



C-489-834

Investigation

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February 19, 2019

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Large Diameter Welded
Pipe from the Republic of Turkey

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to the producers of large diameter welded pipe (welded pipe) from the Republic of Turkey (Turkey), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties:

- Comment 1: Using Production Data Provided by the Government of Turkey (GOT) in Analysis of Market Distortion
- Comment 2: The Appropriate Methodology to Calculate a “Tier 2” Benchmark
- Comment 3: Application of Adverse Facts Available (AFA) to the Deduction from Taxable Income for Export Revenue Program
- Comment 4: Deducting Guarantee Fees in Calculating the Benefit for the Rediscount Program
- Comment 5: Verification Corrections for Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan) and HDM Celik Boru Sanayi ve Ticaret A.S. (HDM Celik)

II. BACKGROUND

Case History

The mandatory respondents in this investigation are Borusan and HDM Celik. On June 29, 2018, Commerce published the *Preliminary Determination* in this investigation and aligned this final countervailing duty (CVD) determination with the final antidumping duty (AD) determination, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i).¹

In July 2018, we conducted verification at the offices of the GOT, Borusan, and HDM Celik, in accordance with section 782(i) of the Act.²

We invited parties to comment on the *Preliminary Determination*. In October 2018, we received case briefs from Borusan and the petitioners,³ and rebuttal briefs from Borusan, the GOT, and the petitioners.⁴

Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.⁵ If the new deadline falls on a non-business day, in accordance with Commerce's practice, the deadline will become the next business day. The revised deadline for the final determination of this investigation is now February 19, 2019.

Period of Investigation

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

¹ See *Large Diameter Welded Pipe from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 30697 (June 29, 2018) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

² See Memoranda: "Verification of the Questionnaire Responses of the Government of Turkey (GOT)," dated September 17, 2018 (GOT Verification Report); "Verification of the Questionnaire Responses of Verification of the Questionnaire Responses of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan)," dated October 2, 2018 (Borusan Verification Report); and "Verification of the Questionnaire Responses of HDM Celik Boru Sanayi ve Ticaret A.S.," dated October 5, 2018 (HDM Celik Verification Report).

³ The petitioners in this investigation are 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).

⁴ See Borusan's Case Brief, "Large Diameter Welded Pipe from Turkey. Case No. C-489-834: BMB's Case Brief," dated October 19, 2018 (Borusan's Case Brief); Petitioners' Case Brief, "Large Diameter Welded Pipe from the Republic of Turkey: Case Brief of Petitioners," dated October 19, 2018 (Petitioners' Case Brief). See also Borusan's Rebuttal Brief, "Large Diameter Welded Pipe from Turkey, Case No. C-489-834: BMB's Rebuttal Brief," dated October 24, 2018 (Borusan's Rebuttal Brief); GOT's Rebuttal Brief, "Rebuttal Brief of the Government of Turkey in Countervailing Duty Investigation on Imports of Large Diameter Welded Pipe from the Republic of Turkey," dated October 24, 2018 (GOT's Rebuttal Brief); and Petitioners' Rebuttal Brief, "Large Diameter Welded Pipe from the Republic of Turkey: Rebuttal Brief of Petitioners," dated October 24, 2018 (Petitioners' Rebuttal Brief).

⁵ See memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

Scope of the Investigation

The product covered by this investigation is large diameter welded pipe from Turkey. For a full description of the scope of this investigation, *see* the accompanying *Federal Register* notice at Appendix I.

III. Subsidies Valuation Information

A. Allocation Period

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation period or the allocation methodology used in the *Preliminary Determination*. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.

B. Attribution of Subsidies

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the attribution of subsidies used in the *Preliminary Determination*. For a description of the methodologies used for this final determination, *see* the *Preliminary Determination*.

C. Denominators

While Commerce made certain changes to HDM Celik's denominators as a result of minor corrections from verification, interested parties raised no issues in their case briefs regarding the denominators used in the *Preliminary Determination*. For a description of the methodologies used for this final determination, *see* the *Preliminary Determination*.

D. Loan Interest Rate Benchmarks and Discount Rates

While Commerce made certain changes to the calculation of the loan interest benchmark rate for the Rediscount Program as a result of minor corrections from verification, interested parties raised no issues in their case briefs regarding the loan interest rate benchmarks and discount rates used in the *Preliminary Determination*. For a description of the methodologies used for this final determination, *see* the *Preliminary Determination*.

IV. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable⁶

1. Provision of HRS for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination* to incorporate minor corrections at verification.

Borusan:	0.42 percent <i>ad valorem</i>
HDM Celik:	1.52 percent <i>ad valorem</i>

2. Deductions from Taxable Income for Export Revenue

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Borusan:	0.07 percent <i>ad valorem</i>
HDM Celik:	0.03 percent <i>ad valorem</i>

3. Export Financing: Rediscount Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. For this final determination, we are deducting guarantee fees from the benefit Borusan received. *See* Comment 4, below.

Borusan:	0.33 percent <i>ad valorem</i>
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4. Investment Encouragement Program: Customs Duty and VAT Exemptions

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

HDM Celik:	0.01 percent <i>ad valorem</i>
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5. Property Tax law 1319: Exemption from Property Tax

⁶ For additional information on the below subsidy rate calculations, *see* the *Preliminary Determination* and the Memoranda: “Countervailing Duty Investigation of Large Diameter Welded Pipe from Turkey: Final Determination Calculation Memorandum for Borusan” (Borusan Final Calculation Memorandum) and “Large Diameter Welded Pipe from Turkey: Final Determination Calculation Memorandum for HDM Celik Boru Sanayi ve Ticaret A.S. (HDM Celik)” (HDM Celik Final Calculation Memorandum), dated concurrently with these final results.

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

HDM Celik: 0.01 percent *ad valorem*

6. Inward Processing Certificate Exemption Program

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Borusan: 0.10 percent *ad valorem*

7. Free Zones Law 3218: Corporate Income Tax Exemptions

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

HDM Celik: 1.18 percent *ad valorem*

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

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

HDM Celik: 0.97 percent *ad valorem*

B. Programs Determined Not to Provide Countervailable Benefits During the POI

1. Provision of CTL Plate for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination* and determines that this program provided no measurable benefit to HDM Celik.

2. Other Programs Conferring No Measurable Benefit During the POI

Borusan and its cross-owned affiliates reported receiving benefits under various programs, some of which were specifically alleged and others were self-reported. Based on our calculations using the record evidence, we determine that the benefits from the following programs are either: 1) were fully expensed prior to the POI 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. Consistent with Commerce's practice,⁷ we determine that it is unnecessary for Commerce to make a final determination as to the countervailability of the following programs and have not included them in our final 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 Support⁸

C. Programs Determined Not to Be Used During the POI

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

D. Program Determined to Be Not Countervailable In This Investigation

1. Social Security Premium Support Program
2. Minimum Wage Incentive Program

As discussed in the *Preliminary Determination*, we determined these programs were not specific, based upon the information on the record.⁹ No party has argued that these programs should be found specific for the final determination; thus, we have not changed our findings with regard to these programs.

⁷ See e.g., *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying Issues and Decision Memorandum (IDM) at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE;" *Certain Steel Wheels From the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying IDM at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District;" *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at "Programs Used By the Alnan Companies;" and *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016), and accompanying IDM at "Tax Deduction for Research and Development Expenses."

⁸ See Borusan Final Calculation Memorandum at 2.

⁹ See *Preliminary Determination* PDM at 23-24.

V. ANALYSIS OF COMMENTS

Comment 1: Using Production Data Provided by the GOT in Analysis of Market Distortion

In the *Preliminary Determination*, Commerce relied on production data collected by the Turkish Steel Manufacturers Association (TCUD) and provided by the GOT to find, in light of other record evidence that the GOT imposed no export restraints on HRS, that the market for HRS in Turkey was not distorted by the government's presence during the POI.

Petitioners' Case Brief

- The production data from TCUD were prepared expressly for this investigation; however, at verification the GOT could not provide access to the files, records or personnel responsible for the preparation of these data.¹⁰
- Because Commerce was unable to document the accuracy or completeness of the TCUD data at verification, it should not rely on it for the final determination.¹¹
- Commerce has previously rejected data created by a respondent when the respondent provided no information regarding methodology for gathering the data.¹²
- In previous cases when respondent governments have relied on an industry association to provide data, Commerce has required supporting documentation at verification. When that documentation was not provided, Commerce applied AFA because the provided information could not be verified.¹³
- At verification, TCUD officials told Commerce that they did not take any measures to confirm the accuracy of the information and that there were no penalties for companies that provide inaccurate information.¹⁴ This is untenable because this data was prepared by entities whose self-interests align with those of the mandatory respondents and have a clear interest in Commerce using Turkish market data as a benchmark, rather than finding that Turkish HRS and CTL plate markets are distorted.¹⁵
- The GOT certified the submitted data; therefore, the fact that another party gathered and provided the data does not excuse the deficiencies with the data. In prior cases involving deficient data, Commerce has held the certifying party responsible for the failure even if the certifying party relied on a third party to prepare the faulty information.¹⁶

¹⁰ See Petitioners' Case Brief at 5-6.

¹¹ *Id.* at 5 (citing *Chia Far Indus. Factory Co. v. United States*, 343 F. Supp. 2d 1344, 1362 (CIT 2004)).

¹² *Id.* at 7 (citing *Fresh Garlic from the People's Republic of China: Results of New Shipper Review*, 75 FR 61130 (October 4, 2010) (*Garlic from China*)).

¹³ *Id.* (citing *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review*, 79 FR 78799 (December 31, 2014), and accompanying Issues and Decision Memorandum (IDM) at 87 (*Citric Acid*)).

¹⁴ See Petitioners' Case Brief at 6.

¹⁵ *Id.*

¹⁶ See Petitioners' Case Brief at 9 (citing *PAM, S.P.A. v. United States*, 495 F.Supp 2d 1360, 1369-70 (CIT 2007) affirming, in part, *Notice of Final Results of the Sixth Administrative Review of the Antidumping Duty Order on Certain Pasta from Italy and Determination Not to Revoke in Part*, 69 FR 6255 (February 10, 2004), and accompanying IDM).

Borusan's Rebuttal Brief

- Commerce's verification report confirms that it was able to verify all the information used to calculate the GOT's share of the HRS market.¹⁷ Furthermore, Commerce has repeatedly examined and verified the data underlying the GOT's market share in numerous proceedings.¹⁸ The GOT and TCUD followed the same methodology in this investigation and Commerce did not find anything at verification to cause it to amend its practice with respect to this program.¹⁹
- The petitioners' cited cases are inapposite. In *Citric Acid*, Commerce's verification outline specifically asked for supporting documentation for previously-unsupported consumption data which the Government of China (GOC) refused to provide.²⁰ Here, the GOT followed the instructions in Commerce's verification outline and Commerce noted no discrepancies in its report.
- Similarly, in *Garlic from China*, Commerce rejected a world price index provided by a respondent that was unsupported by any record evidence and the respondent provided no explanation for the data or how it was compiled.²¹ This fact pattern is not comparable to the instant case.
- Regarding the petitioners' argument that Commerce cannot rely on the data provided by TCUD because its interests allegedly align with the respondents, these are the same circumstances present in every other proceeding involving this program. The petitioners offer no evidence that the GOT or the respondents attempted to improperly influence TCUD or alter the data to their benefit.²²
- Regarding the petitioners' allegation that Commerce cannot rely on the data collected by TCUD because there was no threat of penalty for companies which provide inaccurate information, the petitioners have offered no evidence that any of the submitted data is inaccurate.²³

¹⁷ See Borusan's Rebuttal Brief at 3-4 (citing GOT Verification Report at 4).

¹⁸ *Id.* at 4 (citing *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 10-11; *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015), and accompanying IDM at 16; *Welded Line Pipe from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34113 (January 2, 2018), unchanged in the *Final Results Welded Line Pipe from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34114 (July 19, 2018); *Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*, 83 FR 6511 (February 14, 2018), and accompanying IDM at 4; *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 82 FR 47479 (October 12, 2017), and accompanying IDM at 6-7; and *Oil Country Tubular Goods from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2016*, 83 FR 51440 (October 11, 2018) (*2016 OCTG Review*), and accompanying PDM at 16).

¹⁹ *Id.* at 8.

²⁰ *Id.* at 9 (citing *Citric Acid* IDM at Comment 5A).

²¹ *Id.* at 9-10 (citing *Garlic from China* IDM at Comment 3).

²² *Id.* at 9.

²³ *Id.*

- The petitioners have offered no evidence that: 1) TCUD's data is inaccurate; 2) the market share data Commerce used at the *Preliminary Determination* is inaccurate; or 3) the Turkish HRS market is otherwise distorted.²⁴
- The petitioners' attempt to cast doubt on the GOT's certification of its response is without merit. It is common for the government official who is responsible for a case to sign the certification on behalf of the government and this official takes responsibility for the accuracy of the response. However, the petitioners have cited no evidence that the GOT's response is inaccurate with respect to TCUD's data.²⁵
- Commerce did not rely solely on the market share data supplied by the GOT in finding that the markets for HRS and CTL plate in Turkey are not distorted. Commerce also looked at the substantial level of imports, and the lack of an export tax on or export quota for the inputs.²⁶

GOT's Rebuttal Brief

- Commerce has repeatedly investigated and verified the GOT's HRS market share calculation and underlying TCUD data and has always used this data to determine if the market for HRS in Turkey is distorted.²⁷
- In *Citric Acid*, the GOC officials did not show Commerce officials any documentation to support the data submitted. In the present case, during verification GOT officials showed Commerce officials all of the correspondence between TCUD and the HRS producers regarding the HRS production figures.²⁸
- There is no reason for the HRS producers to provide incorrect data and they are under no obligation to provide these production figures to Commerce given that they compete with the respondents both in Turkey and export markets.²⁹
- The methodology used in this investigation and other proceedings to determine the production of HRS in Turkey is the most plausible method Commerce can use; no party has provided an alternative option. Therefore, Commerce should continue to use this methodology here.³⁰

Commerce's Position:

For the final determination, we continued to use the TCUD data provided by the GOT, along with other record information, to conduct our market distortion analysis with regard to HRS in Turkey. Based on the data, in combination with other record evidence indicating no government restraints on the export of HRS, we find no support in the case record to determine that the market for HRS in Turkey was distorted by the government's presence during the POI. We disagree with the petitioners that we were unable to verify the TCUD data with the GOT. At verification, we examined the TCUD data, finding:

²⁴ *Id.* at 11.

²⁵ *Id.*

²⁶ See Borusan's Rebuttal Brief at 11 (citing *Preliminary Determination* PDM at 11.)

²⁷ See GOT's Rebuttal Brief at 5 (citing *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), and accompanying IDM at 13).

²⁸ *Id.* (citing *Citric Acid* IDM at Comment 5A).

²⁹ *Id.*

³⁰ *Id.*

According to the TCUD representative, the organization compiled POI HRS production data from the responses received from the Turkish steel industry and from information provided by the GOT Statistical Institute for Import and Export. The representative stated that only five of the six Turkish companies capable of producing HRS did so during the POI. We examined TCUD's letters requesting HRS quantities, and the subsequent responses from Colakoglu, Toscelik Profil ve Sac Endustrisi A.S. (Toscelik), MMK Metalurji Sanayi Ticaret Ve Liman Isletmeleri A.S. (MMK), Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas), Eregli Demir ve Çelik Fabrikaları A.S. (Erdemir), and Iskenderun Demir ve Celik A.S. (Isdemir) during the POI. *See* VE-5.³¹

Moreover, regarding documentation to support the HRS figures TCUD provided, we found:

GOT officials stated they obtained "HRC Imports" data from the Turkish Statistical Institute, which maintains import data based on HTS codes. GOT officials also stated they obtained "HRC Production" and "Total Production of Finished HRC" data from the following two sources: 1) questionnaires requesting 2017 HRC production data, which TCUD sent to each HRC-producing firm; and 2) 2017 production data contained in Erdemir's and Isdemir's 2017 annual reports. GOT officials explained that by summing the questionnaire responses and the information in Erdemir and Isdemir's 2017 annual reports, they calculated the 2017 total for "Total Production of Finished HRC" and "HRC Production." We compared these documents to pages 15-16 of the GOT IQR and noted no discrepancies. *See* VE-5 for documents examined at verification.^{32,33}

As these excerpts demonstrate, Commerce examined the underlying documentation TCUD obtained from HRS producers to compile the data submitted to Commerce and noted no discrepancies. Accordingly, we find that Commerce verified the reported data.

We disagree with the petitioners that we should consider the TCUD data unverified because the GOT did not provide access to the books and records of the underlying HRS/CTL plate producers. In our GOT verification outline, we did not request that the GOT provide access to the books and records of the HRS/CTL plate producers who submitted production data to TCUD,³⁴ and it is not Commerce's practice to verify data submitted by non-respondent companies. Given the short time frame Commerce has to complete an investigation, it would be impracticable to conduct verification with companies other than the mandatory respondents. In

³¹ *Id.*

³² *See* GOT Verification Report at 4.

³³ We used the same methodology to verify TCUD's reported CTL plate data. While we noted a small calculation issue regarding Toscelik's reported quantity, this change does meaningfully impact our analysis. *See* GOT Verification Report at 5.

³⁴ *See* Department Letter re: Verification of the Government of the Republic of Turkey's Questionnaire Responses Submitted in the Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Turkey, dated July 6, 2018 at 6-5.

addition, there is a practical difficulty in compelling non-respondent companies to cooperate. Thus, we find no basis to determine that the GOT failed verification because it did not provide access to the books and records of the non-respondent HRS/CTL plate producers.

We also disagree with the petitioners that the cases they cite support Commerce's rejection of the TCUD data. In *Citric Acid*, the GOC was unable to provide any documentation regarding the consumption data it provided for caustic soda.³⁵ However, in this case, the GOT provided the records of the survey conducted by TCUD to collect the HRS and CTL plate production data, and we tied the records provided to the GOT's questionnaire responses.³⁶ Similarly, in *Garlic from China*, the respondent provided unsupported data and did not explain how these data were compiled.³⁷ In the instant case, TCUD provided a complete explanation of how it gathered the data and survey records supporting these data.³⁸

We also disagree with the petitioners' contention that we should reject the TCUD data because TCUD imposes no penalty on HRS/CTL plate producers if they provide inaccurate data. The petitioners have offered no evidence beyond mere speculation that the data HRS/CTL plate producers provided to TCUD is inaccurate. Finally, we disagree with the petitioners that the GOT's certification of the TCUD data is problematic. As explained above, we verified TCUD's reported production data. Commerce's regulations require certification that the response is "accurate and complete," to the best of the certifying official's knowledge,³⁹ and there is no evidence on the record that suggests that the GOT's response is deficient. Consequently, because the petitioners have provided no evidence that the production data provided by TCUD and the GOT is inaccurate, we continued to use the TCUD data for the market distortion analysis for the final determination.

Comment 2: The Appropriate Methodology to Calculate a "Tier 2" Benchmark

After relying on the TCUD data provided by the GOT in determining whether the market for HRS in Turkey is distorted, and in light of other record evidence indicating that the GOT imposed no restraints on exports, we find that the markets for HRS and CTL Plate in Turkey are not distorted. Therefore, it is unnecessary to decide what Tier 2 benchmark is appropriate and this issue is moot.

³⁵ See *Citric Acid* at Comment 5A.

³⁶ See GOT Verification Report at Exhibit 5.

³⁷ See *Qingdao Sea-line Trading Co., Ltd., v. United States Consol. Ct. No. 10-00304*, Slip op. 12-39 (CIT 2012) (*Qingdao*) at *6.

³⁸ See GOT Verification Report at Exhibit 5.

³⁹ See 19 CFR 351.303(g).

Comment 3: Application of AFA to the Deduction from Taxable Income for Export Revenue Program

Petitioners' Case Brief

- Commerce should apply AFA to the Deduction from Taxable Income for Export Revenue program because the GOT failed to provide information Commerce requested in its verification agenda.
- Specifically, in its verification agenda, Commerce requested that the GOT have available Borusan's and HDM Celik's tax returns, among other documents.⁴⁰
- In the GOT's April 23, 2018 IQR, the GOT stated that it does not keep records regarding the program and the respondents could provide information regarding their usage of this program during the POI.⁴¹ At verification, the GOT changed its story and stated that it was unable to discuss any benefits Borusan or HDM Celik received during the POI because of tax secrecy laws.⁴² This is the first instance where the GOT stated that although it had information relevant to benefits received by the respondents, it was barred from sharing that information.
- Moreover, the GOT made no effort to coordinate with Borusan and HDM Celik prior to verification to obtain their permission to review their tax returns with Commerce officials.⁴³
- Commerce has previously applied AFA with respect to benefit in instances where it may have been able to review similar information with respondent companies.⁴⁴
- Turkey's Ministry of Finance maintains the most pertinent information regarding the usage and benefits received under the Deduction from Taxable Income for Export Revenue program. The GOT's statement that it did not maintain records related to the respondents' usage is incorrect. The GOT's actions prevented parties from reviewing these alleged secrecy laws.
- Therefore, in its final determination, Commerce should apply AFA to Borusan and HDM Celik for this program. As AFA, Commerce should use the highest non-*de minimis* rate calculated for this program in a different proceeding (*i.e.*, 20 percent).⁴⁵

⁴⁰ See Petitioners' Case Brief at 15 (citing Commerce's Memorandum entitled, "Verification of the Questionnaire Responses of the Government of Turkey" (GOT Verification Report), dated October 31, 2017, at 8).

⁴¹ *Id.* (citing the GOT's letter entitled, "Response of the Government of Turkey in the Countervailing Duty Investigation on Large Diameter Welded Pipe from the Republic of Turkey," dated April 23, 2018 (GOT's April 23, 2018 IQR))

⁴² *Id.* (citing the GOT Verification Report at 8).

⁴³ *Id.*

⁴⁴ *Id.* at 16 (citing *Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China*, 79 FR 76962 (December 23, 2014) (*Silicon Products from China*), and accompanying IDM at Comment 16 (discussing the verification of non-use of a program not only with a respondent, but also with the government)).

⁴⁵ *Id.* at 17 (citing *Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey*, 80 FR 61361 (October 13, 2015) (*CWP Turkey 2015*), and accompanying IDM at 5-6). We note that the only subsidy rate calculated in *CWP Turkey 2015* for this program was 0.2 percent.

Borusan's Rebuttal Brief

- Commerce officials fully verified the Deduction from Taxable Income for Export Revenue program with both Borusan and HDM Celik and, as a result, the application of AFA is unwarranted.⁴⁶
- The GOT stated in its questionnaire response that respondents Borusan and HDM Celik used this program. Borusan and HDM Celik each included its tax returns in its respective questionnaire response. It is often the case that a government cannot release the tax returns of a private company upon request.
- The case the petitioners cited is inapposite. *Silicon Products from China* concerns Commerce's attempted verification of non-use of China's Ex-Im Bank Export Buyer's Credit program. In that case, the GOC did not respond to the standard questions appendix regarding that program and refused to provide any information to Commerce verifiers.
- In this investigation, the GOT fully responded to Commerce's questionnaire and discussed the program at length with Commerce officials at verification.⁴⁷
- Commerce found no issues after verifying this program at both the GOT and the respondent companies. It is not the petitioners' place to dictate the manner in which Commerce verifies a particular program or to determine whether Commerce adequately completed verification.
- Commerce examined the tax returns the petitioners identify as most relevant to this program at the verifications of Borusan and HDM Celik. Commerce should therefore reject the petitioners' arguments concerning this program in its final determination.

GOT's Rebuttal Brief

- At verification, the GOT fully cooperated with Commerce concerning the Deduction from Taxable Income for Export Revenue program.
- Commerce reviewed both Borusan's and HDM Celik's tax returns, which were officially approved by the Ministry of Finance.
- The GOT clearly stated in its questionnaire response that it does not keep records regarding this program.⁴⁸ Therefore, it was the GOT's understanding that Commerce would seek information concerning Borusan's and HDM Celik's benefits under this program with the companies themselves.
- The amount of the deduction under this program cannot exceed 0.5 percent of a company's income derived from export activities. Thus, due to its nature, there is no way for the GOT to keep records specific to the benefits companies received under this program.
- Commerce has previously verified this program in the same manner in other proceedings and there is no justification for Commerce to change its practice in this investigation.⁴⁹

⁴⁶ See Borusan's Rebuttal Brief at 18 (citing HDM Celik Verification Report at 10; and Borusan Verification Report at 8).

⁴⁷ *Id.* at 19 (citing the GOT's April 23, 2018 IQR at 45-55; and the GOT Verification Report at 8).

⁴⁸ See GOT's Rebuttal Brief at 3 (citing the GOT's April 23, 2018 IQR at 46).

⁴⁹ *Id.* at 4 (citing *Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 76962 (March 28, 2018), and accompanying IDM).

Commerce's Position:

We disagree with the petitioners that it is appropriate to apply an AFA subsidy rate to Borusan and HDM Celik for the Deduction for Taxable Income for Export Revenue Program. The GOT reported that both Borusan and HDM Celik used this program, and both respondents reported the amount of the benefits they received in their questionnaire responses. At verification, we discussed the nature of this program with GOT officials, and the usage and benefits Borusan and HDM Celik received with representatives at each company.⁵⁰ Also at verification, we tied the exact amounts Borusan and HDM Celik reported receiving to their audited tax returns, noting no discrepancies as part of these examinations.⁵¹

While the petitioners correctly note that our verification outline for the GOT did reference the respondents' tax returns, that was in the context of an illustrative list (preceded by "*e.g.*") of materials for possible review but not intended to be mandatory. We generally verify respondents' tax returns at the respondents' verifications. There was no other pertinent documentation concerning the application for, usage of, or benefits received under the Deduction from Taxable Income for Export Revenue program. Moreover, even assuming, *arguendo*, we found that the GOT failed to cooperate to the best of its ability at verification by not providing the respondents' tax returns, it is Commerce's normal practice to rely on information supplied by the respondent to establish a benefit amount, rather than determining the benefit for the program based on the application of AFA. For example, in *Iranian Pistachios*, Commerce stated that, "in instances in which the foreign government fails to adequately respond to the Department's questionnaires... the Department calculates the benefit by relying, to the extent possible, on information supplied by the respondent firm."⁵²

Moreover, we disagree with the petitioners that *Silicon Products from China* supports applying an AFA subsidy rate for this program. In that case, Commerce was unable to verify a respondent's non-use of China's Ex-Im Bank Export Buyer's Credit program because the GOC did not: 1) provide a response to Commerce's questionnaire; and 2) allow Commerce access to information concerning the program at verification. In the instant case, there is no dispute that the mandatory respondents used the program. Moreover, the GOT responded to Commerce's questionnaire regarding the Deduction from Taxable Income for Export Revenue program and discussed the program with Commerce officials at verification.

The petitioners do not argue and have provided no evidence to suggest either that Commerce did not verify these benefit amounts with the respondents or that the tax returns reviewed at the

⁵⁰ See GOT Verification Report at 8; Borusan Verification Report at 8-9; and HDM Celik Verification Report at 10-11.

⁵¹ See Borusan Verification Report at 8: "We reviewed the 2016 income tax return that was filed {by Borusan} during the POI and tied the tax deduction reported in the response to the income tax return."; also see HDM Celik Verification Report at 10-11: "We examined HDM Spiral's 2016 corporate tax return (which was filed in 2017) with company officials, who identified the line containing the deduction {under this program}... The information and documentation presented was consistent with HDM Celik's April 25, 2018 questionnaire response at page 15 and at Exhibit 11."

⁵² See *Certain In-shell Roasted Pistachios from the Islamic Republic of Iran: Final Results of Countervailing Duty New Shipper Review*, 73 FR 9993 (February 25, 2008) (*Iranian Pistachios*), and accompanying IDM at Comment 2. There are exceptions to this normal practice, but this case does not fall into one of those exceptions.

company verifications (and tied to the reported benefit amounts) were inaccurate. Therefore, we find that basing the rate for this program on AFA is unwarranted. Consequently, we have continued to rely on the benefit amounts reported by Borusan and HDM Celik in our calculations for the final determination.

Comment 4: Deducting Guarantee Fees in Calculating the Benefit for the Rediscount Program

Borusan's Case Brief

- In the *Preliminary Determination*, Commerce stated that it would subtract the guarantee fees Borusan paid from the benefit calculation for the Short-Term Pre-Shipment Rediscount Loan program.⁵³ However, Commerce failed to do so in its calculations.⁵⁴
- Commerce can correct this error for the final determination in two ways, by either subtracting: 1) the guarantee fees from the benefit calculated in the *Preliminary Determination*, consistent with the methodology Commerce recently used in *OCTG from Turkey*;⁵⁵ or 2) the interest amount, including guarantee fees, from the benchmark interest rate.

Petitioners' Rebuttal Brief

- The record of this case does not establish that the guarantee fees Borusan paid meet the requirements of section 771(6)(A) of the Act because the information Borusan provided did not demonstrate that the guarantee fees are either: 1) required to qualify for this program; or 2) are application fees or deposits.⁵⁶
- The verification reports Borusan provided in its supplemental questionnaire response (*i.e.*, from *WLP from Turkey* and *CWP from Turkey*) either do not mention guarantee fees or describe them as blockage fees, which are paid back upon the maturation of the loan.⁵⁷ Thus, it is reasonable to assume that the guarantee fees at issue here are similar to these “blockage fees.”
- The amount of the guarantee fees Borusan paid bears no relationship to either the underlying loan or the interest reported on that loan.⁵⁸
- Both Congress and the courts have confirmed that the offsets listed in section 771(6)(A) of the Act are the only offsets to CVD benefits which Commerce is permitted to make

⁵³ See Borusan's Case Brief at 1 (citing *Preliminary Determination* PDM at 15).

⁵⁴ *Id.* at 2 (citing Memorandum, “Preliminary Determination Calculation Memorandum for Borusan,” dated June 19, 2018).

⁵⁵ *Id.* at 3 (citing *2016 OCTG Review*).

⁵⁶ See Petitioners' Rebuttal Brief at 3.

⁵⁷ *Id.* (citing Borusan's May 18, 2018 Supplemental Questionnaire Response at Exhibit A-13 and A-14 (containing Memoranda “Verification of the Questionnaire Responses of Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret,” dated October 23, 2017; and “Verification of the Questionnaire Responses submitted by Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB), and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, Borusan)) (Borusan's May 18, 2018 SQR)).

⁵⁸ *Id.* at 4.

under the statute.⁵⁹ Additionally, Commerce has previously found that voluntary payments do not satisfy the requirements of section 771(6)(A) of the Act.⁶⁰

- Therefore, Commerce should refuse to grant Borusan's requested offset and continue to calculate the benefit for this program in the same manner as in the *Preliminary Determination*.

Commerce's Position:

We agree with Borusan that we failed to deduct guarantee fees from the benefit calculation for this program in the *Preliminary Determination*, contrary to our stated intention to do so. In the *Preliminary Determination*, we stated, "...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."⁶¹

We find no merit to the petitioners' argument that we should not deduct these fees because they do not meet the requirements of section 771(6)(A) of the Act. Section 771(6) of the Act states:

For the purposes of determining the net countervailable subsidy, the administering authority may subtract from the gross countervailable subsidy the amount of –

- (A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,
- (B) Any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and
- (C) Export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

In its questionnaire response, the GOT stated that, under this program, the Turk Eximbank requires promissory notes which have a short-term guarantee limit and the borrower incurs the costs of this requirement.⁶² In its questionnaire response, Borusan explained that it reported such costs as guarantee fees.⁶³ At the verification of Borusan, we examined documentation related to the Turk Eximbank loans and the associated fees Borusan incurred, noting no

⁵⁹ *Id.* (citing *Trade Agreements Act of 1979, S. Rep. No. 96-249 (1979) reprinted in 1979 U.S.C.C.A.N. 381, 472 at 186; Certain Uncoated Groundwood Paper from Canada: Final Affirmative Countervailing Duty Determination*, 83 FR 39414 (*UGW Paper*), and accompanying IDM at Comments 19, 60 and 68, citing *Geneva Steel v. United States*, 20 CIT 7 (1996) and *Kajaria Iron Castings Pvt. v. United States*, 156 F.3d 1163, 1174 (Fed. Cir. 1998)).

⁶⁰ *Id.* at 5 (citing *UGW Paper* at Comment 60; *Certain Softwood Lumber Products from Canada*, 82 FR 51814 (November 8, 2017), and accompanying IDM at Comment 78; *Biodiesel from the Republic of Indonesia*, 82 FR 53471 (November 16, 2017), and accompanying IDM at Comment 4; and *Melamine from Trinidad and Tobago*, 80 FR 68849 (November 6, 2016), and accompanying IDM at Comment 6).

⁶¹ See *Preliminary Determination PDM* at 15.

⁶² See GOT's April 23, 2018 IQR at 41.

⁶³ See Borusan's April 23, 2018 Initial Questionnaire Response at 34.

discrepancies with data reported in Borusan's questionnaire response.⁶⁴ Moreover, at the GOT verification, we discussed with Turk Eximbank officials that applicant firms under this program must submit a promissory note in order to receive the loan.^{65,66} As a result, we find that the guarantee fees are appropriately deducted from the benefit calculation because Borusan incurred its guarantee fees related to the promissory notes required by Turk Eximbank for this program, thus satisfying the requirements of section 771(6)(A) of the Act.

We disagree with the petitioners that the *WLP from Turkey* and *CWP from Turkey* verification reports demonstrate that guarantee fees are not required. The *WLP from Turkey* verification report makes no mention of guarantee fees; however, in this investigation, we verified Borusan's reported guarantee fees and noted no discrepancies.⁶⁷ While the verification report from *CWP from Turkey* discusses blockage fees that are paid at the maturation of the loan,⁶⁸ such blockage fees are not the same as the guarantee fees in question. The "Implementation Principles of the Rediscount Program," contained in GOT's April 23, 2018 IQR defines blockage fees as a small deduction from the principal which approved firms incur when receiving a loan under this program.⁶⁹ Borusan did not report incurring such blockage fees in its response.⁷⁰

Finally, we disagree with the petitioners that the relationship between the amount of the guarantee fees Borusan paid and the amount of the underlying loan is relevant to our determination. In all instances, the amount of Borusan's guarantee fees expressed as a percentage of the principal of each loan is small.⁷¹ In addition, we verified Borusan's reported guarantee fees, noting no discrepancy.⁷² Consequently, for the *Final Determination*, we revised the calculation of the benefit for Borusan under this program to subtract the interest amount, including guarantee fees, from the benchmark interest rate.⁷³

Comment 5: Verification Corrections for Borusan and HDM Celik

Petitioners' Case Brief

- Commerce should incorporate the changes obtained at the verifications of both Borusan and HDM Celik in its calculations for the final determination.⁷⁴

No other party commented on this topic.

⁶⁴ See Borusan Verification Report at 7-8 and Verification Exhibits 9, 13, and 14.

⁶⁵ See GOT Verification Report at 7.

⁶⁶ The petitioners make an additional argument regarding these fees that is business proprietary; therefore, we are unable to address it here. For the discussion of this issue, see Borusan Final Calculation Memorandum.

⁶⁷ See Borusan Verification Report at 7-8.

⁶⁸ See Borusan's May 18, 2018 SQR at A-14.

⁶⁹ See GOT's April 23, 2018 IQR at Exhibit 13.

⁷⁰ *Id.*

⁷¹ See Borusan Final Calculation Memorandum at Attachment 6b.

⁷² See Borusan Verification Report at 7-8.

⁷³ See Borusan Final Calculation Memorandum at Attachment 6b.

⁷⁴ See Petitioners' Case Brief at 18

Commerce's Position:

We incorporated the changes resulting from verification for both Borusan and HDM Celik, as outlined in the verification reports,⁷⁵ in our calculations for the final determination.

VI. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.




Agree



Disagree

2/19/2019

X 

Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

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

⁷⁵ See Borusan Verification Report at 2-3; HDM Celik Verification Report at 2-3.