



C-489-825

Administrative Review

POR: 12/28/2015 - 4/25/2016 and 9/12/2016-12/31/2016

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August 6, 2018

MEMORANDUM TO: 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

FROM: Irene Tzafolias  
Director, Office VIII  
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Results:  
Administrative Review of the Countervailing Duty Order on  
Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes  
from the Republic of Turkey

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey). The period of review (POR) is December 28, 2015 through April 25, 2016, and September 12, 2016, through December 31, 2016. We preliminarily determine that Ozdemir Boru Profil San. ve Tic. Ltd. Sti. (Ozdemir) received countervailable subsidies during the POR.

## II. BACKGROUND

### A. Initiation and Case History

On July 21, 2016, Commerce published its final determination in the CVD investigation of HWR pipes and tubes from Turkey.<sup>1</sup> On September 13, 2016, Commerce published an amended final

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<sup>1</sup> See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*HWR Turkey 2014 Final Determination*).



determination and *Order*.<sup>2</sup> On March 14, 2018, Commerce published a notice regarding the remand redetermination of *Amended HWR Turkey 2014 Final Determination*.<sup>3</sup>

On September 1, 2017, Commerce published a notice of opportunity to request an administrative review of this *Order*.<sup>4</sup> On September 28, 2017, we received a request from Ozdemir to conduct an administrative review of the *Order* with respect to Ozdemir.<sup>5</sup> On November 13, 2017, Commerce initiated an administrative review of the *Order* for the period December 28, 2015 through April 25, 2016, and September 12, 2016, through December 31, 2016, covering Ozdemir.<sup>6</sup>

On November 16, 2017, Commerce issued the initial questionnaire to Ozdemir and the Government of Turkey (GOT), and on January 9, 2018, we received initial questionnaire responses from both Ozdemir and the GOT.<sup>7</sup> We issued supplemental questionnaires on March 30, 2018, April 16, 2018, and June 29, 2018, to which Ozdemir responded on April 27, 2018, and July 6, 2018.<sup>8</sup> We issued supplemental questionnaires on March 30, 2018, April 16, 2018, and June 29, 2019, to which the GOT responded on April 27, 2018, and July 13, 2018.<sup>9</sup>

## **B. Postponement of Preliminary Results**

On June 1, 2018, Commerce postponed the deadline for the preliminary results of this administrative review by 60 days, as permitted under section 751(a)(3)(A) of the Tariff Act of

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<sup>2</sup> See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 81 FR 62874 (September 13, 2016) (*Order*).

<sup>3</sup> See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Notice of Court Decision Not in Harmony With the Amended Final Determination of the Countervailing Duty Investigation*, 83 FR 11174 (March 14, 2018) (*HWR Turkey Remand Notice*); see also *Final Results of Remand Redetermination Pursuant to Court Remand*, Court No. 16-00206, <http://ia.ita.doc.gov/remands/> (December 11, 2017) (*HWR Turkey 2014 Redetermination*).

<sup>4</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 82 FR 41595 (September 1, 2017).

<sup>5</sup> See Ozdemir letter, “Ozdemir Review Request” (September 28, 2017).

<sup>6</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 52268 (November 13, 2017).

<sup>7</sup> See Ozdemir letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Response to Questionnaire” (January 9, 2018) (Ozdemir IQR); See also GOT letter, “Response of the Government of Turkey in Administrative Review of Countervailing Duty on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey” (January 9, 2018) (GOT IQR).

<sup>8</sup> See Ozdemir letter, “Ozdemir Response to Supplemental Questionnaire” (April 27, 2018) (Ozdemir April 27 SQR); see also Ozdemir letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Ozdemir response to the supplemental questionnaire #3” (July 6, 2018) (Ozdemir July 6, SQR).

<sup>9</sup> See GOT letter, “Response of the Government of Turkey in Administrative Review of Countervailing Duty on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Supplemental Questionnaire” (April 27, 2018) (GOT SQR1); GOT letter, “Response of the Government of Turkey in Administrative Review of Countervailing Duty on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: 2nd Supplemental Questionnaire” (April 27, 2018) (GOT SQR2); GOT letter, “Response of the Government of Turkey in Administrative Review of Countervailing Duty on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: 3<sup>rd</sup> Supplemental Questionnaire” (July 13, 2018) (GOT SQR3).

1930, as amended (the Act), and 19 CFR 351.213(h)(2).<sup>10</sup> In accordance with Commerce's practice, if the new deadline falls on a non-business day, the deadline will become the next business day.<sup>11</sup> Accordingly, the revised deadline for the preliminary results in this administrative review was postponed to August 6, 2018.<sup>12</sup>

### III. SCOPE OF THE ORDER

The products covered by this order are certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceed the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of this order is

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<sup>10</sup> See Memorandum to James Maeder, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2015-2016 (June 1, 2018) (Preliminary Results Deadline Postponement Memorandum).

<sup>11</sup> See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

<sup>12</sup> See Preliminary Results Deadline Postponement Memorandum; see also 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" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days.

dispositive.

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

##### **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>13</sup> In the initial questionnaire, we notified the respondents to this proceeding that the AUL period would be 15 years, pursuant to 19 CFR 351.524(d)(1) and the U.S. Internal Revenue Service Publication 946 (2008), “Appendix B - Table of Class Lives and Recovery Periods” (IRS Pub. 946).<sup>14</sup> The 15-year period corresponds to IRS Pub. 946 asset class, “33.4 Manufacture of Primary Steel Mill Products.” No party in this proceeding submitted comments challenging the proposed AUL period, and we therefore preliminarily determine that a 15-year period is appropriate to allocate benefits from non-recurring subsidies.

Furthermore, for non-recurring subsidies, we 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 year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are expensed to the year of receipt rather than allocated over the AUL.

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

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) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This 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:

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<sup>13</sup> See 19 CFR 351.524(b).

<sup>14</sup> See U.S. Internal Revenue Service Publication 946 (2008), “How to Depreciate Property” at Table B-2: Table of Class Lives and Recovery Periods.

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.<sup>15</sup>

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case to determine whether cross-ownership exists. The U.S. Court of International Trade (CIT) 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>16</sup>

### *Ozdemir*

Ozdemir reported that it has no parent companies or subsidiaries, and that it had no cross-owned affiliates during the POR or the AUL.<sup>17</sup> Accordingly, Ozdemir responded to the initial questionnaire only with regard to itself. Pursuant to 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Ozdemir to the sales of Ozdemir.

### **C. Denominators**

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondent’s 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. Where the program has been found to be contingent upon export activities, we used the recipient’s total export sales as the denominator. For a further discussion of the denominators used, *see* Ozdemir’s Preliminary Calculation Memorandum.<sup>18</sup>

Because only four days of the POR are covered during the calendar year 2015, we are basing the duty assessment rate for these four days on subsidy information provided for calendar year 2016.<sup>19</sup> Therefore, all sales denominators are based on the total sales and total export sales of calendar year 2016. We provided interested parties an opportunity to comment on this approach,

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<sup>15</sup> See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

<sup>16</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600 (CIT 2001).

<sup>17</sup> See Letter from Ozdemir, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey; Response to affiliation section of questionnaire” (November 29, 2017), at 1-4.

<sup>18</sup> See Memorandum, “Ozdemir Calculations for the Preliminary Results,” dated concurrently with this memorandum (Ozdemir’s Preliminary Calculation Memorandum).

<sup>19</sup> See Memorandum to the File, “Reporting Period for the First Administrative Review,” dated April 11, 2018.

and no parties submitted any comments.<sup>20</sup> Furthermore, as Ozdemir received revenue from tolling services during the POR, we included this revenue in the total sales denominator for this review.

## **V. BENCHMARKS AND INTEREST RATES**

Commerce is reviewing non-recurring, allocable subsidies received by Ozdemir.<sup>21</sup> The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

### **A. Discount Rates**

In accordance with 19 CFR 352.524(d)(3)(i), Commerce will select the following discount rates in order of preference: (1) the cost of long-term, fixed-rate loans of the firm in question; (2) the average cost of long-term, fixed-rate loans in the country in question; or (3) a rate that Commerce considers to be most appropriate. As the first two options are unavailable, we used the discount rate data from the International Monetary Fund's (IMF's) *International Financial Statistics* as our national discount rate, consistent with 19 CFR 351.524(d)(3)(i)(C). The interest rate benchmarks and discount rates used in our preliminary calculations are provided in Ozdemir's Preliminary Calculation Memorandum.

### **B. Land Benchmark**

For these preliminary results, we relied upon the land benchmark data used in *HWR Turkey 2014 Redetermination*. Specifically, we used as our benchmark publicly available information concerning industrial land prices in Turkey for purposes of calculating a comparable commercial benchmark price for land available in Turkey. We find that these land prices serve as comparable commercial benchmarks under 19 CFR 351.511(a)(2)(i).

### **C. Input Benchmark**

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>22</sup> This is because such prices generally reflect most closely the prevailing market conditions of the purchaser under investigation.

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<sup>20</sup> *Id.*

<sup>21</sup> See 19 CFR 351.524(b)(1).

<sup>22</sup> See, *e.g.*, *Notice of Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying Issues and Decision Memorandum (IDM), at "Market Based Benchmark."

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 the government authority sold hot-rolled steel (HRS) to the respondent 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>23</sup>

Consistent with Commerce's final determinations in *CWP Turkey 2015 AR* and *WLP from Turkey*, we determine that the record evidence does not support a finding that the Turkish HRS market is so distorted that it cannot serve as a source for an appropriate benchmark.<sup>24</sup> The record information shows that for 2014, 2015, and 2016, the combined domestic HRS production of the government authority accounted for 44.76, 40.34, and 38.29 percent of supply, respectively, while imports of HRS accounted for 31.94, 39.53, and 38.73 percent in the same years, respectively.<sup>25</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 that purchased from the government authority) 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 the government authority, where applicable, during the POR.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Because we are using actual import prices paid by Ozdemir, the benchmark includes the delivery charges, value-added tax (VAT), but not import duties or stamp fees.

## **VI. ANALYSIS OF PROGRAMS**

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

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<sup>23</sup> See *CVD Preamble*, 63 FR at 65277.

<sup>24</sup> See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 47479 (October 12, 2017) (*CWP Turkey 2015 AR*) and accompanying IDM, at 15; *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*WLP from Turkey*), and accompanying IDM, at 15 – 16.

<sup>25</sup> See *GOT IQR*, at 12.

## A. Programs Preliminarily Determined to Be Countervailable

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

Commerce examined the provision of HRS to Ozdemir during the POR. In the *HWR Turkey 2014 Final Determination*, Commerce found that this program provided countervailable subsidies to Ozdemir.<sup>26</sup> The information submitted by the GOT with regard to this program remains consistent with our previous finding.

Ozdemir reported purchasing HRS from Eregli Demir ve Celik Fabrikalari T.A.S. (Erdemir) and Iskenderun Iron & Steel Works Co. (Isdemir) during the POR.<sup>27</sup> In its initial questionnaire response, the GOT responded to the Input Producer Appendix for Erdemir and Isdemir.<sup>28</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 a shareholder of Erdemir and Isdemir. During the POR, OYAK owned 49.29 percent of Erdemir's shares through a wholly-owned holding company, Ataer Holding A.S. (ATAER).<sup>29</sup> Moreover, because 3.08 percent of Erdemir's shares were owned by Erdemir itself in the form of treasury shares,<sup>30</sup> the other shareholders combined accounted for less than 48 percent, thus making OYAK the single largest, and controlling, shareholder of Erdemir. Also during the POR, Erdemir owned 95.07 percent of Isdemir.<sup>31</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>32</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>33</sup> The Representatives Assembly, in turn, elects 20 of the 40 members, and 10 substitute members of OYAK's General Assembly.<sup>34</sup> Of the General Assembly's other 20 members, 17 are, by statute, government officials (*i.e.*, Ministers of Finance and National Defense, Commanders of the Land, Naval, and Air Forces, General Commander of the Grandarmy, President of the Court of Accounts, President of the Board of Audit of the Prime

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<sup>26</sup> See *HWR Turkey 2014 Final Determination*, 81 FR at 47349, and accompanying IDM, at 11-14.

<sup>27</sup> See Ozdemir letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Response to Questionnaire" (January 9, 2018) (Ozdemir IQR), at Exhibit 8, and Ozdemir April 27 SQR, at Exhibit 11.

<sup>28</sup> *Id.*, at Exhibit 7.

<sup>29</sup> *Id.*, at 19, Exhibit 7-C1 (Erdemir's 2014 Annual Report), Exhibit 7-C3 (Erdemir's 2015 Annual Report), Exhibit 7-C5 (Erdemir's 2016 Annual Report), and Exhibit 7-N (ATAER's and OYAK's response to the Input Producer Appendix).

<sup>30</sup> *Id.*, at Exhibit 7 (Input Producer Appendix) at 5-6; Exhibit 7-C5 (Erdemir's 2016 Annual Report) at 5, 92, 147.

<sup>31</sup> *Id.*, at Exhibit 7.

<sup>32</sup> *Id.*, at Exhibit 7-G2.

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

<sup>34</sup> *Id.*



Ministry, Chairman of the Board of the Banks Association, Chairman of the Union Chambers and Commodity Exchanges, General Staff of the Ministry of National Defense, and three private sector individuals appointed by the Minister of National Defense). In accordance with the law, either the Minister of National Defense or the Minister of Finance presides over the General Assembly.<sup>35</sup> Members of the General Assembly elect the eight-person Board of Directors.<sup>36</sup> Also, OYAK's property has, by law, the "same rights and privileges of state property," OYAK is exempt from corporate and other taxes, and members of the armed forces must, by law, contribute part of their salaries to OYAK.<sup>37</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>38</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>39</sup> Also, the GOT explained that the Turkish Privatization Administration (TPA) holds veto power over any decisions related to the closedown, sale, merger, or liquidation of both Erdemir and Isdemir.<sup>40</sup> Erdemir's 2014, 2015, and 2016 annual reports indicate that OYAK and the TPA continue to have representatives on Erdemir's Board of Directors.<sup>41</sup>

During the POR, Erdemir's 2015 Annual Report indicates continued growth, stating that it "broke a new record by producing 8.9 million tons of crude steel and 7.4 million tons of flat steel products... {a}s a result of these efforts, we achieved 8 {percent} growth in our revenues to US\$ 4.4 billion, which included US\$ 403 million of exports to 42 countries, demonstrating a successful performance at a time of volatility both in Turkey and in the world."<sup>42</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 CVD determination in *OCTG from Turkey*, we determine that Erdemir and Isdemir are public bodies, and hence "authorities," pursuant to section 771(5)(B) of the Act.<sup>43</sup> Consequently, we find that the HRS supplied by Erdemir and Isdemir to Ozdemir is a

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

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

<sup>38</sup> See GOT IQR, at Exhibit 7-C5.

<sup>39</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>40</sup> See GOT IQR, at 7-A (Erdemir's Articles 21, 22, 27 of Association).

<sup>41</sup> *Id.*, at Exhibit 7-C1, Exhibit 7-C3, and Exhibit 7-C5.

<sup>42</sup> *Id.*, at Exhibit 7-C3.

<sup>43</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*

financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act.

Regarding the specificity of the HRS for LTAR program, the GOT provided a list of the industries that purchased HRS in Turkey during the POI.<sup>44</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>45</sup> Consistent with Commerce's determination in *OCTG from Turkey* and *WLP 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>46</sup>

To measure the benefit during the POR, we compared the monthly benchmark prices, as identified and described above in the "Benchmarks and Interest Rates" section, to Ozdemir's actual purchase prices for HRS from Erdemir and Isdemir during 2016, including taxes and delivery charges, as appropriate. In instances in which Ozdemir 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>47</sup> Under this methodology, we find that Ozdemir received a benefit to the extent that the prices it paid for HRS produced by Erdemir and Isdemir were for LTAR.<sup>48</sup>

To calculate the net subsidy rate attributable to Ozdemir, we divided the benefit by the company's total sales during the POR. On this basis, we find that the Ozdemir received a countervailable subsidy of 1.01 percent *ad valorem*.<sup>49</sup>

## **2. Provision of Land for LTAR**

According to the GOT, support is provided in the form of allocation of land to firms operating in provinces as set forth in Article 2 of Law No. 5084 (February 6, 2004), including (previously) non-allocated parcels in Organized Industrial Zones (OIZs) in provinces subject to clause (b) of Article 2.<sup>50</sup> The GOT further states that this program is used to promote investment and to increase employment in selected provinces where the development level is relatively low.<sup>51</sup> In *HWR Turkey 2014 Final Determination*, Commerce found that the program was administered by the Ministry of Science, Industry and Technology, Directorate General of Industrial Zones, a

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*Ticaret A.S. & Borusan Istikbal Ticaret v. United States*, Slip Op. 15-36 (CIT) (April 22, 2015) (Borusan) at 28, in which the Court upheld Commerce's finding that Erdemir and Isdemir are "authorities."

<sup>44</sup> See GOT IQR, at 16-18.

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

<sup>46</sup> See *OCTG from Turkey*, 79 FR at 41964, and accompanying IDM at 20-26; see also *WLP from Turkey*, and accompanying IDM, at 11-14.

<sup>47</sup> See Ozdemir's Preliminary Calculation Memorandum.

<sup>48</sup> See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

<sup>49</sup> See Ozdemir's Preliminary Calculation Memorandum.

<sup>50</sup> See GOT IQR, at 22-24.

<sup>51</sup> *Id.*

national government authority, and that it is implemented in each industrial zone by the respective OIZ.<sup>52</sup> The GOT reports that the program was terminated on February 6, 2010.<sup>53</sup>

In *HWR Turkey 2014 Final Determination*, Commerce found that Ozdemir received a countervailable subsidy under this program in 2008, when it purchased land from the Zonguldak OIZ.<sup>54</sup> We found that the land sold to Ozdemir in 2008 constituted a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, and that it is specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in provinces designated as priority regions for development.<sup>55</sup> According to the GOT, Ozdemir has not received further benefits from this program during the POR.<sup>56</sup> In addition, Ozdemir states that the company did not purchase or lease land-use rights in the Zonguldak OIZ during the POR.<sup>57</sup> However, under our methodology for land, any benefit from past provisions of land under this program may continue to be allocable to the POR.

To determine whether Ozdemir's acquisition of land from the OIZ entity constitutes the provision of land for LTAR, we multiplied the area of land Ozdemir purchased from the GOT in 2008 by the unit benchmark land price discussed above in the "Benchmarks and Interest Rates" section. Applying the "0.5 percent test," described above in the "Allocation Period" section, we divided the benefit amount received in 2008 by Ozdemir's total sales for 2008 and found that the resulting ratio exceeded 0.5 percent. Therefore, we allocated a portion of the benefit to the POI using Commerce's standard grant allocation formula.<sup>58</sup>

However, we lack either: (1) company-specific information concerning interest rates charged to Ozdemir on long-term, Turkish lira-denominated debt which originated in 2008; or (2) information from the GOT concerning long-term interest rates in Turkey for 2008. Therefore, in accordance with 19 CFR 351.505(a)(3)(ii), we used the national average discount rate in Turkey for 2008 as the long-term discount rate utilized in the grant allocation formula. See the "Benchmarks and Interest Rates" section above for a description of the source of this rate. To calculate the net subsidy rate, we divided the amount of the subsidy allocated to the POR by Ozdemir's POR sales value. On this basis, we determine Ozdemir's net subsidy rate under this program to be 0.13 percent *ad valorem*.<sup>59</sup>

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

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

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<sup>52</sup> See *HWR Turkey 2014 Final Determination*, 81 FR at 47349, and accompanying IDM, at 14.

<sup>53</sup> *Id.*, at 23.

<sup>54</sup> *Id.*, at 14-15.

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

<sup>56</sup> See GOT IQR, at 24.

<sup>57</sup> See Ozdemir IQR, at 16; see also Ozdemir April 27 SQR, at 4.

<sup>58</sup> See 19 CFR 351.524(d).

<sup>59</sup> See Ozdemir's Preliminary Calculation Memorandum.

not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings from such activities.<sup>60</sup> This deduction is to cover the expenditures without documentation incurred from exports, construction, maintenance, assembly, and transportation activities abroad.<sup>61</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>62</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>63</sup>

In *HWR Turkey 2014 Final Determination*, Commerce found that Ozdemir received a countervailable subsidy with respect to its 2013 tax return, filed in 2014.<sup>64</sup> Consistent with *HWR Turkey 2014 Final Determination* and prior CVD determinations involving Turkey, we preliminarily find that this tax deduction is a countervailable subsidy.<sup>65</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 POR, Ozdemir reported receiving the deduction for export earnings with respect to its 2015 tax return, filed in 2016.<sup>66</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 Ozdemir, we divided the company's tax savings by its total export sales value for 2016. On this basis, we preliminarily determine the net countervailable subsidy for this program to be 0.04 percent *ad valorem*.<sup>67</sup>

## **B. Programs Preliminarily Determined Not to Confer a Measurable Benefit during the POR**

### **1. Assistance to Offset Costs Related to AD/CVD Investigations**

The Turkish Exporters' Assembly (TEA) was statutorily created in 2009 under Law No. 5910,

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<sup>60</sup> See GOT IQR, at 3.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> See *HWR Turkey 2014 Final Determination*, 81 FR at 47349, and accompanying IDM at 15-16.

<sup>64</sup> *Id.*

<sup>65</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"; *OCTG from Turkey*, 79 FR at 41964, and accompanying IDM at "Deduction from Taxable Income for Export Revenue;" and *WLP from Turkey*, 80 FR at 61371, and accompanying IDM at "Deduction from Taxable Income for Export Revenue."

<sup>66</sup> See Ozdemir IQR, at Exhibit 3.

<sup>67</sup> See Ozdemir's Preliminary Calculation Memorandum.

which places all exporters' associations under the jurisdiction of the TEA and stipulates that they must carry out activities to defend the interests of their members.<sup>68</sup> Moreover, under Article 4 of the law and Article 6 of the related regulation, exporters are legally bound to join such associations, pay various specified contributions, and comply with the decisions of the association.<sup>69</sup> The TEA works in conjunction with the Ministry of Economy to approve, audit, and oversee industry-specific exporter associations, such as the Turkish Steel Exports' Assembly (TSEA) of which Ozdemir is a member.<sup>70</sup>

During the POR, the "Directive on Financial Support for the Attorney/Legal Consultancy Fees Paid by Companies as Part of Investigations of Trade Policy Measures and Practices of Generalized System of Preferences" (Financial Support Directive), under the authority of the Ministry of Economy's Under-Secretariat of the Prime Ministry for Foreign Trade, entrusted the exporters' associations to provide financial assistance to members for legal fees incurred by members as part of foreign trade remedy proceedings.<sup>71</sup> Specifically, the Financial Support Directive is meant to "regulate the financial support covered by the budget of the exporters' associations" in regard to legal fees incurred during foreign trade policy investigations.<sup>72</sup> Furthermore, this directive provides criteria on what companies are eligible to receive assistance, what documents are necessary to complete an application, how the exporter associations should evaluate these applications, and how much assistance should be granted to the recipients.<sup>73</sup>

The record indicates that the GOT did not directly contribute to the financial assistance provided to Ozdemir, as the funds were disbursed from TSEA membership dues.<sup>74</sup> However, under section 771(5)(B)(iii) of the Act, a financial contribution is provided by a government authority or, alternatively, when a government authority entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from the practices normally followed by governments. Within the framework of Law No. 5910, and by operation of the related regulation and the Financial Support Directive, the GOT delegated its authority to assist exporters via exporters' associations to which directives were issued.<sup>75</sup> As such, the GOT entrusted or directed its authority to provide a financial contribution to exporters (*i.e.*, reimbursement for legal fees) to the TEA and, through the TEA, to the exporters' associations, including the TSEA, using funds from statutorily mandated contributions from members.<sup>76</sup> Accordingly, the authority to provide a financial contribution to exporters in the form of a direct transfer of funds, which would normally be vested in the GOT, was entrusted or directed to the private exporters' associations, including the TSEA, using funds from statutorily mandated contributions from its members.

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<sup>68</sup> See GOT SQR2, at Exhibit 1 (*Regulation on Establishment and Duties of Turkish Exporters Assembly and Exporters Associations* (Law No. 5910)).

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

<sup>70</sup> See Ozdemir IQR, at 21.

<sup>71</sup> See GOT SQR2, at Exhibit 2.

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

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*, at 2 and Exhibit 4.

<sup>75</sup> *Id.*, at Exhibit 1.

<sup>76</sup> *Id.*

For the reasons described above, the financial assistance provided under this program is a subsidy as described under section 771(5)(B)(iii) of the Act because, under the combined force of Law No. 5910 and the Financial Support Directive, the GOT, through the TEA, entrusted or directed Turkish exporters' associations to make financial contributions to their members. Specifically, by reimbursing their members for AD/CVD legal costs, the exporters' associations are providing a financial contribution in the form of a grant under section 771(5)(D)(i) of the Act. Because this program is only available to exporters, we determine that it is specific within the meaning of section 771(5A)(B) of the Act. The benefit received is equal to the amount of the financial assistance in accordance with 19 CFR 351.504(a).

Ozdemir reported receiving this benefit in 2009 and 2013.<sup>77</sup> We find that this program provides a non-recurring benefit under 19 CFR 351.524(c). To calculate a rate for this program, we first applied the "0.5 percent test," pursuant to 19 CFR 351.524(b)(2). Because the total value of the assistance provided was less than 0.5 percent of total export sales in each year of receipt, we expensed the grant to those years of receipt (*i.e.*, before the POR). Accordingly, we preliminarily find that this program did not provide a benefit during the POR.

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

In the underlying investigation, Ozdemir reported receiving exemptions under this program in 2009, 2010, and 2011.<sup>78</sup> Record evidence in this segment shows that IEP certificate tied to those exemptions was subsequently closed in 2013. Ozdemir also reported having another IEP certificate that remained active during the POR.<sup>79</sup> However, Ozdemir stated that it has not imported equipment pursuant to this certificate since during the POR.<sup>80</sup>

In CVD cases involving Turkey subsequent to *HWR Turkey 2014 Final Determination*, Commerce adjusted its treatment of this program in light of new information in the records of those investigations and reviews. Therefore, to determine what, if any, benefits Ozdemir received under this program during the POR, we assessed the record information for this program in this segment in accordance with the methodological approach taken in those cases, which differs from that taken in the *HWR Turkey 2014 Final Determination*.

Prior to the change in methodology on this program, Commerce countervailed the amounts of import duties and VAT that were exempted during the review or investigation period as subsidies tied to the company's capital assets and, thus, allocable across the AUL. After performing the 0.5 percent allocation test on the period total of foregone taxes and duties, Commerce would either expense the benefit in the year of receipt or allocate the benefit over the AUL, in accordance with 19 CFR 351.524(c)(2)(iii) and (d)(1). However, as Commerce noted in *WLP Turkey 2015 AR Prelim*, based on additional evidence, the import duties and VAT exempted under the program remain payable to the GOT until the exempted company successfully passes a final onsite inspection by the GOT to close out the relevant IEP certificate and receives a

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<sup>77</sup> See Ozdemir IQR, at 21-24; see also Ozdemir April 27 SQR, at 8-9.

<sup>78</sup> See *HWR Turkey 2014 Final Determination*, 81 FR at 47349, and accompanying IDM at 17-18.

<sup>79</sup> See GOT IQR, at Exhibit 1; see also GOT SQR 1 at Exhibit 3 and 4.

<sup>80</sup> See Ozdemir April 27 SQR, at 7-8.

“completion visa” from the GOT, which finally waives the company’s liability for the exempted import duties and VAT.<sup>81</sup> If the company fails the onsite inspection and, thus, receives no “completion visa,” the company has to repay the exempted duties and VAT, with interest.

Pursuant to 19 CFR 351.505(d)(1), Commerce treats any balance on an unpaid liability that may be waived in the future as a contingent-liability interest-free loan. Accordingly, Commerce determines a recurring benefit equal to the amount of interest payments (and other loan costs) that the respondent would have paid during the POR had it borrowed the full amount of the duty exemption or reduction at the time of importation, which constitutes the first benefit under a contingent liability program. Because Ozdemir reported making no relevant imports under the IEP customs duty and VAT exemption program during the POR, we preliminarily find no such benefit to Ozdemir during the POR.

Additionally, pursuant to 19 CFR 351.505(d)(2), once the company has finally satisfied the contingency attached to those exemptions, *i.e.*, the subsequent events or performance for which the government grants a final waiver of liability to the company, Commerce determines a second, non-recurring, benefit from the total revenue foregone under the program in the form of a grant received in the year the company receives the final waiver of liability. In this case, we find that Ozdemir received such a benefit in 2013 when its IEP certificate was successfully closed and the GOT granted the “completion visa” certifying that the investment requirements had been met.<sup>82</sup>

To determine the benefit amount that Ozdemir received with the completion visa in 2013, we summed all the import duty and VAT exempted on Ozdemir’s equipment imports under the program from 2009 to 2011 into one total grant value. To calculate a rate for this program, we then applied the “0.5 percent test,” pursuant to 19 CFR 351.524(b)(2), using the total f.o.b. sales value for 2013.<sup>83</sup> Because the total value of the assistance provided was less than 0.5 percent of the 2013 total f.o.b. sales, we expensed the grant to 2013 (*i.e.*, before the POR). Therefore, Ozdemir received no benefit under this program during the POR, pursuant to 19 CFR 351.505(d)(1) and (2).

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

### **1. Minimum Wage Incentive**

Ozdemir reported that it received grants under a new minimum wage law introduced in 2016.<sup>84</sup> The GOT states that the program is designed to reduce the employment costs of the companies due to the sudden increase of the minimum wage.<sup>85</sup> It was initiated under “Provisional Article

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<sup>81</sup> See *Welded Line Pipe from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review*; 2015, 83 FR 1237 (January 10, 2018) (*WLP Turkey 2015 AR Prelim*), and accompanying IDM at 14.

<sup>82</sup> See Memorandum to the File, “Ozdemir’s IEP Documents Placed on the Record,” dated concurrently with this memorandum.

<sup>83</sup> See Ozdemir IQR, Exhibit 1.

<sup>84</sup> See Ozdemir IQR, at 19.

<sup>85</sup> See GOT IQR, at 40.

68” of the Law No. 5510<sup>86</sup> and is administered by the Social Security Institution (SSI).<sup>87</sup> As the assistance provided under this program is a direct transfer of funds (*i.e.*, grants) and is administered by a GOT agency, we preliminarily find that this program provides a financial contribution under section 771(5)(D)(i) of the Act.

Regarding specificity, Commerce must determine whether a domestic subsidy is specific in law (*de jure*) or in fact (*de facto*) to an enterprise or industry within the jurisdiction of the authority providing the subsidy in accordance with section 771(5A)(D) of the Act. *De jure* specificity analysis focuses on the availability of a program, while *de facto* specificity analysis focuses on the usage of a program.

A subsidy is not considered *de jure* specific if it meets the following criteria: (1) eligibility is automatic; (2) the criteria or conditions for eligibility are strictly followed; and (3) the criteria or conditions are clearly set forth in the relevant statute, regulation, or other official document so as to be capable of verification.<sup>88</sup>

The GOT claims that the assistance is available on a country-wide basis; that it is not contingent upon export performance or the use of domestic goods over imported goods; that the eligibility is not limited to enterprises or industries located within designated regions; and that eligibility is not limited to any enterprise or group of enterprises, or to any industry or group of industries.<sup>89</sup> “Provisional Article 68” states that this benefit is available to “any employers who employ any insurance holders subjected to the provisions of long-term insurance branches.”<sup>90</sup> Furthermore, according to Ozdemir, there is no application process for this program, and the SSI “automatically calculates the amount for each employer based on the number of employees, the wages, and/or salaries of these employees, and the total working days.”<sup>91</sup> Given the information on the record, we preliminarily determine that this program is not *de jure* specific.

According to 771(5A)(D)(iii) of the Act, a subsidy is *de facto* specific if one or more of the following factors exist: (1) the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number; (2) an enterprise or industry is a predominant user of the subsidy; (3) an enterprise or industry receives a disproportionately large amount of the subsidy; or (4) the manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over another.<sup>92</sup>

The GOT provided usage data for this program, including the total amount of assistance approved for all companies under this program and the total number of companies approved for assistance under this program.<sup>93</sup> In addition, the GOT provided a table listing the total amount of

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<sup>86</sup> See GOT SQR1, at Exhibit 9.

<sup>87</sup> *Id.*, at 42.

<sup>88</sup> See section 771(5A)(D)(ii) of the Act.

<sup>89</sup> See GOT IQR, at 46-47.

<sup>90</sup> See GOT SQR1, at Exhibit 9.

<sup>91</sup> See Ozdemir IQR, at 19.

<sup>92</sup> See section 771(5A)(D)(iii) of the Act.

<sup>93</sup> See GOT IQR, at 49.



assistance for every industry in which companies were approved for this program. The GOT also identified the industry in which Ozdemir operates, industry C 2420, or “manufacture of tubes, pipes, hollow profiles and related fittings, of steel,” in the NACE classification system, which is a subsector of the manufacturing industry.<sup>94</sup>

We summed the total value of the assistance granted to each industry listed in the GOT response<sup>95</sup> and the number of enterprises in each sector that received this assistance. We found that the C 2420 subsector received 0.47 percent of the total assistance granted to the manufacturing industry and that the recipient enterprises within the C 2420 subsector comprise 0.32 percent of the manufacturing enterprises receiving this assistance. Furthermore, we found that the manufacturing industry received approximately 28 percent of the total assistance granted to all industries under this program and that the recipient enterprises within the manufacturing industry comprise approximately 14 percent of the total number of enterprises receiving this assistance.

Given the usage data provided by the GOT, we do not find that the recipients of this subsidy are limited in number; that the industry in which Ozdemir operates is a predominant user of the subsidy; nor that this industry receives a disproportionately large amount of the subsidy. Furthermore, we see no evidence on the record of this review that discretion was used to grant the subsidy. Therefore, we do not find this program to be *de facto* specific. Accordingly, we preliminarily find that the minimum wage incentive program did not confer a countervailable subsidy during the POR.

## **2. Inward Processing Regime (IPR)**

The Ministry of Economy is the authority responsible for administering the Inward Processing Certificate program (IPC).<sup>96</sup> Under the IPC program, companies are exempt from paying customs duties and VAT on raw materials and intermediate unfinished goods that are imported and used in the production of exported goods.<sup>97</sup> Companies may choose whether to be exempt from the applicable duties and taxes upon importation (*i.e.*, the Suspension System) or have the duties and taxes reimbursed after exportation of the finished goods (*i.e.*, the Drawback System). Under both systems, companies provide a letter of guarantee that is returned to them upon fulfillment of the export commitment.<sup>98</sup>

To participate in this program, a company must hold an IPC, which lists the amount of raw materials or intermediate unfinished goods to be imported and the amount of product to be exported.<sup>99</sup> To obtain an IPC, an exporter must submit an application, which provides information about the goods to be produced and the raw materials to be imported.<sup>100</sup> There are two types of IPCs: (1) D-1 certificates for imported raw materials or intermediate unfinished

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<sup>94</sup> *Id.*, at Exhibit 14.

<sup>95</sup> *Id.*

<sup>96</sup> *See* GOT IQR, at 31.

<sup>97</sup> *Id.*, at 28-40.

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

<sup>99</sup> *Id.*, at 35.

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

goods used in the production of exported goods, and (2) D-3 certificates for imported raw materials or intermediate unfinished goods used in the production of goods sold in the domestic market.<sup>101</sup> D-1 certificates provide for exemption or drawback of both import duties and VAT, while D-3 certificates only provide for exemption of import duties (*i.e.*, for D-3 the VAT is payable).

While Commerce has found benefits received under the D-3 certificates to be countervailable,<sup>102</sup> D-1 certificates, pursuant to 19 CFR 351.519(a)(1)(ii), confer a benefit only 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.<sup>103</sup> Furthermore, with regard to the VAT exemption granted under this program, pursuant to 19 CFR 351.517(a), in the case of the exemption upon export of indirect taxes, a benefit exists to the extent that Commerce determines that the amount exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

In prior proceedings involving this program, Commerce found that, in accordance with 19 CFR 351.519(a)(4)(i), the GOT had 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>104</sup> Commerce also found that the exemption granted on certain methods of payments used in purchasing imported raw materials under this program does not constitute a subsidy pursuant to 19 CFR 351.517(a), because the tax exempted upon export does not exceed the amount of tax levied on like products when sold for domestic consumption.<sup>105</sup> No new information is on the record of this review to warrant a reconsideration of Commerce's earlier findings.

During the POR, Ozdemir used D-1 certificates and received duty and VAT exemptions on certain imported and domestically-purchased inputs used in the production of exported HWR pipes and tubes.<sup>106</sup> In its initial questionnaire response, Ozdemir showed that its realized consumption of imported and domestically-purchased raw materials used in the production of exported goods was equal to 95 percent of materials purchased under the D-1 certificate.<sup>107</sup> We consider this to be a normal allowance for waste in accordance with 19 CFR 351.519(a)(1)(ii).

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<sup>101</sup> *Id.*, 28-40.

<sup>102</sup> See, e.g., *Circular Welded Carbon Steel Pipes and Tubes From Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 16994 (April 7, 2017), and accompanying Preliminary Decision Memorandum (PDM), at 15-16, unchanged in *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 47479 (October 12, 2017).

<sup>103</sup> *Id.*, 14-15.

<sup>104</sup> *Id.*, at 13-16; see also *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), and accompanying IDM at 11-13; and *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>105</sup> *Id.*; see also *Turkey Pipe 2013 Final Results*, 80 FR at 61361 and accompanying IDM, at 7-8.

<sup>106</sup> See GOT IQR, at Exhibit 9.

<sup>107</sup> See Ozdemir IQR, at Exhibit 16.

Therefore, Commerce preliminarily determines that Ozdemir did not use the D-1 certificate to purchase inputs to manufacture products for domestic distribution.

Consistent with Commerce's findings in *Turkey Pipe 2013 Final Results*,<sup>108</sup> and based on our review of the information supplied by the respondents regarding this program, we preliminarily find no evidence on the record of this review indicating that the amounts of VAT and duty exemptions on inputs Ozdemir imported using the D-1 certificates were excessive or that the company used the imported inputs for any other products besides those exported.

Therefore, consistent with case precedent,<sup>109</sup> we preliminarily determine that the tax and duty exemptions, which Ozdemir received on imported inputs under D-1 certificates of the IPR program, did not confer countervailable benefits, as the exemptions were applied only to the imported inputs consumed in the production of the exported product, making normal allowance for waste. We further preliminarily find that the VAT exemption did not confer countervailable benefits to Ozdemir, because the exemption does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Finally, Ozdemir reported using no D-3 certificates under this program during the POR.

#### **D. Programs Preliminarily Determined to Be Not Used by Ozdemir during the POR**

Commerce preliminarily finds that the following programs were not used by Ozdemir during the POR:<sup>110</sup>

1. Export Financing: Rediscount Program
2. Exemption from Property Tax
3. Law 6486 Social Security Premium Incentive
4. Provision of Lignite for LTAR
5. Tax Benefit for Research and Development (R&D) Activities
6. Product Development R&D Support-UFT
7. Pre-Export Credit Program
8. Export Insurance Provided by Turk Eximbank
9. Large Scale Investment Incentives: VAT and Customs Duty Exemptions
10. Large Scale Investment Incentives: Tax Reductions
11. Large Scale Investment Incentives: Income Tax Withholding
12. Large Scale Investment Incentives: Social Security and Interest Support
13. Large Scale Investment Incentives: Land Allocation
14. Strategic Investment Incentives: VAT and Customs Duty Exemptions
15. Strategic Investment Incentives: Tax Reductions
16. Strategic Investment Incentives: Income Tax Withholding
17. Large Scale Investment Incentives: Social Security and Interest Support
18. Strategic Investment Incentives: Land Allocation
19. Withholding of Income Tax on Wages and Salaries
20. Incentive for Employer's Share in Insurance Premiums

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<sup>108</sup> See *Turkey Pipe 2013 Final Results*, 80 FR at 61361 and accompanying IDM, at 7-8.

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

<sup>110</sup> See Ozdemir IQR, at 11, 13, and 18

## VII. CONCLUSION

We recommend that you approve the preliminary findings described above.



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

8/6/2018

X   
\_\_\_\_\_

Signed by: JAMES MAEDER

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