</sup> See Colakoglu Calculations.

With regard to the above listed programs (*i.e.*, 2 through 4), Commerce made no changes to, and the interested parties raised no issues in their briefs regarding, the preliminary findings that these programs did not confer a countervailable benefit to the respondents. For the descriptions and analyses used for these programs, *see the Preliminary Results*.<sup>25</sup>

C. Programs Determined Not To Be Countervailable

No issues were raised by the interested parties regarding the following programs. Commerce made no changes to its preliminary findings that the programs are not countervailable. For more information, *see the Preliminary Results*.<sup>26</sup>

1. Payments from the Turkish Employers' Association of Metal Industries (MESS) – Social Security Premium Support
2. Payments from MESS – Occupational Health and Safety Support

D. Programs Determined To Not Be Used

No issues were raised by the interested parties regarding the following programs. Commerce made no changes to its preliminary findings that these programs were not used. For more information, *see the Preliminary Results*.<sup>27</sup>

1. Purchase of Electricity for More Than Adequate Remuneration (MTAR) – Sales *via* Build-Operate-Own, Build-Operate-Transfer, and Transfer of Operating Rights Contracts
2. Purchase of Electricity Generated from Renewable Resources for MTAR
3. Provision of Lignite for LTAR
4. Reduction and Exemption of Licensing Fees for Renewable Resource Power Plants
5. Research and Development Grant Program
6. Export Credits, Loans, and Insurance from Turk Eximbank
  - a. Pre-Shipment Export Credits
  - b. Foreign Trade Company Export Loans
  - c. Pre-Export Credits
  - d. Short-term Export Credit Discount Program
  - e. Export Insurance
7. Regional Investment Incentives
  - a. Value Added Tax (VAT) and Customs Duty Exemptions
  - b. Income Tax Reductions
  - c. Social Security Support
  - d. Land Allocation
8. Large-Scale Investment Incentives
  - a. VAT and Customs Duty Exemptions
  - b. Tax Reduction

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<sup>25</sup> See *Preliminary Results* PDM at 17-19.

<sup>26</sup> *Id.* at 19-20.

<sup>27</sup> *Id.* at 21-24.

- c. Income Tax Withholding Allowance
  - d. Social Security and Interest Support
  - e. Land Allocation
- 9. Strategic Investment Incentives
  - a. VAT and Customs Duty Exemptions
  - b. Tax Reduction
  - c. Income Tax Withholding Allowance
  - d. Social Security and Interest Support
  - e. Land Allocation
  - f. VAT Refunds
- 10. Incentives for Research & Development (R&D) Activities
  - a. Tax Breaks and Other Assistance
  - b. Product Development R&D Support – UFT
- 11. Regional Development Subsidies
  - a. Provision of Land for LTAR
  - b. Provision of Electricity for LTAR
  - c. Withholding of Income Tax on Wages and Salaries
  - d. Exemption from Property Tax
  - e. Employers’ Share in Insurance Premiums
  - f. Preferential Tax Benefits for Turkish Rebar Producers Located in Free Zones
  - g. Preferential Lending to Turkish Rebar Producers Located in Free Zones
  - h. Exemptions from Foreign Exchange Restrictions to Turkish Rebar Producers Located in Free Zones
  - i. Preferential Rates for Land Rent and Purchase to Turkish Rebar Producers Located in Free Zones

## IX. Analysis of Comments

### Comment: Whether Commerce Should Modify the Natural Gas Benchmark

#### *Petitioner’s Arguments:*

- The petitioner argues that Commerce’s preliminary finding that the International Energy Agency<sup>28</sup> (IEA) prices represent natural gas that would not be available to Turkish purchasers, based on Turkey’s pipeline system, is without basis. The petitioner claims that Commerce failed to justify departing from *Turkey Rebar II Final*<sup>29</sup> and *Turkey Wire Rod Preliminary*,<sup>30</sup> where it relied on the IEA data as a tier-two benchmark.<sup>31</sup>

<sup>28</sup> The IEA is part of the Organisation for Economic Co-operation and Development (OECD).

<sup>29</sup> See Petitioner Case Brief at 2-3 (citing *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 82 FR 23188 (May 22, 2017) (*Turkey Rebar II Final*), and accompanying Issues and Decision Memorandum (IDM) at Comment 4).

<sup>30</sup> *Id.* (citing *Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination, in Part*, 82 FR 41929 (September 5, 2017) (*Turkey Wire Rod Preliminary*), and accompanying PDM at 14-17).

<sup>31</sup> *Id.* at 3 (citing *Turkey Rebar II Final* IDM at 10; and *Turkey Wire Rod Preliminary* PDM at 16).

- The petitioner asserts that neither *Cold-Rolled Steel from Russia*<sup>32</sup> nor *Melamine from Trinidad and Tobago*<sup>33</sup> supports the approach taken in the *Preliminary Results*, where Commerce rejected the IEA prices and relied on an Azerbaijan price, which it found represents natural gas that would be available, *via* the pipelines, to purchasers in Turkey.<sup>34</sup>
- According to the petitioner, in *Cold-Rolled Steel from Russia*, Commerce found that there were no world market prices available to Russian purchasers based on Gazprom’s gas pipeline system.<sup>35</sup> The petitioner, however, asserts that there is nothing on the record of this review to suggest that the pipelines into Turkey could not accommodate natural gas from Europe.
- The petitioner also claims that in *Melamine from Trinidad and Tobago*, Commerce declined to use U.S. natural gas prices as a benchmark because there are no pipelines from the United States to Trinidad and Tobago.<sup>36</sup> However, the petitioner claims that Commerce has found there are pipelines that permit the transportation of natural gas from Europe to Turkey<sup>37</sup> and, therefore, relying on European pricing data for a Turkish benchmark is consistent with *Melamine from Trinidad and Tobago*.
- The petitioner further argues that by rejecting the IEA data and relying just on the Azerbaijan price, Commerce acted inconsistently with its practice to select a “world market price” benchmark, where the preference is to use an average of all data points to create a robust benchmark when multiple prices are available and comparable.<sup>38</sup>
- The petitioner adds that Commerce has recognized the nature of natural gas markets and has constructed benchmark prices accordingly. In *Cold-Rolled Steel from Russia*, Commerce relied on a study which explained that there are “three distinct regional gas markets – North America, Europe (including Russia and North Africa), and Asia.”<sup>39</sup> In that case, the petitioner states that Commerce determined that regional European natural gas pricing can serve as a benchmark price<sup>40</sup> and, thus, created a world market price. The petitioner adds that, while Commerce used a tier-three methodology in *Cold-Rolled Steel from Russia*, it recognized the nature of the natural gas market in the European region. Therefore, the petitioner claims that the methodology constructed a world market price much like a tier-two benchmark, but Commerce called it a tier-three benchmark.
- Moreover, the petitioner argues that Commerce acted inconsistent with prior determinations in finding that “available” prices are limited to prices from countries that have direct pipelines connections to Turkey. The petitioner claims that there is no

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<sup>32</sup> *Id.* at 4 (citing *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016) (*Cold-Rolled Steel from Russia*)).

<sup>33</sup> *Id.* at 4-5 (citing *Melamine from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination*, 80 FR 68849 (November 6, 2015) (*Melamine from Trinidad and Tobago*)).

<sup>34</sup> See *Preliminary Results* PDM at 16.

<sup>35</sup> See Petitioner Case Brief at 4 (citing *Cold-Rolled Steel from Russia* IDM at Comment 5).

<sup>36</sup> *Id.* (citing *Melamine from Trinidad and Tobago* IDM at 9).

<sup>37</sup> See Petitioner Case Brief at 4-5 (citing *Turkey Rebar II Final* IDM at 10; and *Turkey Wire Rod Preliminary* PDM at 16).

<sup>38</sup> *Id.* at 5 (citing *Utility Scale Wind Towers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 77 FR 75978 (December 26, 2012) (*Wind Towers from China*), and accompanying IDM at Comment 15).

<sup>39</sup> *Id.* at 6 (citing *Cold-Rolled Steel from Russia* IDM at Comment 7).

<sup>40</sup> *Id.*



evidence that the gas that enters from these countries was produced by these countries alone (*i.e.*, because the gas enters from country A, does not mean it was necessarily produced and priced by country A). As such, the petitioner asserts that Commerce's determination is neither consistent with the regulations, nor prior findings in which it relied on alternative sources.<sup>41</sup>

- The petitioner further states that, in order to use the Azerbaijan price, Commerce had to convert the volume data from cubic meter to kilowatt hour.<sup>42</sup> The petitioner argues that converting natural gas units of measure varies depending on temperature and pressure and, thus, is distortive. The petitioner adds that conversion issues led Commerce, in part, to use the IEA data in *Turkey Rebar II Final*.<sup>43</sup>

*Colakoglu's Rebuttal Arguments:*

- Colakoglu argues that the Azerbaijan price is an appropriate benchmark and use of such price is supported by the statute and regulations.<sup>44</sup>
- Colakoglu states that Turkey's natural gas pipeline map indicates that the natural gas piped into the country comes from Azerbaijan, Russia, and Iran. Those are the only countries from which Turkey imported natural gas and the only countries from which natural gas would be available to purchasers in Turkey.<sup>45</sup>
- Colakoglu argues that, while the petitioner may prefer the use of IEA data, Commerce does not have to continue using a particular benchmark if it becomes aware, based on record evidence, that there is a better benchmark that is more reflective of prices that would actually be available to purchasers in the country in question. Colakoglu adds Commerce acknowledged this fact in *Turkey Rebar II Final*.<sup>46</sup>
- Colakoglu asserts that, in this review, Commerce exercised its discretion to use the most accurate benchmark data, which is the Azerbaijan price that yields a world price available to purchasers in Turkey and, thus, is a more accurate reflection of commercial reality than the IEA data.

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<sup>41</sup> See Petitioner Case Brief at 7 (citing *Wind Towers from China* IDM at 69; and *Cold-Rolled Steel from Russia* IDM at 18 ("Where there is more than one commercially available market price to construct a benchmark price, it is the Department's practice to average the prices.")).

<sup>42</sup> See Colakoglu Calculations at 3.

<sup>43</sup> See Petitioner Case Brief at 8 (citing *Turkey Rebar II Final* IDM at Comment 4).

<sup>44</sup> See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(2)(ii); see also Colakoglu Rebuttal Brief at 3 (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed Cir. 1990) (the basic purpose of the statute is to "determin[e] current margins as accurately as possible."); *Fine Furniture (Shanghai) Ltd. v. United States*, 865 F. Supp. 2d 1254, 1267 (CIT 2012) (weighing the burden of late submissions against the statute's stated goals of accuracy and fairness), *aff'd* 748 F.3d 1365 (Fed. Cir. 2014); and *Neenah Foundry Co. v. United States*, 142 F. Supp. 2d 1008, 1016 (CIT 2001) ("The fact that foreign interested parties have waived participation in a proceeding does not absolve the ITA of its responsibility to reach an accurate result.")).

<sup>45</sup> See Colakoglu's Submission, "Natural Gas Benchmark Pricing Data," dated October 27, 2017 (Colakoglu October 27, 2017 Benchmark Submission) at 3-4 and Exhibit 2.

<sup>46</sup> See Colakoglu Rebuttal Brief at 4 (citing *Turkey Rebar II Final* IDM at 22 ("Nevertheless, the Department must select a benchmark that will provide comparable values for this proceeding based on factual information specific to the POI and the novel arguments raised by the parties in this investigation. We are not precluded from selecting a benchmark for this proceeding that differs from benchmarks selected in prior proceedings, nor are we precluded from selecting an annual benchmark, where appropriate, based on the circumstances of a specific input material, time period, or investigation.")).

- Colakoglu adds that the record reflects that the only natural gas pipeline connection between Turkey and Europe is a Turkey to Greece pipeline, which is a one-way export connection from Turkey to Greece.<sup>47</sup>
- Colakoglu asserts there is no evidence to indicate that natural gas from any European source is being transported to Turkey and, therefore, Commerce was correct to use the Azerbaijan price as the benchmark, consistent with the findings in *Cold-Rolled Steel from Russia* and *Melamine from Trinidad and Tobago*.<sup>48</sup>
- Colakoglu adds that benchmark calculations which use conversions are not inherently distortive. According to Colakoglu, in *Turkey Rebar II Final*, Commerce was concerned that there was no single standard conversion factor and that applying different conversion factors to different units of measure yielded varying results to the Global Trade Information Services (GTIS) data.<sup>49</sup> By contrast, the Azerbaijan data require the application of only a single standard conversion factor (cubic meters to kilowatt hours).<sup>50</sup> Colakoglu argues that there is nothing inherently distortive or complicated about this conversion.

**Commerce's Position:** As explained in the *Preliminary Results*, Commerce's regulations establish the basis for identifying the appropriate market-determined benchmark for measuring the adequacy of remuneration for government-provided goods or services.<sup>51</sup> After concluding that there is no viable tier-one benchmark for natural gas in Turkey, and considering all the benchmark information on the record, we preliminarily selected the Azerbaijan natural gas consumption price<sup>52</sup> as the tier-two benchmark to determine whether the natural gas that Colakoglu Metalurji purchased from Boru Hatlari Ile Petrol Tasima A.S. (BOTAS) was provided at LTAR.<sup>53</sup>

Our preliminary decision not to use the IEA prices<sup>54</sup> and, instead, rely on the BMI Research Azerbaijan price as the tier-two benchmark was based on a distinctive set of facts presented on the record of this review. Specifically, evidence on the record of this review shows that, for imports of natural gas into Turkey, the requisite inflow pipeline connections are limited to Azerbaijan, Iran, and Russia.<sup>55</sup> Consequently, we preliminarily determined that natural gas

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<sup>47</sup> See Colakoglu October 27, 2017 Benchmark Submission at Exhibit 2; see also Government of Turkey's (GOT's) "Initial Questionnaire Response," dated April 3, 2017 (GOT April 3, 2017 IQR) at 22 (showing all entry and exit points through which natural gas is transported in and out of Turkey), and Exhibit 6d (BOTAS' 2015 Annual Report) at page 29 (discussing that the Turkey-Greece connection is solely for the export of natural gas through Turkey).

<sup>48</sup> See Colakoglu Rebuttal Brief at 6 (citing *Cold-Rolled Steel from Russia* IDM at 15 and Comment 5, and *Melamine from Trinidad and Tobago* IDM at 8).

<sup>49</sup> *Id.* at 8 (citing *Turkey Rebar II Final* IDM at 9-10 and 23-24).

<sup>50</sup> See Colakoglu Preliminary Calculations.

<sup>51</sup> See 19 CFR 351.511(a)(2); and *Preliminary Results* PDM at 14-16.

<sup>52</sup> The 2015 Azerbaijan natural gas consumption price, published by BMI Research, was placed on the record by Colakoglu. See Colakoglu October 27, 2017 Benchmark Submission at 4-5 and Exhibits 3 and 4.

<sup>53</sup> See *Preliminary Results* PDM at 15-17. We preliminarily found that no benefit was provided to Colakoglu Metalurji.

<sup>54</sup> The IEA pricing data was placed on the record by the petitioner. See Petitioner's Submission, "Benchmark Information," dated October 31, 2017 (Petitioner October 31, 2017 Benchmark Submission) at Exhibit 6.

<sup>55</sup> See GOT April 3, 2017 IQR at Exhibit 6d (BOTAS 2015 Annual Report) at 22-23 and 28-30.

prices from the European countries<sup>56</sup> that compose the IEA data would not be available to purchasers in Turkey *via* the existing pipelines,<sup>57</sup> and, thus, such prices were not suitable as tier-two benchmarks under 19 CFR 351.511(a)(2)(ii).<sup>58</sup>

After considering the arguments raised by the petitioner and Colakoglu regarding the appropriate benchmark for measuring the adequacy of remuneration for Colakoglu Metalurji's natural gas purchases from BOTAS, we conclude that it is appropriate to continue to use the Azerbaijan natural gas consumption price for purposes of determining whether a benefit was provided under the program. For the reasons discussed below, we are not persuaded by the petitioner's arguments to reject the Azerbaijan price, published by BMI Research and, instead, rely on the IEA pricing data.

The record of this review contains evidence, arguments, and benchmarking data that were not presented to Commerce in *Turkey Rebar II Final* and *Turkey Wire Rod Final*.<sup>59</sup> Specifically, in this review, Colakoglu provided evidence that an accurate tier-two benchmark price for natural gas would be the price which is valid in those countries that are connected to Turkey through inflow natural gas pipelines (*i.e.*, Azerbaijan, Iran, and Russia).<sup>60</sup> This argument regarding Turkey's existing pipeline connections was not raised by the company respondent or the GOT in *Turkey Rebar II Final* and, therefore, Commerce relied on the IEA pricing data as the tier-two benchmark for natural gas.<sup>61</sup> In *Turkey Wire Rod Final*, Commerce found that "natural gas, exclusive of {compressed natural gas} CNG and liquified natural gas (LNG), is only imported into Turkey *via* pipeline from Azerbaijan, Iran, and Russia."<sup>62</sup> Therefore, in *Turkey Wire Rod Final*, Commerce relied on Russian natural gas export prices available in Europe (exclusive of exports of natural gas to Turkey) published by Eurostat as the tier-two benchmark for natural gas.<sup>63</sup>

As stated in prior CVD cases, based on factual information specific to and novel arguments raised by parties in a proceeding, Commerce must select a benchmark that will provide comparable values for that proceeding.<sup>64</sup> We, therefore, are not precluded from selecting a benchmark for a proceeding that differs from benchmarks selected in prior proceedings.<sup>65</sup> As

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<sup>56</sup> *Id.* for the IEA "Energy Prices and Taxes Quarterly Statistics - Second Quarter 2016," which identifies the OECD European countries contained in the IEA pricing data.

<sup>57</sup> See *Preliminary Results* PDM at 15-16.

<sup>58</sup> See 19 CFR 351.511(a)(2)(ii): "If there is no usable market-determined price with which to make the comparison under paragraph (a)(2)(i) of this section, the Secretary will seek to measure the adequacy of remuneration by comparing the government price to a world market price where it is reasonably to conclude that such price would be available to purchasers in the country in question."

<sup>59</sup> See *Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, in Part*, 83 FR 13239 (March 28, 2018) (*Turkey Wire Rod Final*). In its case brief, the petitioner cites to *Turkey Wire Rod Preliminary*. Because the *Turkey Wire Rod Final* has now been issued and a new analysis has superseded Commerce's preliminary analysis on this issue from *Turkey Wire Rod Preliminary*, as explained above, the arguments made by the petitioner are moot, and therefore we are not addressing those points herein.

<sup>60</sup> See Colakoglu October 27, 2017 Benchmark Submission at 3 and Exhibit 2.

<sup>61</sup> See *Turkey Rebar II Final* IDM at Comment 4.

<sup>62</sup> See *Turkey Wire Rod Final* IDM at 13.

<sup>63</sup> *Id.* at 13-14.

<sup>64</sup> See, e.g., *Turkey Rebar II Final* IDM at 22.

<sup>65</sup> *Id.*

such, the selection of the IEA pricing data as the natural gas tier-two benchmark in *Turkey Rebar II Final* does not necessarily lead to Commerce using IEA data in the instant review, which has a distinct record of information that is different than the record of that proceeding.

Because natural gas in gaseous form can be transported only by pipeline – and not shipped *via* canisters like liquified or compressed natural gas – there are inherent supply limitations for natural gas.<sup>66</sup> Pursuant to 19 CFR 351.511(a)(2)(ii) (*i.e.*, tier-two of the hierarchy), Commerce will use a world market price where it is reasonable to conclude that such a price would be available to purchasers in the country in question. Commerce has found that pipeline connections are salient facts to consider when applying a tier-two benchmark price for natural gas.<sup>67</sup>

In *Cold-Rolled Steel from Russia* and *Melamine from Trinidad and Tobago*, Commerce determined that the availability of natural gas is dependent upon pipeline connections. In *Cold-Rolled Steel from Russia*, we verified that Russia does not import natural gas.<sup>68</sup> Specifically, Russia cannot import natural gas from Europe, the Middle East, or the East/Asian-Pacific region because Gazprom's pipelines are one-directional, allowing only an outflow of natural gas from Russia to Europe, Asia, and other markets.<sup>69</sup> We, thus, determined that the European and Asian natural gas prices, on the record of that investigation, did not reflect tier-two prices available to Russian purchasers because, given the existing pipelines, such prices for natural gas are not available to Russian purchasers.<sup>70</sup>

In *Melamine from Trinidad and Tobago*, we verified that there are no pipelines from the United States for the transport of natural gas to Trinidad and Tobago.<sup>71</sup> Accordingly, we determined that U.S. natural gas prices were not useable for benchmarking purposes under tier-two of the hierarchy, as they represent prices for natural gas that are not available to purchasers in the country.<sup>72</sup>

Consistent with Commerce's findings in *Cold-Rolled Steel from Russia* and *Melamine from Trinidad and Tobago*, we determine that an accurate tier-two benchmark price for natural gas would be a price that is available in those countries which are connected to Turkey through natural gas pipelines. Based on evidence that Turkey has the requisite inflow pipeline connections with only Azerbaijan, Iran, and Russia,<sup>73</sup> we determine that the IEA pricing data for OECD European countries do not reflect natural gas prices that would be available to Turkish purchasers. Therefore, those market prices do not meet the standard set by 19 CFR 351.511(a)(2)(ii), which states that the adequacy of remuneration will be measured by comparing the government price to a world market price where it would be reasonable to conclude that such price would be available to purchasers in the country in question.

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<sup>66</sup> *Id.* at 10, 24, and 25.

<sup>67</sup> See *Cold-Rolled Steel from Russia* IDM at Comment 5; and *Melamine from Trinidad and Tobago* IDM at 9.

<sup>68</sup> See *Cold-Rolled Steel from Russia* IDM at Comment 5.

<sup>69</sup> *Id.*

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

<sup>71</sup> See *Melamine from Trinidad and Tobago* IDM at 8-9.

<sup>72</sup> *Id.* at 9.

<sup>73</sup> See GOT April 3, 2017 IQR at Exhibit 6d (BOTAS 2015 Annual Report) at 22-23 and 28-30.

The petitioner correctly notes that, in *Cold-Rolled Steel from Russia*, Commerce ultimately relied on European prices to construct a natural gas benchmark. Contrary to the petitioner's statement, however, those European prices were not used to derive a tier-two benchmark but, rather, were used as a proxy for a market-based natural gas benchmark under tier-three of the hierarchy (19 CFR 351.511(a)(2)(iii)).<sup>74</sup> Under 19 CFR 351.511(a)(2), the sequential hierarchy for identifying an appropriate market-determined benchmark to measure the adequacy of remuneration is delineated as follows: (1) market prices from actual transactions of the good within the country in question (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 in question (tier-two); or (3) an assessment of whether the government price is consistent with market principles (tier-three). Under this hierarchy, Commerce must consider benchmarks under tier-one before moving to tier-two and so on. Contrary to the petitioner's claim, the regulations do not permit Commerce to bypass a tier or to merge two tiers together.

The benchmarking information on the record of *Cold-Rolled Steel from Russia* was substantively different than the information on the record of this review. In that investigation, Commerce applied a tier-three benchmark only after first determining that there were no viable tier-one or tier-two benchmarks on the record of the proceeding.<sup>75</sup> Conversely, in this proceeding, after determining that there is no viable tier-one benchmark for natural gas in Turkey because the market is distorted, Commerce has world market prices on the record that are useable for benchmarking purposes under tier-two of the hierarchy and, thus, Commerce need not conduct a tier-three benchmark analysis.

For Commerce's consideration as a tier-two benchmark, the petitioner submitted the IEA pricing data,<sup>76</sup> and Colakoglu submitted: (1) natural gas consumption and trade data for Russia and Azerbaijan published by BMI Research;<sup>77</sup> (2) Romanian natural gas prices published by the Romanian Energy Regulatory Authority;<sup>78</sup> and (3) GTIS natural gas pricing data.<sup>79</sup>

We agree with the petitioner that, where possible, it is Commerce's preference to use all available and comparable pricing data on the record of a proceeding to derive a world market benchmark.<sup>80</sup> However, for a price to be included in the benchmark, it must be reasonable to conclude that the price would be available to purchasers in the country in question, pursuant to 19 CFR 351.511(a)(2)(ii).<sup>81</sup> After considering all benchmark data on the record, we find that there is evidence justifying the exclusion of a certain pricing data sets. Specifically, evidence on the record (i.e., Turkey's natural gas pipeline system) demonstrates that purchasers in Turkey are

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<sup>74</sup> See *Cold-Rolled Steel from Russia* IDM at 18 and 69-70.

<sup>75</sup> *Id.* at 16-18, 52-56, 60-61, and 66-72.

<sup>76</sup> See Petitioner October 31, 2017 Benchmark Submission at Exhibit 6.

<sup>77</sup> See Colakoglu October 27, 2017 Benchmark Submission at 4-5 and Exhibits 3 and 4.

<sup>78</sup> *Id.* at 5-6 and Exhibits 5 and 6.

<sup>79</sup> *Id.* at Exhibits 7 and 8.

<sup>80</sup> See Petitioner Case Brief at 7 (citing to *Wind Towers from China* IDM at 69). See, e.g., *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid from China*), and accompanying IDM at Comment 10; and *Wind Towers from China* IDM at Comment 15.

<sup>81</sup> See, e.g., *Citric Acid from China* IDM at Comment 13; *Cold-Rolled Steel from Russia* IDM at 17 and Comment 5; and *Melamine from Trinidad and Tobago* IDM at 9.

physically precluded from purchasing certain natural gas on the world market.<sup>82</sup>

We find that the IEA OECD European natural gas prices are prices which are not available to Turkish purchasers, given that Turkey does not have a natural gas inflow pipeline connection with Europe. For the same reason, we conclude that the Romanian natural gas prices cannot be included in the benchmark. Regarding the Russian natural gas consumption and trade pricing data, we found the domestic Russian natural gas market to be distorted in *Cold-Rolled Steel from Russia*<sup>83</sup> and, thus, Russian domestic prices are not market-based. Further, the Russian export price (like the Azerbaijan export price) includes prices on sales to Turkey, *i.e.*, Turkish import prices, which would be tier-one prices under 19 CFR 351.511(a)(2)(i) that we have determined cannot be used because Turkey's natural gas market is distorted. Concerning the GTIS pricing data, in *Turkey Rebar II Final*, Commerce identified issues with the data (*i.e.*, inconsistent conversion factors and the inclusion of CNG), which covered the same time period as this review, *i.e.*, calendar year 2015.<sup>84</sup> Therefore, consistent with *Turkey Rebar II Final*, we do not find GTIS to be a reliable source for natural gas pricing data.

Based on our analysis of the benchmarking data, we conclude that the domestic Azerbaijan natural gas consumption price (published by BMI Research) is an appropriate world market price on the administrative record to use as a tier-two benchmark for natural gas. We determine that the domestic natural gas consumption price from Azerbaijan best fulfills the requirements under 19 CFR 351.511(a)(2)(ii), as that price represents natural gas: (a) that would be available through the pipeline system to purchasers in Turkey; and (b) excludes any prices on sales to Turkey itself, *i.e.*, import prices in Turkey, which would be tier-one prices under 19 CFR 351.511(a)(2)(i). Furthermore, unlike the domestic Russian natural gas market, which Commerce found to be distorted in *Cold-Rolled Steel from Russia*, we have not previously made a determination with respect to the market forces affecting gas prices within Azerbaijan. Accordingly, there is no reason for Commerce to call into question the appropriateness of the domestic Azerbaijan annual price on the record for purposes of 19 CFR 351.511(a)(2)(ii). Indeed, the petitioner raised no arguments with respect to the Azerbaijan natural gas market.

The petitioner contends that the natural gas, which enters from the countries with a pipeline connection to Turkey, may not have been produced by those countries. Although we recognize the petitioner's concern, we find that there is no evidence on the record to indicate that Azerbaijan imported natural gas from third countries that was then exported to Turkey. In fact, there is contrary evidence on the underlying record of this proceeding. Specifically, BOTAS' 2015 annual report indicates that the Azerbaijan-Turkey gas pipeline transports Azeri natural gas.<sup>85</sup> Additionally, though we are not using the Russia prices, we know from *Cold-Rolled Steel from Russia*, that, because Gazprom's gas pipelines are not bi-directional, Russia cannot import natural gas from Europe or Asia and, therefore, cannot then export natural gas produced in European (including IEA OECD member countries) or Asian countries to purchasers in Turkey.<sup>86</sup>

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<sup>82</sup> See GOT April 3, 2017 IQR at Exhibit 6d (BOTAS 2015 Annual Report).

<sup>83</sup> See *Cold-Rolled Steel from Russia* IDM at Comment 3.

<sup>84</sup> See *Turkey Rebar II Final* IDM at 9-10 and Comment 4.

<sup>85</sup> See GOT April 3, 2017 IQR at Exhibit 6d (BOTAS 2015 Annual Report) at 30.

<sup>86</sup> See *Cold-Rolled Steel from Russia* IDM at Comment 5.

Further, contrary to the petitioner's argument, Commerce did not conclude that there are pipelines that permit the transportation of natural gas from Europe to Turkey in *Turkey Rebar II Final*.<sup>87</sup> In that case, no party presented evidence of or commented on Turkey's natural gas pipeline system to inform Commerce of the existing pipeline system. Because Turkey's pipeline system was not an issue, Commerce did not make a finding on whether there are pipelines to transport natural gas from Europe to Turkey. Additionally, as previously indicated, Turkey's pipeline map shows a pipeline connecting Turkey and Greece. However, the evidence on the record indicates that this is an outflow pipeline that permits only the export of natural gas from Turkey to Greece,<sup>88</sup> not the import of natural gas from Greece to Turkey.<sup>89</sup> Moreover, the petitioner failed to submit any evidence to refute the function of the Turkey-Greece pipeline, as described in BOTAS' 2015 annual report.<sup>90</sup>

We also find no merit in the petitioner's argument that the Azerbaijan price is not a useable benchmark because of "distortions" when converting the volume data from cubic meter to kilowatt hour. We note that in *Turkey Rebar II Final*, Commerce declined to use GTIS – and not BMI Research – natural gas pricing because the data were reported in several different units of measure (*i.e.*, volume, mass, and energy) and a wide variance in conversion rates across transactions was observed.<sup>91</sup> In that case, the various units of measure could not be converted to a single unit of measure to enable a comparison of the GTIS prices to the respondent's natural gas purchases without introducing assumptions that would be unsupported by the record.<sup>92</sup>

In this review, however, the facts on the record are quite different. The domestic Azerbaijan price is reported in a unit of measure that can be converted to the unit on which BOTAS invoiced Colakoglu Metalurji, using a standard conversion factor that does not introduce any distortion to the benchmark calculation.<sup>93</sup> The petitioner asserts that the conversion of natural gas units of measure varies depending on temperature and pressure. However, the petitioner failed to identify any errors with the conversion of the Azerbaijan pricing data. We, thus, find the conversion of the Azerbaijan price to derive the tier-two benchmark was proper and continue to use that benchmark in the natural gas benefit calculations for these final results. Consequently, consistent with the *Preliminary Results*, we continue to find that no benefit was provided by the GOT to Colakoglu Metalurji during the POR through its purchases of natural gas from BOTAS.<sup>94</sup>

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<sup>87</sup> See *Turkey Rebar II Final* IDM at 8-12 and Comment 4.

<sup>88</sup> See GOT April 3, 2017 IQR at 22 (showing all entry and exit points through which natural gas is transported in and out of Turkey), and Exhibit 6d (BOTAS' 2015 Annual Report) at page 29 (discussing that the Turkey-Greece connection is solely for the export of natural gas through Turkey).

<sup>89</sup> See Colakoglu October 27, 2017 Benchmark Submission at 4.

<sup>90</sup> See GOT April 3, 2017 IQR at Exhibit 6d (BOTAS' 2015 Annual Report) at page 29 (discussing that the Turkey-Greece connection is solely for export through Turkey).

<sup>91</sup> See *Turkey Rebar II Final* IDM at 22.

<sup>92</sup> *Id.* at 22-24.

<sup>93</sup> The Azerbaijan price is proprietary information. For the conversion calculation, see Colakoglu Calculations.

<sup>94</sup> *Id.*

**X. Conclusion**

Based on our analysis of the comments received, we recommend adopting all the above positions. If this recommendation is accepted, we will publish the final results of this review in the *Federal Register*.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

4/9/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

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