



C-489-817

Administrative Review

POR: 1/1/2016 - 12/31/2016

**Public Document**

E&C AD/CVD OI: AP

DATE: March 20, 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 Results of  
Countervailing Duty Administrative Review of Oil Country  
Tubular Goods from the Republic of Turkey; 2016

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## I. Summary

The Department of Commerce (Commerce) has completed its administrative review of the countervailing duty (CVD) order of oil country tubular goods (OCTG) from the Republic of Turkey (Turkey) for the period of review (POR) January 1, 2016, through December 31, 2016. The mandatory respondent is Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret (collectively, Borusan). After analyzing the issues raised by Maverick Tube Corporation and TenarisBayCity (domestic interested parties), the Government of Turkey (GOT) and Borusan, we determine that Borusan received a net countervailable subsidy rate of 0.66 percent during the POR. Below is the complete list of issues in this review for which we received comments from interested parties:

- Comment 1: Using Production Data Provided by the GOT in Analysis of Market Distortion
- Comment 2: The Appropriate Methodology to Calculate a “Tier 2” Benchmark
- Comment 3: Whether to Place the Verification Report from the *Large Diameter Welded Pipe from Turkey*<sup>1</sup> Investigation on this Case Record

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<sup>1</sup> See *Large Diameter Welded Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019), and accompanying Issues and Decision Memorandum (*LDWP from Turkey*).



## Background

On October 11, 2018, Commerce published the *Preliminary Results* for this administrative review.<sup>2</sup> Subsequently, in December 2018, Commerce received a case brief from domestic interested parties,<sup>3</sup> and rebuttal briefs from the GOT and Borusan.<sup>4</sup> On December 21, 2018, Borusan filed a notice of supplemental authority that included excerpts from the World Trade Organization (WTO) Panel Report, *U.S. – Pipe and Tube Products from Turkey*.<sup>5</sup>

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.<sup>6</sup> The revised deadline for the final results of this administrative review is now March 20, 2019.

## II. Scope of the Order

The merchandise covered by the order is oil country tubular goods, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.*, whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (“API”) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the order also covers OCTG coupling stock.

Excluded from the scope of the order are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10,

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<sup>2</sup> See *Oil Country Tubular Goods from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2016*, 83 FR 51440 (October 11, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

<sup>3</sup> See Domestic Interested Parties’ Case Brief, “Certain Oil Tubular Goods from the Republic of Turkey: Case Brief,” dated December 3, 2018 (Domestic Interested Parties’ Case Brief).

<sup>4</sup> See the Government of the Republic of Turkey’s Rebuttal Brief, “2016 Administrative Review of Countervailing Duty Order on Imports of Certain Oil Country Tubular Goods from the Republic of Turkey: Rebuttal Brief,” dated December 10, 2018 (GOT Rebuttal Brief); see also Borusan’s Rebuttal Brief, “Certain Oil Country Tubular Goods from the Republic of Turkey, Case No. C-489-817: Borusan’s Rebuttal Brief,” dated December 10, 2018 (Borusan’s Rebuttal Brief).

<sup>5</sup> See Letter from Borusan, “Certain Oil Country Tubular Goods from the Republic of Turkey, Case No. C-489-817: Notice of Supplemental Authority,” dated December 21, 2018 (citing *United States – Countervailing Measures on Certain Pipe and Tube Products from Turkey*, WT/DS523/R (December 18, 2018) (*U.S. – Pipe and Tube Products from Turkey*)) (Notice of Supplemental Authority).

<sup>6</sup> 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.

7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the order may also enter under the following HTSUS item numbers:

7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

### **III. Subsidies Valuation Information**

#### **A. Period of Review**

The period for which we are measuring countervailable subsidies, *i.e.*, POR, is January 1, 2016, through December 31, 2016.

#### **B. 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 Results*. For a description of the allocation period and the methodology used for these final results, *see* the *Preliminary Results*.<sup>7</sup>

#### **C. Attribution of Subsidies**

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the methodology for the attribution of subsidies used in the *Preliminary Results*. For a description of the attribution of subsidies and the methodology used for these final results, *see* the *Preliminary Results*.<sup>8</sup>

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<sup>7</sup> See PDM at 4.

<sup>8</sup> See Memorandum: Preliminary Results Calculations for Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret (collectively, Borusan), dated October 3, 2018 (Borusan's Preliminary Calculation Memorandum).

## **D. Denominators**

Commerce made no changes to, and interested parties raised no issues in the case briefs regarding, the denominators for total sales and export sales used in the *Preliminary Results*. For a description of the denominators and the methodology used for these final results, *see* the *Preliminary Results*.<sup>9</sup>

## **IV. BENCHMARK INTEREST RATES**

Commerce made no changes to, and interested parties raised no issues in the case briefs regarding, the benchmark interest rates used to measure the benefits from export loans used in the *Preliminary Results*. For a description of the short-term interest rate benchmark used in these final results, *see* the *Preliminary Results* and Borusan's Preliminary Calculation Memorandum.<sup>10</sup>

## **V. Analysis of Programs**

### **A. Programs Determined to be Countervailable**

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

Interested parties raised no issues regarding this program and we made no changes to the *Preliminary Results*. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.<sup>11</sup> For these final results of review, we find the rate for Borusan to be 0.09 percent *ad valorem*.<sup>12</sup>

#### *2. Inward Processing Certificate*

Interested parties raised no issues regarding this program and we made no changes to the *Preliminary Results*. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.<sup>13</sup> For these final results of review, we find the rate for Borusan to be 0.20 percent *ad valorem*.<sup>14</sup>

#### *3. Export Financing -- Rediscount Program (Short-Term Pre-Shipment Rediscount Program)*

Interested parties raised no issues regarding this program and we made no changes to the *Preliminary Results*. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.<sup>15</sup> For these final results of review, we find the rate for Borusan to be 0.08 percent *ad valorem*.<sup>16</sup>

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<sup>9</sup> *See* Borusan's Preliminary Calculation Memorandum.

<sup>10</sup> *See* PDM at 7.

<sup>11</sup> *Id.* at 8-9.

<sup>12</sup> *See* Borusan's Preliminary Calculation Memorandum.

<sup>13</sup> *See* PDM at 9-12.

<sup>14</sup> *See* Borusan's Preliminary Calculation Memorandum.

<sup>15</sup> *See* PDM at 12-13.

<sup>16</sup> *See* Borusan's Preliminary Calculation Memorandum.

#### 4. *Provision of Hot-Rolled Steel for Less Than Adequate Remuneration*

Domestic interested parties raised three issues regarding this program. For a discussion of our consideration of parties' argument regarding the use of benchmarks, *see* "Analysis of Comments" section below. We made no changes to the *Preliminary Results*. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.<sup>17</sup> For these final results of review, we find the rate for Borusan to be 0.29 percent *ad valorem*.<sup>18</sup>

#### **B. Programs Determined Not to Confer a Benefit During the POR**

Interested parties raised no issues regarding these programs and we made no changes to the *Preliminary Results*. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.<sup>19</sup> For these final results of review, we continue to find that the programs did not confer a benefit during the POR.<sup>20</sup>

1. *Assistance to Offset Costs Related to AD/CVD Investigations*
2. *Support of Trade Expositions and Market Research*
3. *Investment Encouragement Program: VAT and Customs Duty Exemptions*

#### **C. Program Found Not to Be Countervailable**

1. *Minimum Wage Incentive Program*

Interested parties raised no issues regarding this program and we made no changes to the *Preliminary Results*. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.<sup>21</sup> For these final results of review, we find this program not to be countervailable.

#### **D. Programs Determined to Be Not Used During the POR**

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

1. *Strategic Investment Incentives*
  - i. Investment Encouragement Program: VAT and Customs Duty Exemptions
  - ii. Tax Reductions
  - iii. Income Tax Withholding
  - iv. Social Security and Interest Support
  - v. Land Allocation

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<sup>17</sup> *See* PDM at 13-17.

<sup>18</sup> *See* Borusan's Preliminary Calculation Memorandum.

<sup>19</sup> *See* PDM at 17.

<sup>20</sup> *See* Borusan's Preliminary Calculation Memorandum.

<sup>21</sup> *See* PDM at 17-18.

2. *Large Scale Investment Incentives*
  - i. VAT and Customs Duty Exemptions
  - ii. Tax Reductions
  - iii. Income Tax Withholdings
  - iv. Social Security and Interest Support
  - v. Land Allocation
3. *Export Insurance Provided by Turk Eximbank*
4. *Preferential Tax Benefits for Turkish OCTG Producers Located in Free Zones*
5. *Incentives for Research and Development Activities*
  - i. Product Development R&D Support-UFT
  - ii. Tax Breaks
6. *Provision of Steam Coal for Less Than Adequate Remuneration*
7. *Investment Encouragement Program: Customs Duty and VAT Exemptions*
8. *Provision of Electricity for LTAR/Law 5084: Energy Support*
9. *Provision of Land for Less Than Adequate Remuneration*
10. *Law 5084: Withholding of Income Tax on Wage and Salaries*
11. *Exemption from Property Tax*
12. *Law 5084: Incentive for Employers' Share in Insurance Premiums*
13. *Law 6486: Regional Program for Employer's Share of Social Security Withholding*
14. *Eximbank Working Capital Loan*
15. *Export Financing: Pre-Export Credit Program*

## VI. Analysis of Comments

### Comment 1: Using Production Data Provided by the Government of Turkey (GOT) in Analysis of Market Distortion

#### *Domestic Interested Parties' Case Brief*

- The production data from the Turkish Steel Producers Association (TCUD) do not meet the statutory or regulatory criteria governing the standards applicable to factual information because the GOT does not have access to the files, records or personnel responsible for the preparation of these data.<sup>22</sup>
- The data were prepared by entities whose self-interests align with those of the respondent and have a clear interest in Commerce using Turkish market data as a benchmark, rather than finding that the Turkish hot-rolled steel (HRS) market is distorted.<sup>23</sup>
- Commerce previously rejected data created by a respondent when the respondent provided no information regarding the methodology for gathering the data.<sup>24</sup>
- 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 adverse facts available because the

<sup>22</sup> See Domestic Interested Parties' Case Brief at. at 6-8.

<sup>23</sup> *Id.* at 9.

<sup>24</sup> *Id.* at 9-10 (citing *Fresh Garlic from the People's Republic of China: Results of New Shipper Review*, 75 FR 61130 (October 4, 2010) (*Garlic from China*)).

provided information could not be verified.<sup>25</sup>

- The GOT certified the submitted data; therefore, the fact that another party gathered and provided the data does not excuse any deficiencies with the data. There is no penalty to TCUD or to its individual members for providing deficient information and no procedure to authenticate the data. In prior cases involving deficient data, Commerce held the certifying party responsible for the failure even if the certifying party relied on a third party to prepare the faulty information.<sup>26</sup>
- Because Commerce would be unable to verify the accuracy and completeness of the TCUD data, it should not rely on the data for purposes of its final results.<sup>27</sup>

#### *Borusan's Rebuttal Brief*

- Commerce did not rely solely on the market share data supplied by the GOT in finding that the Turkish market for HRS is 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.<sup>28</sup>
- Commerce has repeatedly examined and verified the data underlying the GOT's market share calculation in numerous proceedings.<sup>29</sup> The GOT and TCUD followed the same methodology in this review and Commerce did not find anything in the course of the review to cause it to amend its practice with respect to this program.<sup>30</sup>
- Regarding the domestic interested parties' argument that Commerce cannot rely on the data

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<sup>25</sup> See Domestic Interested Parties' Case Brief at 10 (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*)).

<sup>26</sup> *Id.* at 13 (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).

<sup>27</sup> *Id.* at 7 (citing *Chia Far Indus. Factory Co. v. United States*, 343 F. Supp. 2d 1344, 1362 (CIT 2004)).

<sup>28</sup> See *Borusan's Rebuttal Brief* at 2-3.

<sup>29</sup> *Id.* at 7 (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 (*CWCS Pipes and Tubes from Turkey 2013 AR*); *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 Turkey*); *Welded Line Pipe from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34113 (January 2, 2018), unchanged in *Final Results Welded Line Pipe from the Republic of Turkey: Final Results of the Countervailing 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 *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), and accompanying PDM at 10-11 (*LDWP from Turkey Preliminary Determination*)).

<sup>30</sup> *Id.* at 8 (citing Letters from Commerce, "Administrative Review of Countervailing Duty on Certain Oil Country Tubular Goods from the Republic of Turkey: Supplemental Questionnaire," dated April 10, 2018, and August 3, 2018; Letter from GOT, "Response of the Government of Turkey in 2016 Countervailing Duty Administrative Reviews on Imports of Certain Oil Country Tubular Goods from the Republic of Turkey," dated August 17, 2018 (GOT August 17, 2018 SQR); and Letter from GOT, "Resubmission of Exhibit 1 of the Third Supplemental Questionnaire of the Government of Turkey in 2016 Countervailing Duty Administrative Review on Imports of Certain Oil Country Tubular Goods from the Republic of Turkey," dated September 4, 2018 (GOT September 4, 2018 SQR).

provided by TCUD because its interests allegedly align with the respondent, and because there was no threat of penalty for companies which provide inaccurate information, these are the same circumstances present in every other proceeding involving this program. The domestic interested parties offer no evidence that any of the submitted data are inaccurate.<sup>31</sup>

- The cases cited by the domestic interested parties are inappropriate. 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.<sup>32</sup>
- Similarly, in *Garlic from China*, Commerce rejected a world price index provided by a company respondent that was unsupported by any record evidence and the respondent provided no explanation for the data or how it was compiled.<sup>33</sup> This fact pattern is not comparable to the instant case.
- The domestic interested parties' 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 domestic interested parties have cited no evidence that the GOT's response is inaccurate with respect to TCUD's data.<sup>34</sup>
- The domestic interested parties have offered no evidence that: 1) TCUD's data is inaccurate; 2) the market share data Commerce used at the *Preliminary Results* is inaccurate; or 3) the Turkish HRS market is otherwise distorted.<sup>35</sup>
- In its notice of supplemental authority filing, Borusan requested that Commerce consider the recent WTO Panel Report in *U.S. – Pipe and Tube Products from Turkey*, as it addresses the alleged HRS for LTAR program under examination in this administrative review.<sup>36</sup>

#### *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.<sup>37</sup>
- In *Citric Acid*, the GOC officials did not show Commerce officials any documentation to support the data submitted. In all previous investigations and reviews, GOT officials showed Commerce officials all of the correspondence between TCUD and HRS producers regarding the HRS production figures.<sup>38</sup>
- 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

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<sup>31</sup> *Id.* at 9-10.

<sup>32</sup> *Id.* at 10 (citing *Citric Acid from China* at Comment 5A).

<sup>33</sup> *Id.* at 9-10 (citing *Garlic from China* IDM at Comment 3).

<sup>34</sup> *Id.* at 11.

<sup>35</sup> *Id.* at 12.

<sup>36</sup> See Notice of Supplemental Authority at 2 (citing *U.S. – Pipe and Tube Products from Turkey*).

<sup>37</sup> See GOT's Rebuttal Brief at 3-4 (citing *Welded Line Pipe from Turkey*; *CWCS Pipes and Tubes from Turkey 2013 AR*; *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; and *LDWP from Turkey Preliminary Determination*, and accompanying PDM at 10-11).

<sup>38</sup> *Id.* at 4.



respondents in both Turkey and export markets.<sup>39</sup>

- The methodology used in this review 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. Therefore, Commerce should continue using the methodology here.<sup>40</sup>

### Commerce's Position:

For these final results, we are continuing to use the TCUD data provided by the GOT in our analysis of whether the Turkish HRS market is distorted. In the *Preliminary Results*, we relied on the GOT's submitted data on domestic HRS production, including the TCUD data, and the GOT's submitted data on Turkish HRS imports.<sup>41</sup> Based on this information, we found that for 2014, 2015, and 2016, the combined domestic HRS production of Erdemir and Isdemir accounted for 44.76, 40.34, and 38.28 percent of domestic supply of HRS, respectively, while imports of HRS accounted for 31.94, 39.53, and 38.73 percent of domestic supply in the same years, respectively.<sup>42</sup> Given this record information showing 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 found that the HRS market in Turkey was not distorted by the government's presence during this period.<sup>43</sup> We continue to 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 POR.

As an initial matter, as it is Commerce's discretion, we elected not to verify responses in this review.<sup>44</sup> The GOT responded fully to Commerce's inquiries into the TCUD data and there was no indication that the provided TCUD data were flawed or unreliable. Additionally, we note that Commerce has previously verified the TCUD data with the GOT and TCUD,<sup>45</sup> specifically the documentation behind the methodology used by the GOT and TCUD to solicit and collect the data from the individual producers. Commerce will continue to examine the validity of the TCUD data in future segments, including a verification of the methodology and sources of the TCUD data.

We also disagree that the cases relied on by the domestic interested parties support rejecting the TCUD data. In *Citric Acid*, the GOC was unable to provide any documentation regarding the consumption data it provided for caustic soda.<sup>46</sup> However, in this case, the GOT provided the records of the survey conducted by TCUD to collect the HRS production data.<sup>47</sup> Although we

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<sup>39</sup> *Id.* at 5.

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

<sup>41</sup> See PDM at 16 (citing Letter from GOT, "Response of the Government of Turkey in 2016 Countervailing Duty Administrative Review on Imports of Certain Oil Country Tubular Goods from the Republic of Turkey," dated February 16, 2018 (GOT February 16, 2018 IQR), at 23)).

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

<sup>43</sup> See PDM at 16.

<sup>44</sup> See CFR 351.307(b).

<sup>45</sup> See Memorandum, "Countervailing Duty Investigation of Large Diameter Welded Pipe from the Republic of Turkey, Verification of the Questionnaire Responses of the Government of Turkey," dated September 17, 2018.

<sup>46</sup> See *Citric Acid* at Comment 5A.

<sup>47</sup> See GOT August 17, 2018 SQR; GOT September 4, 2018 SQR at Exhibit 1.

did not conduct verification in this administrative review, we were able to confirm from the record evidence that the data reported by the GOT accord with the data supplied by the HRS producers.<sup>48</sup> Similarly, in *Garlic from China*, the respondent company provided unsupported data and did not explain how these data were compiled.<sup>49</sup> However, unlike *Garlic from China*, here, the GOT not only provided the production and consumption data requested, but also provided a complete explanation of how the TCUD conducted the survey and gathered the data, and provided the survey records supporting these data in response to Commerce’s supplemental questionnaire.<sup>50</sup>

Furthermore, we disagree with the domestic interested parties’ contention that we should reject the TCUD data because TCUD imposes no penalty on HRS producers if they provide inaccurate data. The domestic interested parties offered no evidence that the data the HRS producers provided to TCUD are inaccurate.

Moreover, we disagree with the domestic interested parties that the GOT’s certification of the TCUD data is problematic. Commerce’s regulations require certification that the response is “accurate and complete,” to the best of the certifying official’s knowledge,<sup>51</sup> and there is no evidence on the record to suggest that the GOT’s response is deficient, or that the certification was provided by an official who otherwise had knowledge that the information provided was not “accurate and complete.” Consequently, because the domestic interested parties have provided no evidence that the production data provided by TCUD and the GOT are inaccurate, we continue to use the TCUD data for the market distortion analysis for these final results.

Finally, we declined Borusan’s request to consider the WTO Panel Report in *U.S. – Pipe and Tube Products from Turkey* for purposes of these final results. As an initial matter, this proceeding was conducted consistent with U.S. law, which is consistent with our WTO obligations. Furthermore, the Court of Appeals for the Federal Circuit has confirmed that WTO reports are without effect under U.S. law, “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the Uruguay Round Agreements Act (URAA).<sup>52</sup> In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.<sup>53</sup> As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to supersede automatically the exercise of Commerce’s discretion in applying the statute.<sup>54</sup> Accordingly, the WTO Panel’s conclusions in *U.S. – Pipe and Tube Products from Turkey* do not undermine Commerce’s analysis or determinations with respect to the HRS for LTAR program under examination in this administrative review.

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<sup>48</sup> See GOT September 4, 2018 SQR at Exhibit 1 and GOT February 16, 2018 IQR at 22-23.

<sup>49</sup> See *Garlic from China*, and accompanying IDM at Comment 3.

<sup>50</sup> See GOT August 17, 2018 SQR; GOT September 4, 2018 SQR at Exhibit 1.

<sup>51</sup> See 19 CFR 351.303(g).

<sup>52</sup> See *Corus Staal BV v. U.S. Dep’t of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), *cert. denied* 126 S. Ct. 1023 (2006); accord *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007).

<sup>53</sup> See, e.g., 19 U.S.C. 3533, 3538 (sections 123 and 129 of the URAA).

<sup>54</sup> See, e.g., 19 U.S.C. 3538(b)(4) (implementation of WTO reports is discretionary).

## **Comment 2: The Appropriate Methodology to Calculate a “Tier 2” Benchmark**

After relying on the TCUD data provided by the GOT to analyze 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 market for HRS in Turkey is not distorted. Therefore, it is unnecessary to consider the calculation of a tier 2 benchmark and we do not need to address the domestic interested parties’ arguments on this issue.

## **Comment 3: Whether to Place the Verification Report from the *Large Diameter Welded Pipe (LDWP) from Turkey* Investigation on this Case Record**

### *Domestic Interested Parties’ Case Brief*

- Because the verification report in the countervailing duty investigation of *LDWP from Turkey* is relevant to Commerce’s analysis of the HRS for LTAR program in this review, Commerce should place on the record of this review the relevant excerpts of the public version of the verification report from that investigation.<sup>55</sup>
- Domestic interested parties argue that Commerce may place this additional information on the record of this review, because, in *LDWP from Turkey*, after the deadline to provide new factual information expired, Commerce allowed Borusan to provide a discussion of, and citations to, the verification reports in other Turkish cases discussing the HRS for LTAR program.<sup>56</sup>
- Although the deadline for new factual information expired, placing the verification report excerpts of the *LDWP from Turkey* investigation on the record will allow an opportunity for supplemental briefing regarding Commerce’s verification findings for the HRS for LTAR program.<sup>57</sup>
- Domestic interested parties requested Commerce to extend the briefing deadline beyond the final determination in *LDWP from Turkey*, arguing that decisions pending in that investigation could impact these final results, and that parties should have an opportunity to comment.

### *Borusan’s Rebuttal Brief*

- Commerce’s precedent prescribes that the domestic interested parties’ request to put a verification report from another proceeding on the record of this proceeding must be rejected.<sup>58</sup>
- Domestic interested parties fail to explain how the verification report from *LDWP from Turkey* is relevant to this proceeding. Further, the *LDWP from Turkey* verification report deals with a different industry and a different period of investigation, 2017.<sup>59</sup>

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<sup>55</sup> See Domestic Interested Parties’ Case Brief at 4-5.

<sup>56</sup> *Id.* at 4-5, footnote 13 (citing Borusan’s submission on June 1, 2018 in *LDWP from Turkey*).

<sup>57</sup> See Domestic Interested Parties’ Case Brief at 4-5.

<sup>58</sup> See Borusan’s Rebuttal Brief at 3-4 (citing *Welded Line Pipe from Turkey* and accompanying IDM at Comment 1).

<sup>59</sup> *Id.* at 4.

### Commerce's Position:

We disagree with the domestic interested parties and, therefore, we did not place excerpts of the verification report from the *LDWP from Turkey* on the record of this review. Commerce's longstanding practice, as upheld by the Court of International Trade, is that each segment of a proceeding is independent, with separate records and independent determinations.<sup>60</sup> This principle applies especially to separate proceedings, involving different products and different periods of investigation or review.

Regarding the domestic interested parties' reliance on *LDWP from Turkey*, although Commerce has the discretion to place new factual information on the record,<sup>61</sup> we find that such action was not warranted in this instance, for the reasons discussed above. Furthermore, to postpone the briefing schedule to await the final determination in *LDWP from Turkey* would have subjected the deadlines of this proceeding to those of another, contrary to the statute, which provides for the independent completion of each segment of a proceeding.<sup>62</sup> Indeed, it would be impracticable to delay issuing final results of review in one case until a final determination or final results are issued in another case.

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<sup>60</sup> See *Clearon Corp. v. United States*, No. 13-73, Slip Op. 14-88, n.42 (CIT 2014) (quoting *Gourmet Equip. Taiwan Corp. v. United States*, 24 CIT 572, 577-78 (CIT 2000) ("Commerce's longstanding practice, upheld by this court, is to treat each segment of an antidumping proceeding, including the antidumping investigation and the administrative reviews that may follow, as independent proceedings with separate records and which lead to independent determinations.")).

<sup>61</sup> See 19 CFR 351.301(c)(4).

<sup>62</sup> See Sections 705(a) and 751(a)(3) of the Act.

## VII. Recommendation

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



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

3/20/2019

X



Signed by: GARY TAVERMAN

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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