



C-489-834

Investigation

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POI: 01/01/2017 – 12/31/2017

E&C AD/CVD OII: AM, AKM, RRB

**DATE:** June 19, 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 P. Maeder  
Associate Deputy Assistant Secretary  
for Antidumping/Countervailing Duty Operations  
performing the duties of Deputy Assistant Secretary for  
Antidumping and Countervailing Duty Operations

**SUBJECT:** Decision Memorandum for the Affirmative Preliminary  
Determination of the Countervailing Duty Investigation of Large  
Diameter Welded Pipe from the Republic of Turkey

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## **I. SUMMARY**

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of large diameter welded pipe (welded pipe) from the Republic of Turkey (Turkey), as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

## **II. BACKGROUND**

### **A. Case History**

On January 17, 2018, Commerce received a countervailing duty (CVD) petition concerning imports of welded pipe from Korea, filed in proper form on behalf of American Cast Iron Pipe Company, Berg Steel Pipe Corp./Berg Spiral Pipe Corp, Dura-Bond Industries, Skyline Steel, Stupp Corporation, Greens Bayou Pipe Mill, LP, JSW Steel (USA) Inc., and Trinity Products LLC (collectively, the petitioners).<sup>1</sup> We describe the supplements to the petition and our

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<sup>1</sup> See Petitioners' letter, "Large Diameter Welded Pipe from Canada, Greece, India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Petitions for the Imposition of Antidumping and Countervailing Duties," dated January 17, 2018 (Petition).



consultations with the Government of the Republic of Turkey (GOT) in the Initiation Checklist.<sup>2</sup> On February 20, 2018, we published the initiation of a CVD investigation on welded line pipe from Turkey.<sup>3</sup>

On February 6, 2018, we released the U.S. Customs and Border Protection (CBP) entry data under administrative protective order (APO), and requested comments regarding the data and respondent selection. We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on CBP entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.<sup>4</sup>

On March 5, 2018, pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2), we selected Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan) and HDM Spirally Welded Steel Pipe Co. Inc. (HDM Spiral).<sup>5</sup> On March 8, 2018, we issued the CVD questionnaire to the GOT.

On March 27, 2018, we received timely responses to the “affiliated companies” section of the CVD questionnaire from Borusan and HDM Celik.<sup>6</sup> On April 2 and 11, 2018, we issued affiliation supplemental questionnaires to HDM Celik, to which HDM Celik submitted timely responses on April 5 and 18, 2018.<sup>7</sup>

On April 23, 2018, the GOT and Borusan submitted timely responses to the initial CVD questionnaire,<sup>8</sup> and on April 25, 2018, HDM Celik submitted a timely response to the initial CVD questionnaire.<sup>9</sup>

On April 30, 2018, we issued a supplemental questionnaire to HDM Celik. On May 2, 2018, we issued supplemental questionnaires to the GOT and Borusan. On May 11, 2018, we issued a second supplemental questionnaire to the GOT.

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<sup>2</sup> See “Countervailing Duty Initiation Checklist: Large Diameter Welded Pipe from the Republic of Turkey (Turkey),” dated February 9, 2018 (Initiation Checklist).

<sup>3</sup> See *Large Diameter Welded Pipe from India, the People’s Republic of China, the Republic of Korea, and the Republic of Turkey: Initiation of Countervailing Duty Investigations*, 83 FR 7148 (February 20, 2018) (*Initiation Notice*).

<sup>4</sup> *Id.* 79 FR at 7152.

<sup>5</sup> See Memorandum, “Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Turkey: Respondent Selection,” dated March 5, 2018. As part of its affiliation response, HDM Celik Boru Sanayi ve Ticaret A.S. (HDM Celik) stated that HDM Celik acquired HDM Spiral on October 31, 2017, and would be responding on behalf of both companies. See HDM Celik’s March 27, 2018 Affiliation Response (HDM Celik’s AFFR) at 4. See also “Attribution of Subsidies,” below, for further discussion.

<sup>6</sup> See HDM Celik’s AFFR. See also Borusan’s March 27, 2018 Affiliation Response (Borusan’s AFFR).

<sup>7</sup> See HDM Celik’s April 5, 2018 Supplemental Affiliation Response (HDM Celik’s April 5, 2018 SAFFR). See also HDM Celik’s April 18, 2018 Second Supplemental Affiliation Response.

<sup>8</sup> See GOT’s April 23, 2018 Initial Questionnaire Response (GOT’s April 23, 2018 IQR).

<sup>9</sup> See Borusan’s April 23, 2018 Initial Questionnaire Response (Borusan’s April 23, 2018 IQR). See also HDM Celik’s April 25, 2018 Initial Questionnaire Response (HDM Celik’s April 25, 2018 IQR).

On May 16, 2018, HDM Celik submitted a timely response to its initial supplemental questionnaire.<sup>10</sup> On May 18, 2018, Borusan and the GOT submitted timely responses to Commerce's initial supplemental questionnaires.<sup>11</sup>

On May 23, 2018, we issued an additional supplemental questionnaire to HDM Celik. On May 24 and 25, 2018, we issued additional supplemental questionnaires to the GOT and Borusan, respectively. On May 30, 2018, HDM Celik submitted a timely response to its May 23 supplemental questionnaire.<sup>12</sup> On June 4, 2018, the GOT submitted a timely response to its May 24 supplemental questionnaire.<sup>13</sup> On June 5 and 6, 2018, Borusan submitted timely responses to its May 25 supplemental questionnaire.<sup>14</sup>

#### **B. Postponement of the Preliminary Determination**

On March 20, 2018, the petitioners requested that Commerce postpone the deadline for the preliminary determination. Commerce granted the petitioners' request and, on April 2, 2018, published the notification of postponement of the preliminary determination, until June 19, 2018, in the *Federal Register*, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).<sup>15</sup>

#### **C. Period of Investigation**

The period of investigation (POI) is January 1, 2017, through December 31, 2017.

### **III. INJURY TEST**

Because Turkey is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a U.S. industry. On March 6, 2018, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of large diameter welded pipe from Turkey.<sup>16</sup>

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<sup>10</sup> See HDM Celik's May 16, 2018 Supplemental Questionnaire Response (HDM Celik's May 16, 2018 SQR).

<sup>11</sup> See Borusan's May 18, 2018 Supplemental Questionnaire Response (Borusan's May 18, 2018 SQR). See also GOT's May 18, 2018 Supplemental Questionnaire Response (GOT's May 18, 2018 SQR).

<sup>12</sup> See HDM Celik's May 30, 2018 Supplemental Questionnaire Response (HDM Celik's May 30, 2018 SQR).

<sup>13</sup> See GOT's June 4, 2018 Supplemental Questionnaire Response (GOT's June 4, 2018 SQR).

<sup>14</sup> See Borusan's June 5, 2018 Supplemental Questionnaire Response (Borusan's June 5, 2018 SQR). See also Borusan's June 6, 2018 Additional Hot-Rolled Steel Data.

<sup>15</sup> See *Large Diameter Welded Pipe from India, the People's Republic of China, the Republic of Korea, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 83 FR 13946 (April 2, 2018).

<sup>16</sup> See *Large Diameter Welded Pipe from Canada, China, Greece, India, Korea, and Turkey Determinations*, 83 FR 10748 (March 12, 2018).

## IV. SUBSIDIES VALUATION

### A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.<sup>17</sup>

Commerce finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised.<sup>18</sup> Commerce notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding has disputed this allocation period.

Furthermore, for non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

### B. Attribution of Subsidies

Cross Ownership: In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide 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

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<sup>17</sup> See 19 CFR 351.524(b).

<sup>18</sup> See U.S. Internal Revenue Service Publication 946 (2017), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

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>19</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>20</sup>

### Borusan

Borusan responded to Commerce’s questionnaire on behalf of itself and its affiliates: 1) Borusan Mannesmann Boru Yatirim Holding A.S. (BMBYH), a holding company that owns the majority of Borusan;<sup>21</sup> and 2) Borusan Holding A.S. (Borusan Holding), a holding company that owns the majority of BMBYH.<sup>22</sup>

We preliminarily find that Borusan, BMBYH, and Borusan Holding are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) by virtue of Borusan Holding’s ultimate ownership of Borusan and BMBYH. In accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Borusan to its own sales.

In its affiliation questionnaire response, Borusan stated that neither BMBYH nor Borusan Holding engaged in production or sales activities that would make them eligible for any of the alleged subsidies in this investigation.<sup>23</sup> Borusan stated BMBYH and Borusan Holding did not receive any subsidies from the programs listed in Commerce’s CVD questionnaire, specifically addressing each program in turn.<sup>24</sup> Therefore, while we preliminarily find that BMBYH and Borusan Holding are cross-owned with Borusan within the meaning of 19 CFR 351.525(b)(6)(vi), we find no evidence that Borusan Holding or BMBYH received any countervailable subsidies attributable to Borusan during the POI.

Finally, Borusan identified numerous additional companies with which it was affiliated during the POI based on cross-ownership with Borusan Holding.<sup>25</sup> However, Borusan reported that none of these affiliates was involved in the production or sale of subject merchandise.<sup>26</sup> Therefore, we preliminarily determine that these affiliated companies do not meet any of the

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<sup>19</sup> See *Countervailing Duties: Final Rule* 63 FR 65347, 65401 (November 25, 1998) (*CVD Preamble*).

<sup>20</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

<sup>21</sup> See Borusan’s AFFR at 4 and Exhibit 3.

<sup>22</sup> See Borusan’s AFFR at 3 and Borusan’s April 23, 2018 IQR at 1.

<sup>23</sup> See Borusan’s AFFR at 10.

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

<sup>25</sup> *Id.* at 5-8.

<sup>26</sup> *Id.*

conditions set forth in 19 CFR 351.525(b)(6)(ii)-(v); as a result, we have not included them in our subsidy analysis.

### HDM Celik

HDM Celik responded to Commerce's questionnaire on behalf of itself and HDM Spiral, a producer of subject merchandise.<sup>27</sup> According to HDM Celik, HDM Spiral merged with HDM Celik on October 31, 2017, and no longer exists. Prior to October 31, 2017, HDM Celik was the majority shareholder in HDM Spiral.

We preliminarily determine that, prior to October 31, 2017, HDM Celik and HDM Spiral were cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) through HDM Celik's majority ownership and control of HDM Spiral. In accordance with 19 CFR 351.525(b)(6)(i), we are attributing subsidies received by HDM Celik and HDM Spiral to the companies' combined sales.

Finally, HDM Celik identified additional companies with which it was affiliated during the POI.<sup>28</sup> However, HDM Celik reported that none of these affiliates was involved in the production or sale of subject merchandise. Therefore, we preliminarily determine that these affiliated companies do not meet any of the conditions set forth in 19 CFR 351.525(b)(6)(ii)-(v). As a result, we have not included them in our subsidy analysis.

### C. Denominators

In accordance with 19 CFR 351.525(b), when selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). Similarly, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator (or the total export sales of the cross-owned affiliates, as described above). In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.<sup>29</sup>

### D. Benchmark Interest Rates

We are investigating export loans and non-recurring, allocable subsidies that the respondents received.<sup>30</sup> In the section below, we discuss the derivation of the benchmarks and discount rates

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<sup>27</sup> See HDM Celik's AFFR at 4.

<sup>28</sup> See HDM Celik's April 5, 2018 SAFFR at Exhibit S1.

<sup>29</sup> See Memorandum, "Countervailing Duty Investigation of Large Diameter Welded Pipe from Turkey: Preliminary Determination Calculation Memorandum for Borusan," (Borusan's Preliminary Calculation Memorandum) dated concurrently with these preliminary results; see also Memorandum, "Countervailing Duty Investigation of Large Diameter Welded Pipe from Turkey: Preliminary Determination Calculation Memorandum for HDM Celik," (HDM Celik's Preliminary Calculation Memorandum), dated concurrently with these preliminary results.

<sup>30</sup> See 19 CFR 351.524(b)(1).

for the POI and previous years.

### Short-Term Benchmarks

To determine whether government-provided loans under investigation conferred a benefit, Commerce uses, where possible, company-specific interest rates for comparable commercial loans.<sup>31</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. Borusan submitted weighted-average interest rates, along with the underlying data, that it paid on comparable short-term commercial loans.<sup>32</sup> Consistent with 19 CFR 351.505(a)(2)(ii), we are preliminarily using the interest rates that Borusan submitted on comparable short-term loans as benchmarks.

### Long-Term Benchmark

As discussed above, to determine whether government-provided loans under investigation conferred a benefit, Commerce uses, where possible, company-specific interest rates for comparable commercial loans.<sup>33</sup> Where such benchmark rates are unavailable, consistent with 19 CFR 351.505(a)(3)(ii), we use lending rate data from the International Monetary Fund's International Financial Statistics as our national average benchmark.<sup>34</sup>

### Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we have 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 were received.

## **V. ANALYSIS OF PROGRAMS**

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following.

### A. Programs Preliminarily Determined to be Countervailable

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

We examined the provision of HRS to Borusan and HDM Celik during the POI. Borusan and HDM Celik reported purchasing HRS from Ereğli Demir ve Çelik Fabrikalari T.A.S. (Erdemir) and İskenderun Demir ve Çelik A.Ş. (İsdemir) during the POI.<sup>35</sup>

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<sup>31</sup> See 19 CFR 351.505(a)(2)(ii).

<sup>32</sup> See Borusan's April 23, 2018 IQR at Exhibits D-1 and D-2.

<sup>33</sup> See 19 CFR 351.505(a)(2)(ii).

<sup>34</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 (IDM) at "Benchmarks and Interest Rates."

<sup>35</sup> See Borusan's April 23, 2018 IQR at 14 and Exhibit A-1. See also HDM Celik's April 25, 2018 IQR at Exhibit 8.

The information submitted by the GOT with regard to this program remains consistent with our previous findings. In *CWP Turkey 2015 AR* and *Welded Line Pipe from Turkey*, Commerce found that this program provides countervailable subsidies.<sup>36</sup> 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 POI, OYAK owned 49.28 percent of Erdemir's shares through a wholly-owned holding company, Ataer Holding A.S.<sup>37</sup> Because 3.08 percent of Erdemir's shares were owned by Erdemir itself in the form of treasury shares,<sup>38</sup> OYAK was the controlling shareholder of Erdemir. During the POI, Erdemir in turn owned 95.07 percent of Isdemir.<sup>39</sup>

In its initial questionnaire response, the GOT responded to the Input Producer Appendix for Erdemir, Isdemir, and OYAK.<sup>40</sup> In addition, we asked the GOT to submit certain documents relevant to the Turkish flat steel industry.<sup>41</sup> The GOT claimed it could not submit these documents under its confidentiality agreements with the European Union.<sup>42</sup> However, the GOT did provide limited public summaries of the contents of these documents.<sup>43</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 the Ministry of National Defense."<sup>44</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>45</sup> The Representatives Assembly, in turn, elects 20 of the 40 members of OYAK's General Assembly.<sup>46</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>47</sup> Also, OYAK's property has, by law, the

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<sup>36</sup> See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 47477 (October 12, 2017) (*CWP Turkey 2015 AR*), and accompanying IDM at 15. 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 IDM at 13 – 17.

<sup>37</sup> See GOT's April 23, 2018 IQR at Exhibit 8-N.

<sup>38</sup> See GOT's April 23, 2018 IQR at Exhibit 8-C6 at pages 5 and 55 (Note 21 to Erdemir's 2017 Audited Financial Statement).

<sup>39</sup> *Id.* at Exhibit 8(i).

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

<sup>41</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 GOT's April 26, 2018 Initial Questionnaire Response Supplement (GOT's April 26, 2018 IQRS).

<sup>42</sup> See GOT's May 18, 2018 SQR at 3-4 and Exhibit 4.

<sup>43</sup> *Id.* at 3.

<sup>44</sup> See GOT's April 23, 2018 IQR at Article 1 of Exhibit 8-G.

<sup>45</sup> *Id.* at Article 3 of Exhibit 8-G.

<sup>46</sup> *Id.* at Article 4 of Exhibit 8-G.

<sup>47</sup> *Id.* at Articles 5 and 8 of Exhibit 8-G.



“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>48</sup>

Record evidence indicates that the GOT’s significant involvement in OYAK extends to Erdemir and Isdemir. For example, Erdemir’s 2016 Annual Report states, “In 2016 . . . flat steel exports increased 29%,” and that Erdemir “aims to meet the present and future needs of Turkish industry to the highest level by investing in the production of high value added products.”<sup>49</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>50</sup> Also, the GOT explained that the Turkish Privatization Administration (TPA) holds veto power over any decisions related to the closedown, sale, de merger, merger, or liquidation of both Erdemir and Isdemir.<sup>51</sup> Additionally, the TPA also holds veto power over decisions on reduction in capacity of Erdemir and Isdemir’s integrated steel production facilities and mining facilities.<sup>52</sup> Further, Erdemir’s 2016 Annual Report indicates that OYAK and the TPA both have members on Erdemir’s Board of Directors.<sup>53</sup>

During the POI, Erdemir’s 2017 Annual Report indicates continued growth, stating that it “realized the highest final flat production in its history, at 7.7 million tons,” and that its exports increased “by 10%... {to} 1.2 million tons of steel to 45 countries over a wide geographical area.”<sup>54</sup> Erdemir’s 2017 Annual Report indicates that OYAK and the TPA continue to have members on Erdemir’s Board of Directors.<sup>55</sup>

We preliminarily determine that the record evidence cited above indicates that the GOT exercises meaningful control over Erdemir and Isdemir, such that Erdemir and Isdemir possess, exercise or are vested with government authority. This meaningful control is evident from both the role of OYAK as an institution through which the GOT exercises control over Erdemir and Isdemir, and the alignment of Erdemir’s Annual Report with the Medium Term Programme. Therefore, consistent with the final 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 Act.<sup>56</sup> Consequently, we find that the HRS supplied by Erdemir and Isdemir to Borusan and HDM Celik is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act.

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<sup>48</sup> *Id.* at Articles 18, 35, and 37 of Exhibit 8-G.

<sup>49</sup> *Id.* at Exhibit 8-G (Erdemir 2016 Annual Report at 3 and 34, respectively).

<sup>50</sup> See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review: Calendar Year 2013 and Rescission of Countervailing Duty Administrative Review, In Part*, 80 FR 61361 (October 13, 2015) (*Turkey Pipe 2013 Final Results*), and accompanying IDM at 8-11.

<sup>51</sup> See GOT’s April 23, 2018 IQR at Exhibit 8(i) and at Exhibit 8-A (Erdemir’s Articles 21, 22, 27 of Association).

<sup>52</sup> See GOT’s April 23, 2018 IQR at Exhibit 8-C3 (Erdemir’s 2016 Annual Report) at page 71.

<sup>53</sup> *Id.* at Exhibit 8-G (Erdemir’s 2016 Annual Report, pages 64-65).

<sup>54</sup> See GOT’s June 8, 2018 3rd QRS at Exhibit 1 (Erdemir’s 2017 Annual Report, at pages 12 and 43).

<sup>55</sup> *Id.* at Exhibit 1 (Erdemir’s 2017 Annual Report, page 15).

<sup>56</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 IDM 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.”

Regarding the specificity of the HRS for LTAR program, the GOT provided a list of the industries that purchased HRS in Turkey during the POI.<sup>57</sup> Specifically, the GOT identified the following industries as purchasers of HRS during the POI: 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>58</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>59</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>60</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 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, in certain circumstances, 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>61</sup>

Consistent with Commerce's final determinations in *CWP Turkey 2015 AR* and *Welded Line Pipe 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

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<sup>57</sup> See GOT's April 23, 2018 IQR at 19. The existence of this program is evident from both the repeated provision of HRS by Erdemir and Isdemir and the Annual Reports of Erdemir.

<sup>58</sup> *Id.*

<sup>59</sup> See *OCTG from Turkey*, and accompanying IDM at 20-26; and *Welded Line Pipe from Turkey*, and accompanying IDM at 11 - 14.

<sup>60</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 IDM at "Market Based Benchmark."

<sup>61</sup> See *CVD Preamble*, 63 FR at 65277.

benchmark.<sup>62</sup> The record information shows that for 2015, 2016 and 2017, the combined domestic HRS production of Erdemir and Isdemir accounted for 40.27, 38.44, and 36.22 percent of supply, respectively, while imports of HRS accounted for 39.63, 38.67, and 34.15 percent in the same years, respectively.<sup>63</sup> Given the minority share of government production, the substantial levels of imports, and the lack of other record evidence indicative of distortion, such as an export tax on or export quota for the input, we preliminarily find, consistent with our prior determinations noted above, that the HRS market in Turkey was not distorted by the government's presence during this period. 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 respondents' 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 POI.

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 Borusan and HDM Celik, the benchmark includes the delivery charges, import duties (where applicable), and VAT paid (where applicable).

We then compared the monthly benchmark prices to Borusan's and HDM Celik's actual purchase prices for HRS from Erdemir and Isdemir, including taxes and delivery charges, as appropriate. In instances in which Borusan and HDM Celik 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>64</sup> Under this methodology, we find that Borusan and HDM Celik received a benefit to the extent that the prices they paid for HRS produced by Erdemir and Isdemir were for LTAR.<sup>65</sup>

To calculate the net subsidy rate attributable to Borusan and HDM Celik, we divided the benefit by the companies' total sales during the POI. On this basis, we find that the Borusan received a countervailable subsidy of 0.42 percent *ad valorem*, and HDM Celik received a countervailable subsidy rate of 1.54 percent *ad valorem*.<sup>66</sup>

## 2. Provision of Cut-to-Length Plate (CTL Plate) for LTAR

We examined the provision of CTL plate to HDM Celik during the POI. The company reported purchasing CTL plate from Erdemir during the POI.<sup>67</sup>

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<sup>62</sup> See *CWP Turkey 2015 AR* and accompanying IDM at 15; *Welded Line Pipe from Turkey* and accompanying IDM at 15 – 16.

<sup>63</sup> See GOT's April 23, 2017 IQR at 16-17.

<sup>64</sup> See Borusan's Preliminary Calculation Memorandum.

<sup>65</sup> See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

<sup>66</sup> See Borusan's Preliminary Calculation Memorandum; see also HDM Celik's Preliminary Calculation Memorandum.

<sup>67</sup> See HDM Celik's April 25, 2018 IQR at Exhibit 9.

For the same reasons as noted above, we preliminarily determine that the record evidence indicates that Erdemir is an “authority” within the meaning of section 771(5)(B) of the Act. Consequently, we find that the CTL plate supplied by Erdemir to HDM Celik is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act.

In its initial questionnaire response with regard to this program, the GOT explained that CTL plate is produced from HRS through a “simple cutting process,” and for that reason referred Commerce to its responses with regard to the HRS for LTAR program, implying that those responses equally pertain to CTL plate.<sup>68</sup> Accordingly, we are preliminarily relying on the GOT’s responses regarding HRS for our findings regarding the specificity of the CTL plate for LTAR program under section 771(5A) of the Act, and in part regarding the CTL plate market in the context of our benchmark and benefit analysis under 19 CFR 351.511.<sup>69</sup> Thus, consistent with our analysis of HRS above, we preliminarily determine that the subsidy 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, and by extension, CTL plate, is limited in number.<sup>70</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>71</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 sold CTL plate to HDM Celik for LTAR. Notwithstanding the regulatory 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, in certain circumstances, a substantial portion

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<sup>68</sup> See GOT’s April 23, 2018 IQR at 27 and the GOT’s May 18, SQR at 4.

<sup>69</sup> Subsequently, in the GOT’s May 18, 2018 SQR at 5, the GOT did provide aggregate production and consumption data pertaining to CTL plate. Nonetheless, following the preliminary determination, if we determine it is appropriate, Commerce may continue to seek any available information specifically relevant to the CTL plate market and the composition of industrial sectors that purchase CTL plate from Erdemir and Isdemir.

<sup>70</sup> See *OCTG from Turkey*, and accompanying IDM at 20-26; and *Welded Line Pipe from Turkey*, and accompanying IDM at 11 - 14.

<sup>71</sup> See, *e.g.*, *Softwood Lumber from Canada*, and accompanying IDM at “Market Based Benchmark.”

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>72</sup>

Similar to Commerce's determination regarding the Turkish HRS market, discussed above, we determine that the record evidence does not support a finding that the Turkish CTL plate market is so distorted that it cannot serve as a source for an appropriate benchmark. The record information shows that for 2015, 2016 and 2017, the combined domestic CTL plate production of Erdemir and Isdemir accounted for 42.33, 42.12, and 42.13 percent of supply, respectively, while imports of CTL plate accounted for 45.25, 46.06, and 46.65 percent in the same years, respectively.<sup>73</sup> Given the minority share of government production, the substantial levels of imports, and the lack of other record evidence indicative of distortion, such as an export tax on or export quota for the input, we preliminarily find, consistent with our determination regarding the Turkish HRS market, that the CTL plate market in Turkey was not distorted by the government's presence during this period. Therefore, we determine that HDM Celik's reported prices for domestic and imported CTL plate can serve as tier one benchmarks. Accordingly, pursuant to 19 CFR 351.511(a)(2)(i), we used HDM Celik's actual domestic and import prices for CTL plate to calculate the benefit from its purchases of CTL plate from Erdemir during the POI.

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 HDM Celik, the benchmark includes delivery charges.<sup>74</sup>

We then compared the monthly benchmark prices HDM Celik's actual purchase prices for CTL plate from Erdemir, including taxes and delivery charges, as appropriate. In instances in which HDM Celik paid to Erdemir a lower unit price than the benchmark unit price, we multiplied the difference by the quantity of HRS purchased to calculate the benefit.<sup>75</sup> Under this methodology, we find that HDM Celik received a benefit to the extent that the prices it paid for CTL plate produced by Erdemir was for LTAR.<sup>76</sup>

To calculate the net subsidy rate attributable to HDM Celik, we divided the benefit by the company's total sales during the POI. On this basis, we find that HDM Celik received a countervailable subsidy of 0.02 percent *ad valorem*.<sup>77</sup>

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<sup>72</sup> See *CVD Preamble*, 63 FR at 65277.

<sup>73</sup> See GOT's May 18, 2018 SQR at 5. These data include CTL plate produced by Erdemir's affiliate, Erdemir Celik Servis Merkezi San. ve Tic. A.S.

<sup>74</sup> Because its production facility is in a free zone, HDM Celik did not pay import duties or VAT on its purchases of CTL plate.

<sup>75</sup> See Borusan's Preliminary Calculation Memorandum.

<sup>76</sup> See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

<sup>77</sup> See HDM Celik's Preliminary Calculation Memorandum.

### 3. Deductions from Taxable Income for Export Revenue

Addendum 4108 of Article 40 of the Income Tax Law Number 193, effective June 2, 1995, allows taxpayers engaged in export activities to 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>78</sup> This deduction is to cover the expenditures without documentation incurred from exports, construction, maintenance, assembly, and transportation activities abroad.<sup>79</sup> The deduction for export earnings may either be taken as a lump sum on a company's annual income tax return or be shown within the company's marketing, selling and distribution expense account of the income statement.<sup>80</sup> Under this program, marketing, selling, and distribution expenses are deductible expenditures for tax purposes. The Ministry of Finance is responsible for administering the program.<sup>81</sup>

Consistent with prior determinations, we preliminarily find that this tax deduction is a countervailable subsidy.<sup>82</sup> The income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, because it represents revenue foregone 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. During the POI, Borusan and HDM Celik reported receiving the deduction for export earnings with respect to their 2016 tax returns filed during the POI.<sup>83</sup>

Commerce typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1). The amount of the benefit is equal to the amount of tax that would have been paid absent the program.

To calculate the countervailable subsidy rate for Borusan and HDM Celik, we divided each company's tax savings by its total export sales value for the POI. On this basis, we preliminarily determine the net countervailable subsidy for this program to be 0.07 percent *ad valorem* for Borusan and 0.03 percent *ad valorem* for HDM Celik.<sup>84</sup>

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<sup>78</sup> See GOT's April 23, 2018 IQR at 45.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 51 and Exhibit 17.

<sup>81</sup> *Id.* at 46 and Exhibit 17.

<sup>82</sup> See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 16, 2012), and accompanying IDM at "Deduction from Taxable Income for Export Revenue"; and *OCTG Turkey CVD Final*, and accompanying IDM at "Deduction from Taxable Income for Export Revenue."

<sup>83</sup> See Borusan's April 23, 2018 IQR at Exhibit 9; see also HDM Celik's April 25, 2018 IQR at 15.

<sup>84</sup> See Borusan's Preliminary Calculation Memorandum; see also HDM Celik's Preliminary Calculation Memorandum.

#### 4. Export Financing: Rediscount Program<sup>85</sup>

The Rediscount Program was established in 1999 and is administered by the Export Credit Bank of Turkey (Turk Eximbank).<sup>86</sup> The Rediscount Program was designed to provide financial support to Turkish exporters, manufacturer-exporters, and manufacturers supplying exporters.<sup>87</sup> This program is contingent upon an export commitment.<sup>88</sup> Under the Rediscount Program, there is a minimum loan amount of 50,000 U.S. dollars per company.<sup>89</sup> Loan payments shall be made within the credit period or at maturity to the Turk Eximbank.<sup>90</sup> Companies can repay either in the foreign currency in which the loan was obtained or in a Turkish-lira equivalent of the principal and interest based on exchange rates determined by the Turk Eximbank.<sup>91</sup> Borusan reported that it had loans outstanding under this program during the POI.<sup>92</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 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amount paid by the company for the loans during the POI and the amount the company would have paid on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance. Commerce's finding in this regard is consistent with its practice.<sup>93</sup>

In calculating the benefit pursuant to section 771(5)(E) of the Act and 19 CFR 351.505(a)(1), we applied a discounted benchmark interest rate because a borrower pays the interest due upfront when the loan is received. Further, for Borusan, in accordance with section 771(6)(A) of the Act, we subtracted the fees that Borusan paid for guarantees required for receipt of the loans from the benefit calculation. To calculate the countervailable subsidy rate, we divided Borusan's benefit amount by its total export sales value for the POI. On this basis, we preliminarily determine the net countervailable subsidy rate for this program to be 0.49 percent *ad valorem* for Borusan.<sup>94</sup>

#### 5. Investment Encouragement Program (IEP): Customs Duty and VAT Exemptions

Council of Ministers' Decree 2012/3305, which has been in force since June 19, 2012, provides companies with investment incentive certificates to receive customs duty exemptions on

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<sup>85</sup> In our initiation checklist, we referred to this program as the "Rediscount Program (Short-Term Pre-Shipment Rediscount Program)." See Initiation Checklist at 11. However, according to the GOT, this program is now called the "Rediscount Program." See GOT's April 23, 2018 IQR at 33.

<sup>86</sup> See GOT's April 23, 2018 IQR at 33-34.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 39 and Exhibit 13.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 38.

<sup>91</sup> *Id.*

<sup>92</sup> See Borusan's April 23, 2018 IQR at 32.

<sup>93</sup> See, e.g., *CWP Turkey 2011 AR*, and accompanying IDM at 6-7; and *OCTG Turkey CVD Final*, and accompanying IDM at 11-12.

<sup>94</sup> See Borusan's Preliminary Calculation Memorandum.

imported machinery and equipment, as well as VAT exemptions for both imported and domestic purchases of machinery and equipment.<sup>95</sup> The Ministry of Economy administers this program. According to the GOT, this program is designed to, *inter alia*, channel savings to value-added investments, and to increase the production and employment rates.<sup>96</sup>

Decree 2012/3305 stipulates different minimum investment amounts for participation in this program. These minimum amounts are based on the region in which an investment is made (*i.e.*, companies applying for this program in Regions 1 and 2 must make a minimum 1,000,000 Turkish lira (TL) investment, while companies in Regions 3,4,5, and 6 must make a minimum TL 500,000 investment).<sup>97</sup> Article 9 of Decree 2012/3305, which regulates customs duty exemptions, excludes certain items from this benefit (*e.g.*, tow trucks, forklifts, concrete pumps, and used print, press, and textile equipment).<sup>98</sup> Additionally, Article 10, which regulates VAT exemptions, limits this benefit for building construction expenditures to those over a fixed investment amount of TL 500,000,000.<sup>99</sup> Moreover, Decree 2012/3305 excludes numerous sectors from participation in this program.<sup>100</sup> Therefore, we preliminarily find this program is specific under section 771(5A)(D)(i) of the Act, and regionally specific under section 771(5A)(D)(iv) of the Act. 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.

HDM Celik reported imports under this program during the POI, and accordingly paid no customs duties or VAT on those imports. However, the investment incentive certificate pertaining to those imports has not been closed by the GOT.

In previous investigations of this program, Commerce countervailed the amounts of import duties and VAT that were exempted during the review or investigation period, based upon each purchase, performed the 0.5 percent test on the foregone taxes and duties, and 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). However, as Commerce noted in *Welded Line Pipe from Turkey 2015 AR Prelim*, under the IEP program, exempted import duties and VAT remain payable to the GOT, with interest, if the exempted company fails its final onsite inspection by the GOT to close out the relevant investment incentive certificate and issue a “completion visa.”<sup>101</sup> Thus, pending a successful close-out of the investment incentive certificate, the company continues to be liable for the exempted duties and VAT.

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). Since the unpaid duties are a liability contingent on subsequent events, we regard the amount of unpaid duty liabilities as an interest-free contingent-liability loan. We find the amount the respondent

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<sup>95</sup> See GOT’s April 23, 2018 IQR at Exhibit 19.

<sup>96</sup> *Id.* at 55.

<sup>97</sup> *Id.* at Exhibit 19.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> See *Welded Line Pipe from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 83 FR 1237 (January 10, 2018) (*Welded Line Pipe from Turkey 2015 AR Prelim*), and accompanying IDM at 14.



would have paid during the POR had it borrowed the full amount of the duty exemption or reduction at the time of importation to constitute the first benefit under the IEP customs duty and VAT exemption program.

We find that a second benefit arises based on the amount of customs duties and VAT foregone by the GOT on the imports and/or domestic purchases covered by an IEP certificate at the time the GOT certifies that the investment requirements have been met and issues a completion visa. Pursuant to 19 CFR 351.505(d)(2), under such circumstances, we treat the customs duty and VAT exemptions as grants received in the year in which the GOT waived the contingent liability on those exemptions. In accordance with 19 CFR 351.524(c)(2)(iii), because the import duty and VAT exemptions under this program are approved for the purchase of capital equipment, and thus tied to the company's capital assets, we are treating the exemptions as a non-recurring benefit as of date of the receipt of the completion visa from the GOT.

Information provided by HDM Celik indicates that its investment incentive certificate may be tied to the production of a certain product.<sup>102</sup> However, based on the information currently available on the record, we are preliminarily attributing the benefits received by HDM Celik to its total sales, consistent with 19 CFR 351.525(b)(3).<sup>103</sup>

HDM Celik reported that the investment incentive certificate has not yet been closed by the GOT.<sup>104</sup> Therefore, the import duty and VAT exemptions received by HDM Celik constitute a deferral on the payment of the import duties and VAT during the POI, *i.e.*, contingent liabilities within the meaning of 19 CFR 351.505(d). Consistent with our practice, we are calculating a subsidy rate based on the interest otherwise payable on the amounts outstanding during the POI. We are not calculating a subsidy rate based on the full amount of the duties and VAT foregone by the GOT, as HDM Celik has not received final approval/closure from the GOT.

As indicated above, the time period between exempted importation under the program and the final waiver of liabilities, in the form of a "completion visa" issued by the GOT, may span a certain number of years. As such, pursuant to 19 CFR 351.505(d)(1), the benchmark for measuring this benefit is a long-term interest rate because the event upon which repayment of the duties is contingent (*i.e.*, the date of expiration of the time period to satisfy the contingency) 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 then multiplied the daily rate by the number of days the loan was outstanding during the POI and by the amount of unpaid customs duties and VAT under HDM Celik's investment incentive certificate. We summed these amounts to determine the total benefit from the interest free liability.

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<sup>102</sup> See HDM Celik's April 25, 2018 IQR at 17. The information regarding this product is business proprietary information. See HDM Celik's Preliminary Calculation Memorandum for further discussion.

<sup>103</sup> Because HDM Celik did not separately report its sales on a product-specific basis, we are unable to attribute this subsidy on a more specific basis. We intend to obtain this information after the preliminary determination.

<sup>104</sup> See HDM Celik's May 30, 2018 SQR at 2.

To calculate the net subsidy rate attributable to HDM Celik, we divided the total benefit from the interest free liability by the company's total sales during the POI. On this basis, we find that HDM Celik received a countervailable subsidy of 0.01 percent *ad valorem* for this program.<sup>105</sup>

#### 6. Property Tax Law 1319: Exemption from Property Tax

Article 4, Clause (m) of Property Tax Law 1319 provides a permanent exemption on taxes for buildings located in free zones.<sup>106</sup> According to the GOT, the purpose of this program is to encourage companies to invest in free zones.<sup>107</sup> The Ministry of Economy manages Turkey's free zones, and the Ministry of Finance is responsible for this program.

Clause (m) of Article 4 exempts buildings in the following areas from Turkey's building tax: organized industrial zones, free zones, industrial zones, technology development zones, and industrial sites.<sup>108</sup> During the POI, the applicable building tax on non-residential buildings was 0.002 percent.<sup>109</sup>

HDM Celik reported that it received an exemption from the building tax during the POI for its building in the Mersin free trade zone.<sup>110</sup>

We preliminarily find that this program constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, because it represents revenue foregone by the GOT. The exemption provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. Furthermore, because this program is limited to designated geographical regions within the jurisdiction of the granting authority, including free zones, we find that it is regionally specific under section 771(5A)(D)(iv) of the Act. Our finding in this regard is consistent with Commerce's practice for similar property tax exemptions in organized industrial zones.<sup>111</sup>

To calculate the benefit that HDM Celik received under this program, we multiplied the value of HDM Celik's building by the applicable building tax rate of 0.002 percent. To calculate HDM Celik's subsidy rate, we divided the building tax revenue foregone by the GOT by the company's total sales during the POI. On this basis, we determine HDM Celik's net subsidy rate to be 0.01 percent *ad valorem* for this program.<sup>112</sup>

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<sup>105</sup> See HDM Celik's Preliminary Calculation Memorandum.

<sup>106</sup> See GOT's April 23, 2018 IQR at 114.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at Exhibit 29.

<sup>109</sup> *Id.*

<sup>110</sup> See HDM Celik's May 16, 2018 SQR at 4.

<sup>111</sup> See, e.g., *CWP Turkey 2011 AR*, and accompanying IDM at "Organized Industrial Zone (OIZ): Exemption from Property Tax"; see also *OCTG Turkey CVD Final*, and accompanying IDM at "Exemption from Property Tax."

<sup>112</sup> See HDM Celik's Preliminary Calculation Memorandum.

## 7. Inward Processing Certificate Exemption Program

The Ministry of Economy is the authority responsible for granting the Inward Processing Certificate program (IPC). 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. 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.

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. 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. 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. 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).

Concerning the duty drawback under the 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 the same certificates, pursuant to 19 CFR 351.517(a), 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 with regard to the duty drawback 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 production of the exported product, and that the system is reasonable for the purposes intended.<sup>113</sup> Commerce also found that the VAT 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>114</sup> We have no new information on the record of this proceeding to warrant a reconsideration of Commerce's earlier findings.

During the POI, Borusan used D-1 certificates to receive duty and VAT exemptions on certain imported inputs used in the production of exported pipes and tubes. Consistent with Commerce's findings in *Turkey Pipe 2013 Final Results* and *Welded Line Pipe from Turkey*, and

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<sup>113</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>114</sup> *Id.*; see also *Turkey Pipe 2013 Final Results*, and accompanying IDM at 7-8.

based on our review of the information supplied by the respondent regarding this program in this investigation, we preliminarily find no evidence on the record of this proceeding indicating that the amounts of VAT and duty exemptions on inputs Borusan imported under the program were excessive or that Borusan used the imported inputs for any other product besides those exported, respectively.<sup>115</sup>

Therefore, consistent with past cases, we preliminarily determine that the duty exemptions, which Borusan 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.<sup>116</sup> We further preliminarily find that the VAT exemption did not confer countervailable benefits to Borusan 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 POI, Borusan 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>117</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>118</sup> The GOT also reported that there is no need for export commitments in connection with the use of D-3 certificates.<sup>119</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 the export activities of the applying firms.

We preliminarily find that the duty exemption provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, in the form of revenue foregone 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. 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. Thus, per the criteria specified in 19 CFR 351.519(a), we preliminarily determine that duty exemptions Borusan 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 is 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.

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<sup>115</sup> See *Turkey Pipe 2013 Final Results*; and *Welded Line Pipe from Turkey*, and accompanying IDM at 13-17.

<sup>116</sup> *Id.*

<sup>117</sup> See Borusan’s April 23 IQR at 56.

<sup>118</sup> See GOT’s April 23 IQR at 86

<sup>119</sup> *Id.*

To calculate the net subsidy rate attributable to Borusan for its use of the D-3 certificate program, we divided the benefit by Borusan's total export sales during the POI. On this basis, we find that Borusan received a countervailable subsidy of 0.10 percent *ad valorem* for this program.<sup>120</sup>

#### 8. Free Zones Law 3218: Corporate Income Tax Exemptions

Free Zones Law 3218 was approved on June 6, 1985.<sup>121</sup> Free zones established under this law are located throughout Turkey; there were 18 free zones in the country during the POI.<sup>122</sup> Interim Article 6 of Free Zones Law 3218 states that for customs purposes, free zones are considered outside the customs territory of Turkey.<sup>123</sup> Interim Article 3 of Free Zones Law 3218, which is administered by the Ministry of Finance, establishes the Corporate Income Tax Exemptions program.<sup>124</sup> Pursuant to Interim Article 3, taxpayers located in free zones are exempted from income or corporate taxes on the earnings generated through their activities in free zones. This exemption is in effect until the end of the tax year in which Turkey becomes a full member of the European Union.<sup>125</sup>

Free Zones Law 3218 provides an exemption of income taxes or corporate taxes on earnings generated in free zones in Turkey. According to the GOT, all companies holding a free zone operating license are eligible to benefit from this program, and the use of this program is not contingent on export performance.<sup>126</sup> The corporate income tax rate applicable to tax year 2016 was 20 percent.<sup>127</sup> HDM Celik received income tax exemptions under this program during the POI.<sup>128</sup>

We determine that the income tax exemptions provided under this program constitute a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act. We further find that the income tax exemptions conferred a benefit under section 771(5)(E) of the Act in an amount equal to the tax otherwise due. Lastly, we determine that this program is specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in free zones.

To calculate a subsidy rate, we divided the amount of taxes that HDM Celik would have paid absent the program by the company's total sales during the POI. On this basis, we determine HDM Celik's net subsidy rate to be 1.18 percent *ad valorem* for this program.<sup>129</sup>

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<sup>120</sup> See Borusan's Preliminary Calculation Memorandum.

<sup>121</sup> See GOT's April 23, 2018 IQR at Exhibit 28.

<sup>122</sup> *Id.* at 94.

<sup>123</sup> *Id.* at Exhibit 28.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 108.

<sup>127</sup> See GOT's April 23, 2018 IQR at 110.

<sup>128</sup> See HDM Celik's April 25, 2018 IQR at 26.

<sup>129</sup> See HDM Celik's Preliminary Calculation Memorandum.

## 9. Free Zones Law 3218: Exemption from Income Tax on Wages Paid to Workers

As described above, Free Zones Law 3218 was approved on June 6, 1985. Interim Article 3 of Free Zones Law 3218, which is administered by the Ministry of Finance, establishes the Exemption from Income Tax on Wages Paid to Workers program. This exemption is in effect until the end of the tax year in which Turkey becomes a full member of the European Union.<sup>130</sup>

Interim Article 3 of Law 3218 states that, after deducting the minimum living discount from wages, taxpayers (*i.e.*, companies) who export 85 percent of the free, on-board value of the goods they produce in free zones are exempted from paying the income taxes calculated on the wages of workers they employ.<sup>131</sup> Therefore, the use of this program is contingent upon export performance. HDM Celik received income tax exemptions under this program during the POI.<sup>132</sup>

We determine that the income tax exemptions provided under this program constitute a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act. We further find that the income tax exemptions conferred a benefit under section 771(5)(E) of the Act in an amount equal to the tax otherwise due. Lastly, we determine that this program is specific under section 771(5A)(A)-(B) of the Act because the benefits under this program are export contingent.

To calculate HDM Celik's benefit, we derived the amount of taxes that HDM Celik would have paid absent the program. We divided that benefit amount by HDM Celik's total export sales during the POI. On this basis, we determine HDM Celik's net subsidy rate to be 0.97 percent *ad valorem* for this program.<sup>133</sup>

## B. Programs Preliminarily Determined Not to Confer a Benefit During the POI<sup>134</sup>

Borusan and its cross-owned affiliates reported receiving benefits under various programs, some of which were specifically alleged and some were self-reported. Based on the record evidence, we preliminarily determine that the benefits from certain programs: 1) were fully expensable prior and thus not allocable to the POI; or 2) if allocable to the POI, are less than 0.005 percent *ad valorem* in the POI when attributed to the respondent's applicable sales as discussed above in the "Attribution of Subsidies" section above. Consistent with Commerce's practice, we have not included these programs in our preliminary subsidy rate calculations for Borusan.

1. Assistance to Offset Costs Related to AD/CVD Investigations
2. Support for Expositions (Participation in Trade Fairs)
3. Support for Report and Consultancy Services
4. Support for Market Research
5. Intern Salary Support

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<sup>130</sup> See GOT's May 18, 2018 SQR at 27.

<sup>131</sup> *Id.*

<sup>132</sup> See HDM Celik's April 25, 2018 IQR at 28.

<sup>133</sup> *Id.*

<sup>134</sup> See Borusan's May 18, 2018 IQR at Exhibit 21.

## C. Programs Preliminarily Found Not To Be Countervailable

### 1. Social Security Premium Support Program

This program was not alleged by the petitioners, but Borusan reported receiving benefits under this program in its questionnaire response.<sup>135</sup> The GOT also provided a response with respect to this program.<sup>136</sup>

According to the GOT, this program was established in February 2017 under Decree Law 687 as a provision added to Law 4447; under Turkish law, the program took effect on February 9, 2017.<sup>137</sup> The Social Security Institution (SSI) of the GOT administers this program.<sup>138</sup> The purpose of this program, as set forth in Article 17 of Decree No. 687, is to support all companies that hire new employees who were previously unemployed by reducing the cost of the insurance premiums paid by employers.<sup>139</sup>

We preliminarily find based on the record information that the program is not specific within the meaning of sections 771(5A)(A)-(C) of the Act. We also preliminarily find that the program is not *de jure* specific to an enterprise or industry, or group(s) thereof, within the meaning of section 771(5A)(D)(i) of the Act. We further find preliminarily that the program is not used by a limited number of enterprises or industries, and that no enterprise or industry, or group(s) thereof, is a preponderant user or a disproportionate beneficiary of the social security premium support program within the meaning of section 771(5A)(D)(iii) of the Act. In particular, the information on the record for this program demonstrates that: 1) Borusan's benefit compared to that received by other companies is insignificant; and 2) the steel pipe manufacturing sector's benefit compared to that received by other sectors is also insignificant.<sup>140</sup> Finally, we also preliminarily find that this program is not limited to enterprises located in designated geographic regions and thus not specific under section 771(5A)(D)(iv) of the Act. As a result, we preliminarily find that this program is not countervailable during the POI.

### 2. Minimum Wage Incentive Program

This program was not alleged by the petitioners, but Borusan and HDM Celik reported receiving benefits under this program in their questionnaire responses.<sup>141</sup> The GOT also provided a response with respect to this program.<sup>142</sup>

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<sup>135</sup> See Borusan's April 23, 2018 IQR at 55.

<sup>136</sup> See GOT's May 18, 2018 SQR at 17 – 26.

<sup>137</sup> *Id.* at 18.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 18-19 and Exhibit 12.

<sup>140</sup> See GOT's May 18, 2018 SQR at 23 – 25 and Exhibit 13; and GOT's June 4, 2018 SQR at 6-9 and Exhibits 2 and 3.

<sup>141</sup> See Borusan's April 23, 2018 IQR at 55; *see also* HDM Celik April 25, 2018 IQR at 30.

<sup>142</sup> See GOT's April 23, 2018 IQR at 76-84.

According to the GOT, this program was introduced on January 14, 2016 under Article 68 of Law 5510; this program was extended for the year 2017, under Article 71 of Law 5510.<sup>143</sup> The SSI of the GOT administers this program.<sup>144</sup> The purpose of this program, as set forth in Article 71 of Law 5510, is to support companies that employ minimum wage employees that are insured under one of the company's insurance plans by reducing the insurance premiums paid by these companies.<sup>145</sup>

We preliminarily find based on the record information that the program is not specific within the meaning of sections 771(5A)(A)-(C) of the Act. We also preliminarily find that the program is not *de jure* specific to an enterprise or industry, or group(s) thereof, within the meaning of section 771(5A)(D)(i) of the Act. We further find preliminarily that the program is not used by a limited number of enterprises or industries, and that no enterprise or industry, or group(s) thereof, is a preponderant user or a disproportionate beneficiary of the minimum wage incentive program within the meaning of section 771(5A)(D)(iii) of the Act. In particular, the information on the record for this program demonstrates that: 1) both Borusan's and HDM Celik's benefit compared to that received by other companies is insignificant; and 2) the steel pipe manufacturing sector's benefit compared to that received by other sectors is also insignificant.<sup>146</sup> Finally, we preliminarily find that this program is not limited to enterprises located in designated geographic regions and thus not specific under section 771(5A)(D)(iv) of the Act. As a result, we preliminary find that this program did not confer countervailable benefits to either Borusan or HDM Celik during the POI.

### 3. Customs Duty and VAT Exemptions in Free Zones

Article 6 of Free Zones Law 3218 stipulates that goods that enter a free zone are considered outside of the customs territory of Turkey for purposes of import duties, provided that those goods are not released for free circulation, placed under another customs procedure, or used or consumed under conditions other than those provided for in Turkey's customs regulations.<sup>147</sup> This exemption from customs duties and VAT is valid unless the goods are exported to Turkey or used in the production of goods which are then exported to Turkey. If the goods are transferred from a free zone into Turkey, all previously unpaid customs duties are to be paid by the importing company.<sup>148</sup>

As noted in *CWP Turkey 2011 AR*, Turkey's duty drawback and VAT procedures govern the treatment of goods that are imported into a free zone and then subsequently exported from a free zone into Turkey.<sup>149</sup> In such instances, goods exported from a free zone into Turkey are subject to the regular duties and VAT otherwise due. Commerce has previously examined Turkey's duty drawback system and determined that the GOT has in place and applies a drawback system

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<sup>143</sup> *Id.* at 76 and Exhibit 21; and GOT's May 18, 2018 SQR at Exhibit 9.

<sup>144</sup> *See* GOT's April 23, 2018 IQR at 78.

<sup>145</sup> *Id.* at 76 and Exhibit 21; and GOT's May 18, 2018 SQR at Exhibit 9.

<sup>146</sup> *See* GOT's April 23, 2018 IQR at 80 – 84 and Exhibit 22; and GOT's June 4, 2018 SQR 6-9 and Exhibits 2 and 3.

<sup>147</sup> *See* GOT's April 23, 2018 IQR at Exhibit 28.

<sup>148</sup> *Id.*

<sup>149</sup> *See CWP Turkey 2011 AR*, and accompanying IDM at 21.



that ensures that duty exemptions are provided only to products that are consumed in the production of exported products.<sup>150</sup> Furthermore, Commerce has previously addressed the issue of similar benefits received in a “non-tariff zone” in the CVD investigation of *CWP from Vietnam*.<sup>151</sup> We find no evidence on this record that would demonstrate that the duty drawback monitoring system is unreasonable, not effective or not based on generally accepted commercial practices in the exporting country. Therefore, consistent with our practice, we preliminarily find that this program is not countervailable.

D. Programs Preliminarily Found Not To Be Used

1. Provision of Land for LTAR
2. Post-Shipment Discount Program
3. Pre-Export Credits Program
4. Export Insurance Provided by Turk Eximbank
5. Investment Incentive Program
6. Exemption from Property Tax
7. Comprehensive Investment Incentives Program
8. Law 5084: Withholding of Income Tax on Wages & Salaries
9. Law 5084: Incentive for Employer’s Share in Insurance Premiums
10. Support for Energy Payments
11. Exemption from Stamp Duties and Fees in Free Zones

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<sup>150</sup> See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 6, 2012), and accompanying IDM at “Inward Processing Certificate Exemption.”

<sup>151</sup> See *Circular Welded Carbon-Quality Steel Pipe from the Socialist Republic of Vietnam: Final Negative Countervailing Duty Determination*, 77 FR 64471 (October 22, 2012) (*CWP from Vietnam*), and accompanying IDM at Comment 3, in which Commerce found that such exemptions provided inside a free zone are not countervailable.

## VI. CONCLUSION

We recommend that you approve the preliminary findings described above.



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

6/19/2018

X



Signed by: GARY TAVERMAN

\_\_\_\_\_  
Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
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