C-489-819
Administrative Review
POR: 01/01/2016 - 12/31/2016
Public Document
E&C/OVII: CM/LC/KT

July 18, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results, and Partial Rescission, of the Countervailing Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey; 2016

I. SUMMARY

The Department of Commerce (Commerce) has analyzed case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty (CVD) order on steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey). As a result of this analysis, and based on our findings at verification, we have made certain changes since the *Preliminary Results*.[1] We recommend that you approve the positions described in the "Discussion of Comments" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from interested parties:

Comment 1: Whether Commerce Should Modify the Benchmark Used for the Provision of Natural Gas for Less Than Adequate Remuneration (LTAR)
Comment 2: Whether Commerce Should Countervail the Provision of Preferential Financing from the Industrial Development Bank of Turkey (TSKB)
Comment 3: Whether Commerce Should Adjust Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas)' Reported Sales Denominator
Comment 4: Whether Commerce Should Revise its Uncreditworthiness Finding with Respect to Icdas Elektrik
Comment 5: Whether Commerce Should Recalculate the Subsidy Attributed to Icdas Under the Renewable Energy Sources Support Mechanism (YEKDEM) Program
Comment 6: Whether Commerce Should Adjust the Calculation of Icdas' Benefit Under the Investment Incentives Program

[1] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review in Part; 2016*, 83 FR 63472 (December 10, 2018) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

A. Case History

On December 10, 2018, we published the *Preliminary Results* of this administrative review. The mandatory respondents in this review are Icdas, Colakoglu Dis Ticaret A.S. (COTAS) and Colakoglu Metalurji A.S. (Colakoglu Metalurji) (collectively, Colakoglu), and Kaptan Demir Celik Endustrisi ve Ticaret A.S. (Kaptan Demir) and Kaptan Metal Dis Ticaret ve Nakliyat A.S. (Kaptan Metal) (collectively, Kaptan).[2] In the *Preliminary Results*, we calculated an above *de minimis* subsidy rate for Icdas, and a *de minimis* subsidy rate for Colakoglu and Kaptan. Between May 3 and May 9, 2019, we conducted verifications of the questionnaire responses submitted by the Government of Turkey (GOT) and Icdas, in accordance with section 782(i) of the Tariff Act of 1930, as amended (the Act).[3] On June 18, 2019, we received timely case briefs from the Rebar Trade Action Coalition (RTAC or the petitioner), Colakoglu and Icdas.[4] The GOT, Colakoglu, Icdas, and the petitioner submitted timely rebuttal briefs on June 24, 2019.[5] Commerce received timely requests for a hearing from Icdas, Colakoglu and the petitioner.[6] On July 9, 2019, Commerce held a public hearing.[7]

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.[8] On March 27, 2019, we extended the deadline for these final results from May 20, 2019, to July 18, 2019.[9]

---

[2] *See* Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Respondent Selection in Countervailing Duty Administrative Review for 2016," dated March 23, 2018.

[3] *See* Memorandum, "Verification of Questionnaire Responses Submitted by the Government of the Republic of Turkey," dated June 6, 2019 (GOT Verification Report); *see also* Memorandum, "Verification of Countervailing Duty Questionnaire Responses Submitted by Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.," dated June 6, 2019 (Icdas Verification Report).

[4] *See* Petitioner's Case Brief, "Steel Concrete Reinforcing Bar from the Republic of Turkey: RTAC's Case Brief," dated June 17, 2019 (Petitioner Case Brief); *see also* Colakoglu and Icdas' Case Brief, "Steel Concrete Reinforcing Bar from the Republic of Turkey; Colakoglu and Icdas Case Brief," dated June 17, 2019 (Colakoglu and Icdas Case Brief).

[5] *See* GOT's Rebuttal Brief, "2016 Administrative Review of Countervailing Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey: Rebuttal Brief of the Government of Turkey," dated June 24, 2019 (GOT Rebuttal Brief); *see also* Petitioner Rebuttal Brief, "Steel Concrete Reinforcing Bar from the Republic of Turkey," dated June 24, 2019 (Petitioner Rebuttal Brief); and Colakoglu and Icdas' Rebuttal Brief, "Steel Concrete Reinforcing Bar from the Republic of Turkey; Colakoglu and Icdas Rebuttal Brief," dated June 24, 2019 (Colakoglu and Icdas Rebuttal Brief).

[6] *See* Colakoglu and Icdas Case Brief at 1; *see also* Petitioner Case Brief at 1-2.

[7] *See* Public Hearing Transcript, "In The Matter Of: The Countervailing Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey," dated July 9, 2019.

[8] *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.

[9] *See* Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Extension of Deadline for Final Results in 2016 Countervailing Duty Administrative Review," dated March 27, 2019.

B. Period of Review

The period of review (POR) is January 1, 2016 through December 31, 2016.

III. SCOPE OF THE *ORDER*

The merchandise subject to this order is rebar imported in either straight length or coil form regardless of metallurgy, length, diameter, or grade. Commerce did not receive any scope comments subsequent to the *Preliminary Results* and, therefore, the scope has not been updated since the *Preliminary Results*. For a complete description of the scope of this administrative review, *see* the Appendix of the accompanying *Federal Register* notice.

IV. PARTIAL RESCISSION OF THE 2016 ADMINISTRATIVE REVIEW

A. DufEnergy Trading SA (DufEnergy); Duferco Celik Ticaret Limited (Duferco); and Ekinciler Demir ve Celik Sanayi A.S. (Ekinciler)

In the *Preliminary Results*, we stated Commerce's intention to rescind the administrative review with respect to DufEnergy, Duferco, and Ekinciler because the companies timely filed no-shipments certifications.[10] On January 23, 2018, U.S. Customs and Border Protection (CBP) informed us that there were no shipments of subject merchandise to the United States from Turkey with these companies listed as the producer and/or exporter during the POR.[11] No interested party submitted comments on this matter. Because there is no evidence on the record to indicate that DufEnergy, Duferco, or Ekinciler had entries, exports, or sales of subject merchandise to the United States during the POR, pursuant to 19 CFR 351.213(d)(3), we intend to rescind the review with respect to these companies.

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

Entries of merchandise produced and exported by Habas are not subject to countervailing duties under the *Order*[12] because Commerce's final determination in the investigation was negative with respect to subject merchandise produced and exported by Habas.[13] In the *Preliminary Results*, we stated Commerce's intention to rescind the administrative review of Habas, because

---

[10] *See* Ekinciler's Letter, "Hot-Rolled Steel Products from Turkey (C-489-819): Countervailing Duty Administrative Review (01/01/16 – 12/31/16)," dated January 24, 2018; Duferco's Letter, "Steel Concrete Reinforcing Bar from Turkey; No Shipments Letter for Duferco Celik Ticaret Limited," dated January 29, 2018; and DufEnergy's Letter, "Steel Concrete Reinforcing Bar from Turkey; No Shipments Letter for DufEnergy Trading SA (formerly known as Duferco Investment Services SA)," dated January 29, 2018.

[11] *See* CBP's Letter, "Administrative Review of Countervailing Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey: Results of Customs and Border Protection Query," dated January 23, 2018.

[12] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Countervailing Duty Order*, 79 FR 65926 (November 6, 2014) (*Order*).

[13] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963, 54964 (September 15, 2014) (*Turkey Rebar I Final*); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 1329, 1334 (January 11, 2018) (*Initiation Notice*); and *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 8058, 8067 n.6 (February 23, 2018) (*Revised Initiation Notice*) (clarifying that entries produced and exported by Habas are not subject to the *Order*).

the record indicates no entries of subject merchandise produced by another entity and exported by Habas, or entries of merchandise produced by Habas and exported by another entity. No interested party submitted comments on this matter. Because there is no evidence on the record that Habas should be subject to this administrative review, we are rescinding the review with respect to Habas, pursuant to 19 CFR 351.213(d)(3).

V. NON-SELECTED RATE

In the *Preliminary Results*, we determined that Icdas was the sole mandatory respondent with a calculated rate above *de minimis*, and therefore assigned Icdas' rate of 1.37 percent *ad valorem* to the 11 remaining non-selected companies[14] for which an individual rate was not calculated. However, for these final results, we have calculated net countervailable subsidy rates above *de minimis* for both Colakoglu and Icdas. Therefore, consistent with Commerce's practice, as described in the *Preliminary Results*,[15] we are applying a simple average of Colakoglu and Icdas' net subsidy rates to the non-selected companies.[16]

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

We made no changes to the allocation period (AUL) or to the allocation methodology used in the *Preliminary Results.* No issues were raised by interested parties in briefs regarding this topic. For a description of the AUL and the methodology used for the final analysis, *see* the *Preliminary Results*.

B. Attribution of Subsidies

Icdas raised issues in its case briefs regarding the attribution of subsidies under the investment incentive certificates program with respect to Icdas Elektrik.[17] After considering those comments, we have not made any changes to our attribution analysis as discussed in the *Preliminary Results*. For a full discussion of the issue and Commerce's position, *see* Comment 6. For a description of the methodology applicable to these final results, *see* the *Preliminary Results*.

C. Denominators

Icdas and the petitioner commented on the denominator used in Icdas' preliminary calculations.

---

[14] Of the twenty companies included in the *Initiation Notice*, we calculated rates for Colakoglu Metalurji, COTAS, Kaptan Demir, Kaptan Metal, and Icdas, and will rescind this review with respect to DufEnergy, Duferco, Ekinciler, and Habas. Therefore, there are 11 companies that will be subject to the rate determined for non-selected companies (20 minus the nine companies listed in the previous sentence).

[15] *See Preliminary Results* PDM at 6.

[16] *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey; 2016: Calculation of the Non-Selected Rate," dated concurrently with these final results.

[17] *See* Comment 6.

As discussed below, Commerce has revised Icdas' total sales denominator for these final results, on the basis of facts available, with an adverse inference. For a full explanation of the issue and Commerce's position, *see* Comment 3. Otherwise, Commerce has not made changes to, and interested parties did not raise issues in their case briefs regarding the denominators used in the *Preliminary Results*.

D. Loan Benchmarks and Discount Rates

Interested parties raised issues in their case briefs regarding the loan benchmarks and interest rates used by Commerce in the *Preliminary Results*. After considering those comments, we have not made any changes to our loan benchmarks or discount rates since the *Preliminary Results*. For information on the loan benchmarks and interest rates used in the final results, *see* the *Preliminary Results*, the "Analysis of the Comments" section below, and the Final Analysis Memoranda.[18] For a description of the methodology applicable to these final results, *see* the *Preliminary Results*.

E. Uncreditworthiness

Interested parties raised issues in their case briefs regarding the uncreditworthiness finding made by Commerce in the *Preliminary Results* with respect to Icdas Elektrik.[19] In its rebuttal brief, the petitioner also alleged that Icdas was uncreditworthy from 2007 through 2016.[20] As explained in greater detail below, this was the first time the petitioner made these allegations and, thus, they are untimely and cannot be considered by Commerce for these final results. Nonetheless, we note that since Commerce is not relying on interest rate benchmarks for the years 2007 through 2011, arguments regarding Commerce's preliminary determination that Icdas Elektrik was uncreditworthy during those years are moot.

VII. USE OF FACTS OTHERWISE AVAILABLE WITH ADVERSE INFERENCES

A. Legal Standard

Section 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" in reaching the applicable determination if necessary information is not on the record, or if an interested party: withholds information requested by Commerce; fails to provide such information by the established deadlines, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding; or provides such information but the information cannot be verified as provided by section 782(i) of the Act.

[18] *See* Memorandum, "Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.: Final Analysis Memorandum," dated concurrently with this Issues and Decision Memorandum (IDM) (Icdas Final Analysis Memorandum); *see also* Memorandum, "Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji A.S.: Final Analysis Memorandum," dated concurrently with this IDM (Colakoglu Final Analysis Memorandum); and Memorandum, "Kaptan Demir Celik Endustrisi ve Ticaret A.S. and Kaptan Metal Dis Ticaret ve Nakliyat A.S.: Final Analysis Memorandum," dated concurrently with this IDM.

[19] *See* Icdas and Colakoglu Case Brief at 3-9.

[20] *See* Petitioner Rebuttal Brief at 2-3 and 7-9.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information[21] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."[22] In so doing, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about the information an interested party would have provided if the interested party had complied with the request for information.[23]

B. Application of Facts Available, with an Adverse Inference

As discussed further in Comment 3, we discovered a discrepancy at verification that rendered Icdas' reported total sales denominator for 2016 unverifiable. Due to Icdas' failure to accurately report the sales denominator in its questionnaire responses, critical information required for our subsidy analysis is missing from the record. On this basis, and for the reasons explained in detail below, we find that the application of AFA with respect to Icdas' sales denominator is appropriate under sections 776(a)(1) and 776(a)(2)(A)(C)(D) of the Act. While our practice is to accept "minor corrections" at the outset of verification, Icdas' proposed correction would increase the sales denominator significantly and is based on the significant claim that it inadvertently failed to include several product categories when attempting to derive a total FOB sales figure; this could not be considered "minor." Moreover, we note that this was not information presented as a minor correction by Icdas; rather, it was an issue discovered at verification by Commerce. Icdas did not attempt to offer the corrected number or to explain the supposed omission until Commerce discovered the error.

Because Icdas had an ample opportunity to report an accurate sales denominator in this review before verification, yet failed to do so, we find that Icdas did not act to the best of its ability. As explained by the Court of Appeals for the Federal Circuit (CAFC) in *Nippon Steel*, the ordinary meaning of "best of its ability" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. As evidenced by Icdas' attempt to submit the "corrected" sales denominator in its case brief,[24] we find that Icdas could have reasonably provided such information in a timely manner (because the information appears to have always been in its possession), had it put forth

---

[21] *See* 19 CFR 351.308(a).

[22] *See, e.g., Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); and *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998) (*Semiconductors from Taiwan*).

[23] *See* section 776(b)(1)(B) of the Act.

[24] *See Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*); *see also* Colakoglu and Icdas Case Brief at Exhibit 1.

its maximum effort. If in fact that proposed change really was a correction, we would have had an opportunity to review it and verify its validity if Icdas had put forth that effort. Because a substantial portion of Icdas' data is affected by its alleged error, and because we are unable to rely on unverified information,[25] we find the application of AFA with respect to Icdas' sales denominator is warranted.

C. Selection and Corroboration of AFA

Where Commerce uses AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes Commerce to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.[26] In selecting from among the facts available based on an adverse inference, Commerce selects information that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[27] Section 776(b)(2) of the Act authorizes Commerce to rely on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In this instance, we find that it is appropriate to rely on Icdas' reported total sales denominator for 2006, the smallest sales denominator on the record of this review. Because this is primary information reported by Icdas, which was subject to verification in the underlying investigation, there is no need for further corroboration.[28] For a full discussion of the issue, *see* Comment 3.

VIII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Deduction from Taxable Income for Export Revenue

No issues were raised by the interested parties regarding this program. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.[29] The final program rate remains unchanged as follows:

Colakoglu: 0.03 percent *ad valorem*
Icdas: not used
Kaptan: not used

2. Rediscount Program

[25] *See e.g.*, *Yantai Timken Co. Ltd. v. United States*, 521 F. Supp. 2d 1356, 1376 (CIT 2007) (*Yantai Timken*) sustaining Commerce's application of AFA explaining that ("Commerce cannot rely on unverified information"); *see also Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination*, 83 FR 28186 (June 18, 2018) (*Ripe Olives Spain Final*), and accompanying IDM at Comment 21.
[26] *See* 19 CFR 351.308(c)(l) & (2).
[27] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) (SAA) at 870.
[28] *See* Icdas May 14, 2018 Initial Questionnaire Response (Icdas IQR) at Exhibit CVD-35.
[29] *See Preliminary Results* PDM at 13-14.

No issues were raised by the interested parties regarding this program. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.[30] The final program rates remain unchanged as follows:

Colakoglu: 0.01 percent *ad valorem*
Icdas: less than 0.005 percent
Kaptan: 0.22 percent *ad valorem*

3. Purchase of Electricity Generated from Renewable Resources for More Than Adequate Remuneration (MTAR) – Renewable Energy Sources Support Mechanism (YEKDEM)

In its case brief, Icdas raised issues related to our treatment of YEKDEM benefits in the *Preliminary Results*. As explained in Commerce's position under Comment 5, Commerce's analysis with regard to this program remains unchanged from the *Preliminary Results*, with the exception of the revision of Icdas' sales denominator, as explained in Comment 3.

Colakoglu: not used
Icdas: 0.95 percent *ad valorem*
Kaptan: not used

4. Investment Incentive Certificates

Icdas and the petitioner submitted comments in their case and rebuttal briefs with respect to the calculation and subsidy attribution applicable to Icdas under this program. As explained in Commerce's position under Comment 6, our calculation of the subsidies attributable to Icdas under this program remains unchanged from the *Preliminary Results*, with the exception of the revision of Icdas' sales denominator, as explained in Comment 3.

Colakoglu: not used
Icdas: 1.81 percent *ad valorem*
Kaptan: not used

5. Provision of Natural Gas for LTAR

Interested parties submitted several comments regarding the benchmarks used to measure the benefit for this program, which are addressed below. As discussed under Commerce's position in Comment 1, Commerce has determined that it is appropriate to select a different benchmark for this program for these final results.

Colakoglu: 1.78 percent *ad valorem*
Icdas: not used
Kaptan: not used

[30] *Id.* at 14-15.

B. Programs Determined Not to Be Countervailable

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

We received no comments from interested parties regarding this program. Commerce has made no changes in the analysis of the program from the *Preliminary Results*.[31]

2. Payments from MESS – Occupational Health and Safety Support

We received no comments from interested parties regarding this program. Commerce has made no changes in the analysis of the program from the *Preliminary Results*.[32]

3. Preferential Financing from the Industrial Development Bank of Turkey (TSKB)

Interested parties submitted comments in their case briefs regarding the countervailability of this program, which are addressed under Comment 2. The petitioner raised issues with regard to Commerce's determination that this program is not countervailable on the basis that no financial contribution is provided by the GOT. In the *Preliminary Results*, Commerce concluded that there is no basis to find that the TSKB is a government authority, or that the GOT entrusts or directs the TSKB, within the meaning of section 771(5)(B) of the Act. For the final results, Commerce concludes that the record indicates no preferential lending from the TSKB to Icdas during the average useful life (AUL) of the review, and thus no countervailable lending during the POR.[33]

4. Minimum Wage Support

We received no comments from interested parties regarding this program. Commerce has made no changes in the analysis of the program from the *Preliminary Results*.[34]

C. Programs Determined to Not Confer Countervailable Benefits

1. Inward Processing Regime (IPR)[35]

2. Regional Investment Incentives

D. Programs Determined Not to Provide Measurable Benefits During the POR

Consistent with the *Preliminary Results*, we find that the benefits from certain programs were fully expensed prior to the POR, or are less than 0.005 percent *ad valorem*, when attributed to the

[31] *Id.* at 25.
[32] *Id*.
[33] *Id.* at 25-26.
[34] *Id*. at 26-27.
[35] This program is also known as Inward Processing Certificate Exemption.

respondents' applicable POR sales as discussed in the "Attribution of Subsidies" section above. Accordingly, we have not included those programs in our subsidy rate calculations for the respondents, consistent with our established practice.[36] We also determine that it is unnecessary for Commerce to make a determination as to the countervailability of those programs.

1. Assistance to Offset Costs Related to Antidumping/CVD Investigations
2. Reduction and Exemption of Licensing Fees for Renewable Resource Power Plants
3. Assistance for Participation in Trade Fairs Abroad

E. Programs Determined to Not Be Used

No issues were raised by the interested parties regarding the following programs. Commerce made no changes to its preliminary findings that the programs are not countervailable. For more information, *see* the *Preliminary Results*.[37]

1. Provision of Lignite for LTAR
2. Purchase of Electricity for MTAR – Sales *via* Build-Operate-Own, Build-Operate-Transfer, and Transfer of Operating Rights Contracts
3. Research and Development Grant Program
4. Export Credits, Loans, and Insurance from Turk Eximbank
5. Large-Scale Investment Incentives
6. Strategic Investment Incentives
7. Incentives for Research & Development Activities
8. Regional Development Subsidies
9. Comprehensive Investment Incentives
10. Liquefied Natural Gas for LTAR

VIII. DISCUSSION OF THE ISSUES

Comment 1: Whether Commerce Should Modify the Benchmark Used for the Provision of Natural Gas for LTAR

Petitioner's Case Brief

- The petitioner argues that Commerce erred in its decision to use a tier-three benchmark for natural gas based on U.S. export prices for liquefied natural gas (LNG), which excludes the cost of converting natural gas to LNG (*i.e.*, a liquefaction cost).[38] Although Commerce appropriately determined not to use a tier-one benchmark due to the distortion of Turkey's domestic market for natural gas, its final results should either: (1) use an average of all LNG prices on the record inclusive of freight and regasification costs under

[36] *See, e.g., Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016) (*Cold-Rolled Steel Russia Final*), and accompanying IDM at 31-32.
[37] *See Preliminary Results* PDM at 29.
[38] *See* Petitioner Case Brief at 3-11.

a tier-two or tier-three benchmark; or (2) rely on data from the International Energy Agency (IEA) as the natural gas benchmark if LNG prices are not used.

- Commerce should consider LNG prices to be a tier-two benchmark and thus rely on a "world market price where it is reasonable to conclude that such price would be available to purchasers in the country in question."[39] Commerce preliminarily determined that it could not use a tier-two world market benchmark because: (1) Turkey's imports of LNG are from countries with distorted pricing practices (*i.e.*, Russia and Azerbaijan); and (2) LNG is not "the good" provided by the government, but is rather a downstream product derived from natural gas through an industrial production process. However, LNG is simply natural gas in liquid form, and a producer can purchase natural gas in gaseous and liquid form for the exact same use. In fact, Turkish law defines natural gas as including natural gas in both gaseous and liquid form, and Turkish producers imported both natural gas and LNG from various countries in 2016.[40] Moreover, LNG (unlike natural gas) does not need to be transported through pipelines. It is therefore reasonable to assume that world LNG prices represent world market prices that would be available to Turkish producers under 19 CFR 351.511(a)(2)(ii).
- If Commerce continues to consider LNG prices under a tier-three approach, it should modify its methodology by: (1) using an average of all LNG prices on the record, instead of only the data from the U.S. Department of Energy (DOE); (2) including freight costs in the benchmark; and (3) including regasification costs in the benchmark.[41]
- The petitioner placed LNG price data on the record from a variety of sources, including the World Bank, Energy Intelligence, Energy Information Administration, and the Government of Japan. Commerce preliminarily derived the LNG benchmark using only the DOE price data because it claimed that it was the only source that provided units of measure and does not include embedded transportation costs. However, the petitioner asserts that all data sources include a unit of measure, and provided a table highlighting the relevant information.[42] The lack of a unit of measure can therefore not serve as a basis for Commerce's rejection of all LNG price sources other than the DOE.
- Commerce also preliminarily decided to only use LNG price data from the DOE because it is the only data that does not include embedded transportation costs. However, Commerce is required to include freight costs when constructing a tier-two benchmark.[43] Even if Commerce continues to treat LNG prices as a tier-three benchmark, it should still include freight costs because, as discussed above, LNG pricing represents world market prices that are available to producers in Turkey. The LNG data should be calculated in the same manner as a tier-two benchmark since it only differs in terms of the good represented.[44] In fact, Commerce has followed this approach in other proceedings that have used a tier-three benchmark; specifically, Commerce has previously added delivery charges to a tier-three benchmark for natural gas prices "because benchmark prices do not include transmission/distribution charges within the border of the purchasing

[39] *See* 19 CFR 351.511(a)(2)(ii).
[40] *See* Petitioner Case Brief at 6.
[41] *Id*. at 7-10.
[42] *Id*. at 7-9 and Exhibit 1.
[43] *See* 19 CFR 351.511(a)(2)(ii).
[44] *See* Petitioner Case Brief at 8-9.

countries."[45] There is also sufficient information on the record to adjust the LNG benchmark for shipping costs consistent with Commerce practice (*e.g.*, some sources already include freight costs in the price, and the petitioner has also submitted additional LNG transport costs for other prices that do not include these costs).

- Commerce's preliminary decision to subtract regasification costs from the DOE LNG price data is not supported by Commerce practice or regulations.[46] Commerce notes that it used LNG as a means of deriving the market value of natural gas in Turkey absent the involvement of the Turkish government, which is the intention of all three tiers of Commerce's benchmarking hierarchy. However, Commerce's regulations require the use of delivered prices for both tier-one and tier-two benchmarks (*i.e.*, prices that reflect what a firm actually paid or would pay if it imported the product, including delivery charges and import duties).[47] Subtracting regasification costs therefore does not support Commerce's stated goal, as LNG prices would include costs associated with ensuring the good is in a form that is ready to be used (*i.e.*, regasification costs). There is no logical basis for using a different approach simply because the benchmark is tier-three. In fact, Commerce has previously found it appropriate to add delivery charges to a tier-three natural gas benchmark (as noted above), which include transportation, supply and sale surcharges and special surcharges for gas transportation, in order to "derive delivered benchmark prices."[48] Commerce should therefore add, not subtract, regasification costs to construct a natural gas benchmark as if the good was imported and ready for use.
- If Commerce decides not to rely on LNG pricing for the natural gas benchmark in its final results, it should use the European natural gas price data from the International Energy Agency (IEA), as submitted by the petitioner, to construct a tier-three benchmark.[49] Based on Commerce's finding that Russian export prices for natural gas are unsuitable as a tier-two benchmark, Commerce preliminarily decided that the IEA data for EU countries was unusable given that Russian exports of natural gas, which accounted for 39.5 percent of the EU's total imports in 2016, could not be removed from the data. However, this is inconsistent with Commerce's approach to determine whether government presence in a market necessarily makes those market prices distorted. As Commerce regulations explain, "While we recognize that government involvement in a market may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market."[50] Russia does not account for a majority of natural gas imports into the EU, and there is no additional information on the record demonstrating that the effect of Russia's distorted prices on the EU market is more than minimal. Commerce should therefore use the IEA data submitted by the petitioner if it decides not to rely on LNG pricing for the natural gas benchmark.

---

[45] *See Cold-Rolled Steel Russia Final* IDM at 18.
[46] *Id.* at 9-10.
[47] *See* 19 CFR 351.511(a)(2)(iv).
[48] *See Cold-Rolled Steel Russia Final* at 18.
[49] *See* Petitioner Case Brief at 10-11; *see also* Petitioner's Letter, "Certain Steel Concrete Reinforcing Bar from the Republic of Turkey: RTAC Benchmark Submission," dated July 9, 2018 (Petitioner Benchmark) at Exhibit 1-A.
[50] *See Countervailing Duties: Final Rule*, 63 FR 65348, 65377 (November 25, 1998) (*CVD Preamble*).

Colakoglu's Case Brief

- Commerce's preliminary argument that Russia and Azerbaijan exercise control over international prices of natural gas lacks merit.[51] If these countries could, in fact, control international natural gas prices, they would not subsidize the entire world by providing cheap natural gas. For the final results, Commerce should use a tier-two approach to calculate the natural gas benchmark by using information on the record submitted by Colakoglu, including import prices of natural gas from Russia and export prices from Russia and Azerbaijan.
- Commerce's preliminary decision to discard international export prices for natural gas from Russia and Azerbaijan was only based on a few pages of the petitioner's comments and related news and journal articles. There is little objective evidence in the information on the record that Russia or Azerbaijan exercise significant control over international gas export prices.[52]
- The fact that Russia subsidizes natural gas production in its domestic market does not mean that it can exercise the same control over the global market.[53] Moreover, although Russia supplies 39.5 percent of European Union (EU) natural gas imports, the remaining EU imports come from other sources, including from within the EU. It is unlikely that Russia could control natural gas prices for all or part of Europe; it is even more unlikely that Azerbaijan could exercise this kind of control given its limited presence in international markets.
- It is too much to infer from the information on the record that the entire European market is distorted and that there are no market-based natural gas prices in Europe.[54] This is equivalent to finding oil prices from Canada to be distorted because Canada supplies a great deal of crude oil to the U.S. and therefore has the power to manipulate prices.
- If Commerce continues to use a tier-three market due to its finding that the entire EU market is distorted, Colakoglu agrees that LNG pricing must be adjusted to account for the costs of liquefaction, regasification and any other cost associated with transporting LNG.[55] To simplify the benchmark calculation in this case, Commerce could simply use U.S. natural gas prices submitted by the petitioner that, by definition, already exclude the cost of liquefaction.

Petitioner's Rebuttal Brief

- Colakoglu has provided no basis for its contestation of Commerce's preliminary determination that because the natural gas market is distorted in Russia and Azerbaijan, prices from these countries are unsuitable for use in determining the natural gas benchmark.[56] In particular, Colakoglu failed to address or counter any of the evidence on the record used by Commerce in making its decision.

[51] *See* Colakoglu and Icdas Case Brief at 15-17.
[52] *Id*.
[53] *Id*.
[54] *Id*.
[55] *Id*.
[56] *See* Petitioner Rebuttal Brief at 19-22.

- Colakoglu does not challenge Commerce's finding that Russian and Azerbaijani prices are distorted.[57] Instead, Colakoglu argues that Russia and Azerbaijan cannot control world market prices, which was not the subject of Commerce's preliminary determination. Specifically, Commerce found that because Russian and Azerbaijani export prices are distorted, pricing data from these countries could not be used for the benchmark. This does not equate to finding that Russia and Azerbaijan exercise a significant control over international natural gas export prices. In fact, Commerce's regulations recognize that the existence of certain distorted prices in a market does not necessarily make the entire market distorted,[58] and Commerce permits the use of in-country, market-determined prices as a benchmark unless the extent of government involvement in a market renders all in-country prices distorted.[59] Colakoglu's argument is based on a misunderstanding of Commerce's determination and does therefore does not provide any basis for Commerce to reconsider its decision regarding the unsuitability of Russian and Azerbaijani natural gas prices.
- Colakoglu suggests that instead of using U.S. LNG prices as a tier-three benchmark, Commerce could simply use U.S. pipeline gas prices on the record, which would not require complex calculations to exclude liquefaction costs.[60] This suggestion underscores the petitioner's argument that because Commerce did not include freight and regasification costs in U.S. LNG prices for the preliminary determination, the natural gas benchmark is not representative of the price Turkish producers would have paid if they had imported the product.[61] As Colakoglu notes, Commerce essentially used U.S. LNG prices without any consideration of the availability of such prices to Turkish producers or whether they are representative of prices in Turkey absent government involvement. The petitioners reiterate their request that Commerce include freight and regasification costs in U.S. LNG prices for the benchmark in the final results.

Colakoglu's Rebuttal Brief

- Commerce should reject the petitioner's argument that because "LNG is simply natural gas in liquid form" and is therefore "available to purchasers in Turkey," Commerce should use a tier-two benchmark.[62] As Commerce found in its preliminary determination, LNG is not the same good as natural gas because LNG is a downstream product requiring additional processing, including special shipping requirements, and is not subject to supply limitations inherent in the market for natural gas, which can only be transported by pipeline. Commerce's use of the tier-three benchmark is consistent with its past practice of recognizing natural gas and LNG as different products, which the petitioners have ignored.[63] Specifically, in *Rebar from Turkey CVD II*, the petitioners did not

[57] *Id.*
[58] *See CVD Preamble* at 65377.
[59] *See* 19 C.F.R. § 351.511(a)(2)(i); *see also Preliminary Results* PDM at 20-21.
[60] *See* Petitioner Rebuttal Brief at 19-22.
[61] *See* 19 C.F.R. § 351.511(a)(2)(i); *see also Preliminary Results* PDM at 20-21.
[62] *See* Colakoglu and Icdas Rebuttal Brief at 1-6.
[63] *See, e.g., Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 82 FR 12195 (March 1, 2017) (*Rebar from Turkey CVD II*), and accompanying PDM at FN 46, unchanged in *Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Affirmative Countervailing Duty*

challenge Commerce's consideration of LNG and natural gas as "substantially different products."[64]

- Commerce should reject the petitioner's argument for including transportation and liquefaction costs in the natural gas benchmark.[65] If Commerce uses a tier-two or tier-three benchmark, its regulations state that it must make "due allowance for factors that affect comparability," or take equivalent steps to determine a comparable benchmark price "consistent with market principles," respectively.[66] Commerce's exclusion of liquefaction and transportation costs are therefore essential for finding a fair benchmark, based on the following: (1) The DOE's FOP LNG prices already reflect the pipeline costs of delivering the unprocessed natural gas to the port loading facility, and are thus equivalent to "delivered" pipeline gas prices; (2) A natural gas purchaser in Turkey would not incur costs related to liquefaction, transport by ship, or regasification; (3) Although LNG does not need to be transported through pipelines, it must travel through a pipeline to the ship and is then carried on highly specialized LNG tankers, both of which are not required for pipeline gas; and (4) The liquefaction process includes a significant conversion process involving supercooling and pressurization. Although delivered prices are necessary, Colakoglu has already reported the relevant delivery and storage fees.
- The petitioner's suggestion that LNG prices from Japan, Algeria or Nigeria are more representative than the natural gas export prices from Russia or Azerbaijan is baseless.[67] If LNG and natural gas are both sold internationally, they would fetch whatever price the international market for these products would allow.
- If Commerce decides not to rely on LNG prices for the natural gas benchmark, it should not use IEA data on the record as suggested by the petitioner.[68] The IEA data provided by the petitioner is deficient in many ways, and Colakoglu cites to its previously submitted rebuttal to the petitioner's benchmark submission.[69] In this submission, Colakoglu highlights several deficiencies in the IEA data placed on the record by the petitioner: (1) The data includes average prices for countries that have not exported natural gas to Turkey; (2) EU countries rely mostly on imports to meet their natural gas needs, which demonstrates that they would not be exporting to Turkey even if they had a pipeline connection; (3) The largest European natural gas supplier (*i.e.*, Norway), is not included in the data, nor is the largest supplier of natural gas to Turkey (*i.e.*, Russia); (4) The petitioner is attempting to manipulate the IEA data by excluding data for some countries and only presenting data for industrial use, not electricity generation; and (5) The omittance of the section defining "end-use" natural gas prices, which include

Determination, 82 FR 23188 (May 22, 2017) (*Turkey Rebar II Final*), and accompanying IDM; and *Cold-Rolled Steel Russia Final* IDM at Comments 5-7.

[64] *See Turkey Rebar II Fina* IDM at 25.

[65] *See* Colakoglu and Icdas Rebuttal Brief at 1-6.

[66] *See* 19 C.F.R. § 351.511(a)(2)(ii) and (iii).

[67] *See* Colakoglu and Icdas Rebuttal Brief at 1-6.

[68] *Id*.

[69] *See* Colakoglu's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey; Colakoglu's Response to RTAC's Submission Dated July 9 regarding Natural Gas and lignite Benchmark Pricing Data," dated July 11, 2018 (Colakoglu Rebuttal Benchmark) at 3-6.

expenses not incurred by Colakoglu, such as distribution charges. Colakoglu also claims to have submitted the entire IEA report to account for the petitioner's omissions.[70]

- Colakoglu notes that it seems to agree with the petitioner that Russian gas imports do not overly influence EU prices.[71] Specifically, the petitioner argues that "Russia does not account for a majority of imports into the EU and there is no additional information on the record demonstrating that the effect of Russia's distorted prices on EU import prices {is} more than minimal." If the petitioner's statement is correct, then EU natural gas prices are not distorted because Russian prices are unable to significantly impact the EU market. The petitioner and Colakoglu can therefore agree that Russian export gas prices provided by the respondents are usable under a tier-two benchmark.

GOT's Rebuttal Brief:

- Natural gas prices from Russia and Azerbaijan have been used as a tier-two benchmark in previous cases. The GOT therefore agrees with the petitioners that Commerce misconstrued the information on the record adopted an approach inconsistent with Commerce's practice.
- The GOT agrees with Commerce's preliminary finding that LNG and natural gas are different goods, as well as Commerce's decision to exclude freight and liquefaction costs from the LNG calculations.

Commerce's Position: As explained in the *Preliminary Results*, Commerce's regulations establish the basis for identifying the appropriate market-determined benchmark for measuring the adequacy of remuneration for government-provided goods and services.[72] After concluding that there were no viable tier-one or tier-two benchmarks on the record for natural gas in Turkey, we preliminarily decided to use LNG export prices from the U.S. (*i.e.*, data from the DOE), excluding transportation and liquefaction costs, as well as U.S. sales to Turkey, as a tier-three benchmark to determine whether the natural gas that Colakoglu purchased from Boru Hatlari Ile Petrol Tasima A.S. (BOTAS) was provided at LTAR.[73]

Our preliminary decision to rely on LNG export prices from the U.S. for a tier-three natural gas benchmark was based on our finding that the natural gas data on the record is distorted by Russian and/or Azerbaijani prices, and that LNG prices cannot properly serve as tier-two prices within the meaning of our regulation.[74] After considering the arguments raised by interested parties regarding the appropriate benchmark for measuring the adequacy of remuneration for Colakoglu's natural gas purchases from BOTAS, we are changing our preliminary determination

[70] *Id*. at Exhibit 3. Commerce notes that although Colakoglu claims to have provided the full IEA report, Exhibit 3 also omits data for certain countries (*i.e.*, the report skips pages 211 to page 248). Given that the report includes data for all OECD countries, and the omitted pages are between country data for New Zealand and Slovenia, Colakoglu's IEA submission does not include country data for Norway, Poland, Portugal, and the Slovak Republic. However, the petitioner's submission of excerpts from the same IEA report includes data for Poland and the Slovak Republic. *See* Petitioner Benchmark at Exhibit 1-A.

[71] *See* Colakoglu and Icdas Rebuttal Brief at 1-6.

[72] *See* 19 CFR 351.511(a)(2); *see also Preliminary Results* PDM at 19-25.

[73] *See Preliminary Results* PDM at 19-25. We preliminarily found a countervailable subsidy rate of 0.00 percent *ad valorem* for Colakoglu.

[74] *See* 19 CFR 351.511(a)(2)(ii); *see also Preliminary Results* PDM at 19-25.

for the natural gas benchmark. As discussed in the *Preliminary Results*, we preliminarily found that the IEA data on the record was distorted by the large presence of Russian exports, which accounted for 39.5 percent of EU imports during the POR,[75] for which we stated we could not make an adjustment. On further review of the record, we find that we have the information needed to adjust the IEA natural gas prices to account for the distorted Russian export prices in the data. For the reasons discussed below, we are relying on a tier-three natural gas benchmark based on IEA pricing data for EU countries, adjusted for Russian exports to the EU during the POR, for these final results. This is the most accurate benchmark to determine the extent to which BOTAS sold natural gas to respondents for LTAR.

As an initial matter, we note that relying on natural gas prices, rather than LNG prices, is a more direct method for constructing a natural gas benchmark in this review. Specifically, we find that because the IEA data on the record for EU countries can be adjusted for the presence of distorted Russian export prices, the resulting tier-three EU benchmark is preferable to using a tier-three benchmark based on LNG data. This is because LNG requires significant adjustments to serve as a benchmark for piped natural gas, as was discussed in the PDM.[76] While the petitioner has provided data and arguments for making the adjustments, the cumulative effect of making such adjustments risks introducing distortion that can be avoided in this review by relying on data for natural gas already in a piped and gaseous state (*i.e.*, the form used by Colakoglu). We have natural gas prices for 19 EU countries on the record from the IEA,[77] as well as information indicating that Russia supplied 39.5 percent of EU natural gas imports in 2016.[78] We also have information on the record indicating the average unit value (AUV) of Russian exports of natural gas (to all destinations).[79] Using these pieces of information, we find that the EU natural gas pricing data can therefore be adjusted for the distorted price of Russian exports in the data.

In its briefs, Colakoglu argues that Commerce should construct a tier-two benchmark using Russian and Azerbaijani natural gas prices submitted on the record.[80] Specifically, it believes that there is little objective evidence on the record indicating that Russia and Azerbaijan can exercise control over international natural gas prices, including the European market. Notably, Colakoglu does not argue that Russian and Azerbaijani natural gas prices are undistorted.

We are not persuaded by Colakoglu's argument that Commerce should use Russian and Azerbaijani natural gas prices to construct a tier-two benchmark. As noted in the petitioner's rebuttal brief, the ability of Russia and/or Azerbaijan to control international natural gas markets

[75] *See* Colakoglu Rebuttal Benchmark at Exhibit 1.
[76] *See Preliminary Results* PDM at 23.
[77] *See* Petitioner Benchmark at Exhibit 1-A; *see also* Colakoglu Rebuttal Benchmark at Exhibit 3. The 19 EU countries included in our benchmark calculation include: Austria, Belgium, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, the Netherlands, Poland, the Slovak Republic, Slovenia, Spain, Sweden, and the United Kingdom.
[78] *See* Colakoglu Rebuttal Benchmark at Exhibit 1.
[79] *See* Colakoglu's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey; Colakoglu's Submission Regarding Natural Gas Benchmark Pricing Data," dated June 22, 2018 (Colakoglu Benchmark) at Exhibit 3 and Exhibit 4.
[80] *See* Colakoglu and Icdas Case Brief at 15-17.

was not the subject of Commerce's preliminary analysis.[81] Rather, we determined that government control over the natural gas market in both countries renders their domestic prices distorted and thus unusable for a tier-two benchmark. Colakoglu has provided no evidence to contradict the distortion of natural gas prices in Russia or Azerbaijan, nor has it provided any evidence that the relevant sources on the record are not objective. Regarding export prices from the two countries, Commerce's preliminary analysis did not find that Russia "controls" any foreign market. Rather, we found that Russia distorts the EU market through shipments at distorted prices, derived in accordance with foreign policy objectives, instead of commercial considerations.[82] Every cubic meter that Russia ships to the EU at a distorted price changes the average price of the IEA data, because the price of each such shipment is part of that average calculation. This is true regardless of whether Russia exercises any control or leverage over the EU market or its participants. Likewise, Commerce did not determine that Azerbaijan controls any foreign market; rather, as determined in a prior review, the Azerbaijani export data includes exports to Turkey (which Commerce cannot remove).[83] As Commerce has found the Turkish market to be distorted, natural gas imports into Turkey from Azerbaijan must likewise be distorted as its prices must compete with domestic sales of natural gas within Turkey.[84] Thus, Commerce's decision to reject the Azerbaijani natural gas prices was not premised on a finding that the Government of Azerbaijan controls the EU market; rather, our decision is based on the reasonable conclusion that Azerbaijani prices to Turkey must be in conformity with the Turkish domestic market. Colakoglu provides no evidence contradicting the conclusion that Russian shipments to the EU are at distorted prices (and thus distort the IEA data), or that Azerbaijani export prices are distorted by its exports to the GOT-dominated Turkish market. We therefore continue to conclude that we cannot rely on domestic or export prices from either country in constructing a tier-two benchmark.[85]

The petitioner argues that if Commerce does not use LNG prices to construct the natural gas benchmark for these final results, we should rely on the IEA data on the record under a tier-three analysis. We agree that using the IEA data for the natural gas benchmark in this review constitutes a tier-three analysis under 19 CFR 351.511(a)(2)(iii), which is reserved for when world market prices are not "available" to the country under review and undistorted domestic prices are likewise unavailable.[86] Because we have previously found that the EU gas prices in the data are not available to purchasers in Turkey within the meaning of 19 CFR 351.511(a)(2)(ii) they are, thus, not useable as tier-two world market prices.[87] Given the lack of tier-two prices, and based on record evidence as discussed below, we find that the most

[81] *See* Petitioner Rebuttal Brief at 20.
[82] *See Preliminary Results* PDM at 21-23.
[83] *See Steel Concrete Reinforcing Bar From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review in Part; 2015*, 82 FR 57574 (December 6, 2017) (*Turkey Rebar I 2015 Prelim*), and accompanying PDM at 16 and n.111: "The Russian and Azerbaijani export prices include prices on sales to Turkey, *i.e.*, Turkey import prices, which would be inappropriate to use as tier-one prices." This decision was unchanged in the final.
[84] *See Preliminary Results* PDM at 21-23.
[85] *Id*. at 22-23.
[86] *Id.* at 19-25.
[87] *See Turkey Rebar I 2015 Prelim* PDM at 15-16.

appropriate proxy for a market-based natural gas benchmark under a tier-three analysis is using EU natural gas prices sourced from the IEA data on the record.

Commerce has previously used IEA benchmark data for natural gas, finding that the IEA data is "thoroughly analyzed and annotated, and published and distributed as part of a comprehensive energy price report."[88] Commerce's use of IEA data, although as a tier-two benchmark in *Rebar II*,[89] has been upheld by the Court of International Trade (CIT).[90] Despite this precedent, Colakoglu has noted several deficiencies in the IEA data submitted by the petitioner,[91] which we address below.

Certain of the IEA deficiencies identified by Colakoglu are irrelevant when conducting a tier-three analysis using EU natural gas pricing. Specifically, Colakoglu argues that: (1) the IEA data includes average prices for countries that have not exported natural gas to Turkey; (2) EU countries rely mostly on imports to meet their natural gas needs, which demonstrates that they would not be exporting to Turkey even if they had a pipeline connection; and (3) the largest European natural gas supplier (*i.e.*, Norway), is not included in the data, nor is the largest supplier of Turkey natural gas (*i.e.*, Russia). Whether the IEA data includes pricing information for countries that export natural gas to Turkey is irrelevant in a tier-three analysis, as we have already determined that a world market price is unavailable to purchasers in Turkey. Likewise, it is irrelevant that the data do not include prices in Norway or Russia, as the aim is not to estimate the price of natural gas in Europe, but to determine a market value for natural gas as consumed in Turkey, relying on what data are available on the record.

Colakoglu also argues that the petitioner is attempting to manipulate the IEA data by excluding data for some countries and only presenting data for industrial use, not electricity generation. Colakoglu has attempted to alleviate this problem by submitting what it claims is the full IEA report to the record.[92] However, as highlighted in footnote 69, above, the IEA report submitted by Colakoglu is also incomplete. For these final results, Commerce is therefore using all data available for EU countries on the record, which include 19 countries spread between both IEA submissions, including the natural gas prices for electricity generation, as proposed by Colakoglu.[93] In general, where there is more than one commercially available market price to construct a benchmark price, Commerce's practice is to average the prices.[94] We are therefore averaging the natural gas prices for the 19 EU countries, as well as the prices for industrial users and electricity generation, to find the most accurate benchmark price.

---

[88] *See Turkey Rebar II Final* IDM at Comment 4.
[89] We subsequently learned that natural gas from Europe was not available in Turkey due to its pipeline structure. *See Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015*, 83 FR 16051 (April 13, 2018) and accompanying IDM at 10.
[90] *See Turkey Rebar II Final* IDM at Comment 4; *see also Rebar Trade Action Coalition v. United States*, Slip Op. 19-65, Consol. Court No. 17-00202 (CIT 2019).
[91] *See* Colakoglu Rebuttal Benchmark at 3-6.
[92] *Id*. at Exhibit 3.
[93] *See* Colakoglu and Icdas Case Brief at 6, citing Colakoglu Rebuttal Benchmark, at 3-4.
[94] *See Turkey Rebar Final Determination* IDM at 23.

Finally, Colakoglu notes that the petitioner's IEA data omit the section defining "end-use" natural gas prices, which includes ex tax prices that Colakoglu claims it does not incur, such as distribution charges, profit margins, and manufacturing costs. Commerce agrees that the petitioner's submission is deficient because it did not include certain definitions, such as what "end-use" and "ex tax" prices include. According to the extended IEA report included by Colakoglu, ex tax prices (*i.e.*, the prices we are relying on in our calculation) include non-tax expenses such as manufacturing costs, distribution and network charges, and profit margins for companies involved in the manufacturing chain.[95] In other words, it includes all expenses one would expect to find in a fully loaded retail price, except for taxes. This appears to be identical to the level of trade at which BOTAS supplies Colakoglu (*i.e.*, Colakoglu is a retail customer of BOTAS, not a wholesaler or a distributor). Therefore, BOTAS' provision of gas to Colakoglu must include not only manufacturing expenses, but also distribution and transmission charges, regardless of whether these expenses are broken out separately on the BOTAS invoices. Finally, insofar as BOTAS does not include a profit markup in the prices it charges Colakoglu, that is precisely the type of non-market distortion that Commerce is attempting to account for in its benefit calculation. Commerce is not attempting to find a benchmark that replicates BOTAS behavior, but a benchmark that replicates the behavior of a commercially motivated supplier.

As discussed in the *Preliminary Results*, Commerce found that the IEA data on the record were not appropriate to use as a natural gas benchmark because we were unable to remove the distorted prices of Russian exports, which accounted for 39.5 percent of the EU's natural gas imports in 2016, from the data.[96] In their case and rebuttal briefs, both the petitioner and Colakoglu assert that Russian natural gas imports do not overly influence EU prices. Specifically, the petitioner argues that the IEA data is usable at face value because Russia does not account for a majority of natural gas imports to the EU, and there is no information on the record demonstrating Russia's effect on EU prices is more than minimal.[97] However, as explained above, given that the record demonstrates that Russian export prices are distorted, any Russian shipment to the EU leads to a corresponding distortion of the average EU price reported by the IEA. This is not a matter of control or whether Russia dominates the EU market. Therefore, we believe an adjustment to the IEA data to remove the Russian price component is necessary. Our adjustment takes into account the fact that imports amount to an estimated 67 percent of the EU market and that 39.5 percent of those imports come from Russia. We also relied on information indicating the average price of Russian exports to the EU during the POR. To account for the distortion, we multiplied the Russian export AUV by Russia's share of the EU natural gas market (*i.e.* 26.47 percent, considering that 1) an estimated 67 percent of the EU market for natural gas is comprised of imports, and 2) Russia supplied 39.5 percent of EU natural gas imports during the POR). We then subtracted this amount from the EU AUV, and divided the difference by the share of non-Russian supplied natural gas in the EU market (*i.e.* 73.54 percent, based on our estimate above that 26.47 percent of the EU market is comprised of

[95] *See* Colakoglu Benchmark Rebuttal at Exhibit 3.
[96] *See Preliminary Results* PDM at 22; *see also* Colakoglu Benchmark Rebuttal at Exhibit 1: "In 2014, 33% of natural gas consumption {in the EU} was supplied from a source within the EU." We are applying both statistics in our final calculation to remove Russian export prices from the IEA data on natural gas prices in EU countries. For a full explanation of our subsidy calculation, *see* Colakoglu Final Analysis Memorandum.
[97] *See* Petitioner Brief at 10-11.

Russian imports).[98] For a full explanation of the adjustment and our final calculations, *see* Colakoglu Final Analysis Memorandum.[99]

Additionally, Colakoglu reported that its invoices for natural gas from BOTAS include delivery fees, a special consumption tax, and a value-added tax (VAT) of 18 percent.[100] We therefore found the delivered benchmark AUV by adding the delivery fees and special consumption tax to the EU benchmark price adjusted for Russian exports to the EU; we then adjusted this price for the additional 18 percent VAT tax.[101] To calculate the program benefit, we compared the corresponding EU benchmark AUV to the unit monthly prices that Colakoglu paid BOTAS, including delivery fees, special consumption tax and VAT during the POR. In instances where the benchmark unit price was greater than the price paid to BOTAS, we multiplied the difference by the quantity of natural gas purchased from BOTAS during that month to arrive at the benefit. For all transactions, we found that a benefit was provided in accordance with section 771(5)(E)(iv) of the Act because BOTAS provided natural gas for LTAR. We then summed the benefits for Colakoglu and divided that amount by Colakoglu's total consolidated sales during 2016, in accordance with 19 CFR 351.525(b)(6). On this basis, we calculated a net countervailable subsidy rate of 1.78 percent *ad valorem* for Colakoglu under this program.

Comment 2: Whether Commerce Should Countervail the Provision of Preferential Financing from the TSKB

Petitioner's Case Brief

- In its responses to the new subsidy allegation (NSA) questionnaires issued by Commerce, the GOT did not respond fully to Commerce's requests for information and documentation relating to the TSKB's relationship with the GOT, failing twice to submit copies of POR agreements between itself and the TSKB, policy documents relating to its guarantee of the TSKB's loans, and the TSKB's applications for financial guarantees. Along with an inadequate narrative, the GOT only submitted a provision of the law which allows the TSKB to access Treasury guarantees as a development and investment bank.[102]
- Commerce has previously recognized that government ownership is not required for an entity to be deemed an authority. The GOT has the ability to exert meaningful control and oversight over the TSKB due to its representation on the TSKB's board of directors and its role as a critical guarantor of certain TSKB liabilities. The record demonstrates that the TSKB, whose long-term foreign currency Issuer Default Rating is aligned with the Turkish sovereign, is closely connected to the GOT and was entrusted or directed to provide

[98] *See* Colakoglu Final Analysis Memorandum.
[99] *Id*.
[100] *See* Colakoglu's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey; Colakoglu Dis Ticaret A.S.and Colakoglu Metalurji A.S.'s Response to Section III of the Department's CVD Questionnaire," dated May 14, 2019, at Exhibit CVD-9.
[101] As Commerce has previously explained, we find that it is reasonable to conclude that the IEA annual natural gas prices include transmission fees (*i.e.*, the costs associated with use of the national pipeline infrastructure) but not the varying transportation fees (*i.e.*, the varying costs associated with use of the regional distribution networks). *See Turkey Rebar II Final* IDM at 11.
[102] *See* Petitioner Case Brief at 2 and 12-18.

preferential financing consistent with the government's own policies regarding guarantees for investment and development banks.[103]

- Although only one of the TSKB's board members is appointed by the GOT, this member likely exerts influence beyond what is granted to them by the TSKB's Articles of Association. The TSKB only has access to a substantial amount of financing from institutions like the World Bank due to the GOT's guarantees, which the GOT could threaten to withdraw if the TSKB does not align itself with government policies.[104]
- The TSKB has previously aligned itself with GOT financing policies, such as the 2014 Innovative Access to Finance project (where it received $250 million U.S. dollars (USD) from the World Bank that was guaranteed by the GOT), which was described as being consistent with the government's latest SME Strategy and Action Plan, the Turkish Exports Strategy for 2023, and the 10th National Development Plan.[105]
- Because the GOT failed to act to the best of its ability when responding to Commerce's questions, particularly those that are directly relevant to whether the TSKB should be considered an authority, Commerce should find that the TSKB is an authority and apply AFA accordingly.[106]
- If Commerce finds that the application of AFA to the TSKB is inappropriate, Commerce should instead find that Icdas' loan from the TSKB constitutes a financial contribution from an authority and calculate a subsidy margin for this program.[107]

Icdas' Rebuttal Briefs

- The GOT should not receive AFA for its questionnaire responses. It cooperated fully and completely with Commerce's requests for information and responded to the best of its ability regarding its relationship with the TSKB.[108]
- The TSKB should not be treated as an authority by Commerce. The TSKB is a privately-owned bank listed in the Turkish stock exchange and acted only as a minority participant in the consortium of private banks that supplied financing to Icdas Elektrik. The GOT only appoints one of the TSKB's 11 board members, does not own shares of the TSKB, is not involved in the TSKB's loan programs, and plays no role in determining the TSKB's loan eligibility criteria.[109]
- Loan guarantees offered to the TSKB involve foreign financial transactions with multilateral European development banks (MDBs), not Turkish companies. The GOT was likely required to issue a sovereign guarantee as a lending condition of foreign MDBs, which hold all of the TSKB's guaranteed debt.[110]
- The GOT does not guarantee MDB loans extended to the TSKB as subsidies, but rather as a necessary feature of foreign MDB loans. Under this arrangement, control comes from the

[103] *Id.* at 17-21.
[104] *Id.* at 21-22.
[105] *Id.* at 22-23.
[106] *Id.* at 2, 12, and 17-18.
[107] *Id.* at 2, 12, and 23-26.
[108] *See* Colakoglu and Icdas Rebuttal Brief at 6-9.
[109] *Id.* at 8-10.
[110] *Id.* at 9.

MDBs that provide funding for the TSKB's development projects, rather than the GOT as a funding guarantor.[111]

- TSKB loans are not government programs, and information on loans regarding programs used by respondent companies, if any, can be obtained from respondent companies.[112]
- The petitioner's attempts to draw parallels between OYAK (Turkey's military pension fund) and the TSKB, and between the TSKB's lending with the GOT and World Bank, are inaccurate.[113]
- The GOT has provided Commerce with full and complete questionnaire responses, and it is unclear what further documentation is requested by the petitioner.[114]

GOT's Rebuttal Brief

- The petitioner's allegation that the GOT failed to provide copies of documentation related to loan guarantee agreements between the GOT and TSKB is false. The non-submission of the requested agreements or policy documents only indicates that no such documents exist.[115]
- The GOT cooperated fully with Commerce's requests for information regarding the TSKB's access to government loan agreements by providing detailed responses to all questions, including those concerning the financial relationship between the TSKB and the GOT. The GOT also obtained information from the TSKB for several questions it did not have to answer, but did so regardless for the sake of cooperation.[116]
- The GOT refutes the petitioner's claim that the TSKB is an authority. The TSKB's report to the U.S. Securities and Exchange Commission on the record of this proceeding states that the TSKB is subject to the same oversight, supervision, and regulatory terms as other large commercial banks. The GOT also reiterates that the Central Bank's nomination of one member of the TSKB's board of directors does not allow it to exercise control over the adoption of resolutions, which require the majority support of the board's 11 members.[117]
- Because all Turkish development and investment banks have access to the same GOT guarantees as the TSKB, the petitioner's claim that the GOT may force the TSKB to act consistently with its policies in exchange for access to government guarantees is baseless and unsubstantiated by record information.[118]

Commerce's Position: Following Commerce's initiation of investigations into potential preferential financing from development banks, Icdas reported that one of its subsidiary input suppliers, Icdas Elektrik, received a ten-year loan in 2011 from a group of banks that included the TSKB.[119] In both its NSA allegation and its pre-preliminary comments, the petitioner claimed that the TSKB maintains a close relationship with the GOT and relies on government

[111] *Id.* at 9-10.
[112] *Id.* at 7.
[113] *Id.* at 9-10.
[114] *Id.* at 6-9.
[115] *See* GOT Rebuttal Brief at 4-5.
[116] *Id.*
[117] *Id.* at 5-6.
[118] *Id.* at 6.
[119] *See* Icdas' August 31, 2018 New Subsidies Allegation Questionnaire Response (Icdas NSAR) at 4.

guarantees to secure financing from foreign financing institutions, including the World Bank.[120] The petitioner argued that this dependent financial relationship allows the GOT to exercise meaningful control over the TSKB and its policies, thus making the TSKB a government authority. Icdas and the GOT reported that the TSKB's consortium lending to Icdas Elektrik involves only private commercial loans rather than government programs, and the GOT claimed that it is not a designated TSKB shareholder, does not control the TSKB's loan policies, and only appoints one of the TSKB's 11 board members.[121] In the *Preliminary Results*, Commerce concluded that although the GOT appoints a TSKB board member and helps it to secure certain funding via repayment guarantees on foreign financing, these facts alone do not demonstrate that the GOT has the ability to exercise meaningful control over the TSKB or its lending practices.[122] Commerce also determined that the TSKB is not a government authority, and that there was no evidence to support the conclusion that the GOT entrusted or directed the TSKB to provide preferential lending to respondents or any other borrowers via legislation or other practices.[123]

For these final results, although the GOT arguably may not have provided all information relevant to determining whether a financial contribution exists (for example, it could be argued that the GOT should have provided applications it received during the POR from the TSKB for loan guarantees, regardless of whether or not the particular loans at issue are guaranteed), the overall terms of the lending to the respondents indicate that these specific loans were not part of a program of GOT policy lending. Specifically, the TSKB's loans to Icdas were made in the context of a broader consortium that included two other banks on what appear to be private commercial terms.[124] Specifically, the rate charged by the TSKB is identical to the rates charged by the other private members of the consortium, the loan terms are otherwise identical, all loans were secured with substantial collateral from Icdas and Icdas Elektrik themselves, and there is no evidence that the TSKB's participation in the consortium served as an inducement to the other members to participate on terms that they would have otherwise deemed unacceptable.[125] No record evidence suggests that either the TSKB or the GOT guarantees the loans from the other parties or otherwise indemnifies them against default by Icdas Elektrik. Finally, the record indicates that loan proposals for this project were offered to Icdas by several other banks, and that Icdas ultimately settled on the aforementioned consortium because of a previous working relationship between two consortium members and Icdas that facilitated the transaction.[126] Thus, while the GOT arguably failed to provide certain information that could further help determine if the TSKB was "entrusted or directed" (specifically information regarding the TSKB's application to the GOT for loan guarantees that might have induced commitments from the

[120] *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: New Subsidies Allegations," dated June 18, 2018, at 11-13; *see also* Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: RTAC's Pre-Preliminary Determination Comments," dated November 13, 2018, at 25-26.
[121] *See* Icdas' August 31, 2018 New Subsidies Allegations Questionnaire Response (Icdas NSAR) at 3 and 5-7; *see also* GOT's September 5, 2018 New Subsidies Allegations Questionnaire Response at 5-6; and GOT's October 16, 2018 Supplemental New Subsidies Allegations Questionnaire Response at 7-11.
[122] *See Preliminary Results* PDM at 25-26.
[123] *Id.*
[124] *See* Icdas NSAR at 5-7.
[125] *Id.*; *see also* Icdas' October 16, 2018 Supplemental New Subsidies Allegations Questionnaire Response (Icdas Supplemental NSAR) at 1-3.
[126] *See* Icdas Supplemental NSAR at 1-3.

TSKB to GOT policy directions, as a *quid pro quo*), the overall terms of the lending to the respondents indicate that these specific loans were not part of a program of GOT policy lending (for the reasons detailed above). A finding that a financial contribution was provided through the "entrustment and direction" of a private bank, as opposed to a finding that a financial contribution was provided by an "authority" or state-owned bank, requires a finding that there was a government policy to support the respondent (or the respondent's industry), as Commerce has explained previously.[127] Here, given the terms of the loan to Icdas, we cannot conclude that the loans at issue were part of such a government policy (*i.e.*, a preferential lending policy).

Finally, we see no reason to reexamine our conclusion from the *Preliminary Results* that the record does not indicate that the TSKB is a government authority. The petitioner points to no new facts. Moreover, we cannot find that the TSKB is an authority on the basis of AFA, pursuant to section 776(a) and (b) of the Act. The GOT provided ample information in response to Commerce's questionnaires regarding the ownership and control of the TSKB. As noted above, while the GOT arguably failed to respond to certain questions regarding interactions between the GOT and the TSKB during the POR (such as the TSKB's applications for loan guarantees from the GOT), Commerce believes those questions are relevant to the question of entrustment and direction, not to the question of whether the GOT is an authority. The arguably unanswered questions go to the issue of whether the GOT may have exercised some indirect control over the TSKB by extracting policy commitments from the GOT in return for the guarantees. This type of possible indirect influence is not the same as evidence of direct control that establishes an entity as being an authority for financial contribution purposes.

Comment 3: Whether Commerce Should Adjust Icdas' Reported Sales Denominator

Icdas' Case Brief

- Commerce identified a clerical error at verification in which certain free-on-board (FOB) value amounts were not carried over to Icdas' reported total FOB value.[128]
- The majority of the missing items relate to electricity sales, which do not incur freight costs.[129]
- Commerce should adjust Icdas' reported sales denominator to include the amounts that Icdas reported, but inadvertently excluded due to a summation error.[130] The clerical error results in an understatement of Icdas' sales denominator and correcting the error will ensure a more accurate calculation of Icdas' subsidy rates.[131]
- Commerce noted certain accounts Icdas included in its reported sales denominator that were excluded in the prior review. Should Commerce consider an adjustment to Icdas' sales

[127] *See, e.g., Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016), and accompanying IDM at 27 (citing *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) as amended by *Notice of Amended Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 44290 (July 28, 2003)).
[128] *See* Colakoglu and Icdas Case Brief at 2.
[129] *Id.*
[130] *Id.*
[131] *Id.*

denominator, it should not exclude the account which records the difference in value between the theoretical weight of an export shipment and the actual weight recorded by Turkish Customs authorities from Icdas' sales denominator.[132] Icdas receives payment based on the theoretical weight of each shipment, thus calculating the value based on the actual weight would not capture the full value of the sale.[133]

Petitioner's Rebuttal Brief

- Commerce should reject Icdas' proposed adjustment to its sales denominator because the record does not demonstrate that the error was a "simple clerical error." Rather, it is a major correction to Icdas' response, discovered by Commerce, that is not verified or supported by the record.[134]

Commerce's Position: As noted above in Section VII, "Use of Facts Otherwise Available and Adverse Inferences," we determine that Icdas failed to act to the best of its ability with respect to its sales denominator. Accordingly, we determine that the application of facts available, with an adverse inference, is warranted and necessary for these final results.

In our initial questionnaire, we directed Icdas to report the FOB value of its total sales, as well as the FOB values for five other sales categories.[135] Commerce repeated its request that Icdas provide its sales on an FOB basis in a subsequent questionnaire, where we again directed Icdas to "ensure that all sales are reported on an FOB basis."[136] Further, in the verification agenda issued to Icdas in advance of verification, we instructed Icdas to:

> Demonstrate that the reported sales figures are on a free-on-board (FOB) factory basis for domestic sales and an FOB port basis for export sales, and be prepared to tie transportation and insurance to the general ledger and financial statements. *Prepare in advance any necessary worksheets to detail any adjustments for transportation and insurance charges to derive the FOB values.*[137]

Despite these explicit instructions, and Icdas' certifications that its responses were accurate and complete,[138] as we stated in our verification report, we were unable to verify Icdas' reported FOB sales value (*i.e.*, the denominator used in our subsidy calculations) for the POR.[139] This was despite the fact that we had earlier tied Icdas' total sales value to its financial statements (including delivered prices). In other words, Icdas allegedly converted its total sales value to an incorrect FOB basis, which is required by Commerce for purposes of a subsidy rate denominator. In response to our questions, Icdas claimed that it had failed to include certain sales categories in the FOB denominator. Although Icdas was provided with an opportunity to submit minor

[132] *Id.* at 3.
[133] *Id.*
[134] *See* Petitioner Rebuttal Brief at 3-7.
[135] *See* Icdas IQR at CVD-11.
[136] *See* Icdas July 12, 2018 Supplemental Questionnaire Response (Icdas SQR) at 10.
[137] *See* Commerce's Letter, "Verification Agenda for the Countervailing Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey," dated April 23, 2019, at 7.
[138] *See* Icdas IQR at 4; *see also* Icdas SQR at 4.
[139] *See* Icdas Verification Report at 6.

corrections at the commencement of verification, it did not identify this issue as a correction to its response.[140] Rather, only after the verification team noted apparent discrepancies in its attempt to replicate the reported FOB number during verification did Icdas claim that it there was an error in its reporting methodology.[141]

As an initial matter, Icdas' argument is premised on its mischaracterization of the issue. In its briefs, Icdas portrays the alleged error as a "summation error," and asserts that the requisite information is on the record.[142] However, we disagree with Icdas that its failure to comply with our requests to report its total sales on an accurate FOB basis can be dismissed as a simple mathematical error.[143] To the contrary, the record reflects that Icdas provided a total sales value on an FOB basis that it later claimed was allegedly inaccurate, and therefore presumably Commerce could not use it as a total sales denominator.[144] Its explanation for this alleged mistake is that it made a simple mathematical error, but that alleged mistake is not a minor correction that Commerce could accept at this late date. To the contrary, Icdas claimed at verification (for the first time) that sales value for entire categories of merchandise would need to be added to the reported FOB value in order to correct the problem. The purported correction would have increased Icdas' sales denominator significantly (by nearly 50 percent).[145] Such an increase in the value of the sales denominator, as well as the explanation for why the increase was supposedly necessary (because entire product categories had supposedly been overlooked) is not a "minor" correction or "clerical" error that Commerce could accept so late in the review. What amounts to a brand-new sales denominator should have been submitted early enough in the review to allow Commerce and the petitioner adequate time to consider the accuracy of the numbers involved, as well as the calculation methodology, and then give Commerce sufficient time to verify the validity of those numbers. This is, therefore, untimely new factual information that must be rejected pursuant to 19 CFR 351.302(d).[146]

Section 776(A) of the Act provides that when necessary information is not on the record, or an interested party withholds information, fails to provide information in a timely manner, significantly impedes a proceeding, or provides unverifiable information, Commerce is directed to use facts otherwise available. Because an accurate sales denominator is core to the subsidy

[140] *Id.* at 2.
[141] *Id.* at 6-7.
[142] *See* Colakoglu and Icdas Case Brief at 2.
[143] *Id.*
[144] Icdas' sales information contains Business Proprietary Information not susceptible for public summary. For a complete list of the sales affected by the error, *see* Icdas IQR at Exhibit CVD-9; *see also* Icdas Verification Report at 2; and Icdas Final Analysis Memorandum.
[145] *See* Icdas Final Analysis Memorandum.
[146] *See* Petitioner Rebuttal Brief at 5 for correctly pointing out this information was not verified. Icdas also indicates in its briefs that "most of the missing items relate to electricity sales which have no freight cost." *See* Colakoglu and Icdas Case Brief at 2. The inclusion of this sentence is presumably meant to imply that there is no difference between the delivered value of the sales (*i.e.*, what Icdas reported) and the FOB values that it should have reported. While we agree with Icdas that information is indeed missing from the record, certain of the omitted sales categories likely would have included freight. We find Icdas' implication that there is no difference between those values to be unfounded, unsubstantiated, and unverified. For a full list of the sales categories affected by the error, *see* Icdas Final Analysis Memorandum.

analysis, and because we are prohibited from relying on unverified information,[147] we must resort to facts available. In selecting from among the facts otherwise available, our regulations permit the use of an adverse inference, in instances where we find a party "has failed to cooperate by not acting to the best of its ability with a request for information."[148]

In *Nippon Steel*, the CAFC noted that while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."[149] Thus, compliance with the "best of its ability" standard requires the respondent to do the maximum that it is able to do. As the CAFC explained in *Nippon Steel*, although the statutory standard for cooperation "does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping."[150]

Icdas' failure to correct its denominator in the multiple questionnaires issued by Commerce, or in its minor corrections presented at verification, indicates that Icdas did not exercise the required diligence in preparing its questionnaire responses which it certified as accurate and complete.[151] Moreover, the burden of building the record rests on the party in possession of the necessary information.[152] In other words, it is not Commerce's responsibility to find and fix discrepancies in Icdas' reported information. The purpose of verification is to assess the accuracy and completeness of the respondent's questionnaire responses.[153] Thus, to accept Icdas' argument and repair its sales denominator on its behalf, based on an error discovered by Commerce at verification, would deviate from the intended purpose of verification.

In light of the above, we find that Icdas' failure to accurately report its sales denominator, a crucial component of our subsidy analysis, demonstrates a failure to act to the best of its ability, and the application of AFA is warranted. Commerce's enforcement of the AFA provision of the statute under these circumstances is necessary to ensure that "the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[154] Making the sales denominator adjustment proposed by Icdas based on a significant discrepancy discovered by Commerce at verification, would effectively reward Icdas for its inattentiveness and carelessness, which would be a departure from our longstanding practice.[155] Section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination in the investigation, a previous administrative review, or other information placed on the record. As AFA, we will rely on Icdas' total sales and export values

---

[147] *See Yantai Timken*, 521 F. Supp. 2d at 1721; *see also Ripe Olives Spain Final* IDM at Comment 21.
[148] *See* section 776(B)(1)(a) of the Act.
[149] *See Nippon Steel*, 337 F. 3d at 1382.
[150] *Id*.
[151] *See* Icdas IQR at 4; *see also* Icdas SQR at 4.
[152] *See Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F. 3d 1330, 1336 (Fed. Cir. 2002) (quoting *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993).
[153] *See, e.g., Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China*, 77 FR 63788 (Oct. 17, 2012), and accompanying IDM at 61-62.
[154] *See* SAA at 870.
[155] *See, e.g., Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011), and accompanying IDM at 7; *see also Semiconductors from Taiwan*, 63 FR at 8932 (February 23, 1998).

for 2006, the smallest sales denominator reported on the record of this review.[156] Because this is information reported by Icdas in this proceeding, as well as information that was subject to verification in the underlying investigation,[157] our use of this data is consistent with the Act[158] and established practice.[159]

As we are relying on AFA, with respect to Icdas' sales denominator, we need not address the remainder of Icdas' comments concerning its reported sales denominator.

Comment 4: Whether Commerce Should Revise its Uncreditworthiness Finding with Respect to Icdas Elektrik

Icdas' Case Brief

- Commerce should clarify whether the TSKB is government controlled.[160]
- Commerce should remove its finding of uncreditworthiness with respect to Icdas Elektrik, unless the determination is necessary to complete Commerce's calculations.[161]
- Commerce's creditworthiness analysis applies when the terms of the government-provided loan indicate that the firm could not have obtained long-term financing from conventional commercial sources. However, Icdas Elektrik did not obtain a government-provided loan in 2007-2011; therefore, there is no possible benefit conferred. Icdas Elektrik did not obtain financing from the TKSB in 2007 and the TKSB was only a junior lender in 2011.[162]
- In 2007, Icdas Elektrik secured financing from private banks because its parent company, Icdas, acted as a joint guarantor and mortgaged assets to support the note. Commerce has considered the financial health of parents and affiliates when considering the creditworthiness of a new company.[163]
- Commerce should treat all interest and finance expenses on a consolidated group basis for the CVD creditworthiness analysis, as it does in antidumping investigations, due to the fungible nature of financing between group companies.[164]

Petitioner's Rebuttal Brief

- Commerce should continue to find that Icdas Elektrik is uncreditworthy because its financial ratios do not meet Commerce's benchmark to find a company creditworthy.[165]

---

[156] *See* Icdas IQR at Exhibit CVD-35.
[157] *See Steel Concrete Reinforcing Bar From the Republic of Turkey: Preliminary Negative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Determination*, 79 FR 10771 (February 26, 2014) and accompanying PDM at 9. 2006 is covered by the AUL period; *see also Turkey Rebar I Final* (AUL unchanged).
[158] *See* sections 776(b)(2)(C)-(D) of the Act.
[159] *See, e.g., Certain Oil Country Tubular Goods From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 41967 (July 18, 2014) and accompanying IDM at Comment 2.
[160] *See* Colakoglu and Icdas Case Brief at 4.
[161] *Id.*
[162] *Id.*
[163] *Id*. at 6-7.
[164] *Id*.
[165] *See* Petitioner Rebuttal Brief at 8-9.

- The record demonstrates that the TSKB is an authority, therefore Icdas' arguments regarding the TSKB's lack of government control are unsupported, and the record reflects that Icdas received a government-provided loan.[166]
- Icdas was also uncreditworthy, therefore the fact that it acted as a guarantor on Icdas Elektrik's loan is of no consequence, and Commerce should use an uncreditworthy benchmark.[167]

Commerce's Position: While we agree with the petitioner that Icdas Elektrik's financial statements reflect low liquidity levels for 2007-2011, which are not necessarily dispositive for uncreditworthiness, we are not making a finding on the issue of uncreditworthiness with respect to Icdas Elektrik for these final results.[168] Notwithstanding Icdas Elektrik's financial ratios, because our preliminary determination of uncreditworthiness was limited to 2007-2011,[169] and because Icdas Elektrik did not report countervailable lending or non-recurring subsidies during this period,[170] such a finding has no bearing on the calculations required in this proceeding. Thus, we find that the issue is moot. This change from our *Preliminary Results* has no effect on the subsidy rate applicable to Icdas because we did not rely on an uncreditworthy benchmark in our preliminary calculations.

Regarding the petitioner's allegation, raised for the first time in its rebuttal briefs, that Icdas was uncreditworthy from 2007-2016, our regulations state that Commerce normally will not consider the uncreditworthiness of a respondent absent a specific allegation from the petitioner.[171] However, as the petitioner made this allegation after the record of the proceeding closed, and only two weeks before the scheduled date for the final results, Commerce is precluded, realistically, from collecting additional information regarding the issue and the respondent is deprived of a meaningful opportunity to rebut the claim with additional factual information. Further, the petitioner's allegation itself is limited to the calculation of quick and current ratios, which might have been adequate to support further examination of the allegation had the information been submitted earlier, but which does not constitute an adequate examination of all the regulatory factors that would need to be examined in order to make a final determination. Thus, Commerce has no guidance as to how those factors can be addressed at this very late stage in the review without reopening the record.
Moreover, the petitioner's allegation relates to information placed on the record early in the review in response to a questionnaire, and thus the petitioner's allegation could easily have been made much earlier in the review. Due to the fact that this allegation was made after the record of this proceeding was closed, with inadequate time remaining to reopen the record, we determine that there is insufficient information to adequately assess the factors enumerated in 19 CFR 351(a)(4).

[166] *Id*.
[167] *Id*.
[168] *Id*.
[169] *See Preliminary Results* PDM at 12-13.
[170] *See* Memorandum, "Countervailing Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey; 2016: Preliminary Results Calculation for Icdas," dated December 7, 2018 (Icdas Preliminary Analysis Memorandum).
[171] *See* 19 CFR 351.505(a)(6).

Comment 5: Whether Commerce Should Recalculate the Subsidy Attributed to Icdas Under the YEKDEM Program

Icdas' Case Brief

- Because a portion of the benefits conferred to Icdas under YEKDEM in 2016 was subsequently reclaimed, with interest, by Enerji Piyasalari Isletme A.S. (EPIAS) in 2017 and 2018, Icdas' benefit in 2016 was reduced by the amount of reclaimed funds.[172]
- Commerce has recognized in past cases that the repayment of subsidies should be recognized in a subsidy calculation and should reduce Icdas' 2016 benefit to reflect the repayment.[173]
- Because Icdas is required to make payments to EPIAS to support the YEKDEM system, and because such payments exceed the YEKDEM support Icdas receives, Icdas did not receive a net benefit during the POR.[174]
- Commerce should recalculate the net benefit received by Icdas under YEKDEM to include the required payments it made to EPIAS to support the YEKDEM system, as an offset to any benefit received.[175]

Petitioner's Rebuttal Brief

- Commerce should not modify its calculation of the subsidy rate for the YEKDEM program.[176]
- The record does not demonstrate that the alleged reclaimed amount ties to the benefits Icdas received during the POR.[177]
- Commerce should not take into account any payments made to EPIAS in its subsidy calculation because all electricity producers made payments to EPIAS, but only companies eligible to participate in the YEKDEM program receive YEKDEM support payments; thus, the benefit is limited to payments received, regardless of any payments made.[178]

Commerce's Position: Icdas has provided no legal or factual basis for Commerce to depart from the methodology employed in the *Preliminary Results* and reduce its benefit under the YEKDEM program. We agree with the petitioner that the benefit Icdas receives under this program is limited to the payment it receives from EPIAS for its participation in YEKDEM, regardless of any payments it makes to EPIAS.[179] Icdas raised similar arguments prior to the *Preliminary Results*, which we found unpersuasive,[180] and we find no new evidence or arguments on the record that would warrant a change from our preliminary calculation.

[172] *See* Colakoglu and Icdas Case Brief at 9.
[173] *Id.* citing *British Steel PLC v. United States*, 127 F. 3d 1471, 1475 (Fed. Cir. 1997).
[174] *Id.* at 10.
[175] *Id*.
[176] *See* Petitioner Rebuttal Brief at 9.
[177] *Id.* at 9-15.
[178] *Id.* at 16-17.
[179] *Id.* at 17.
[180] *See Preliminary Results* PDM at 15.

As an initial matter, we disagree with Icdas that the funds reclaimed by EPIAS should factor into our calculation of the POR benefit. There is no argument concerning the timing of EPIAS' actions regarding the repayments by Icdas to EPIAS. The repayments happened after the POR, and thus had no effect on Icdas' operations during the POR. Not only were the repayments not made until after the POR, but there was not even a demand for repayment by EPIAS during the POR.[181] Therefore, whether the repayments constitute an offset to the calculated benefit is something to be considered in a subsequent administrative review of this program.

With respect to Icdas' request that Commerce offset the benefit conferred under YEKDEM to account for payments it made to EPIAS (*i.e.*, the net effect of the subsidy), we find no factual or legal basis to do so. The Act defines the "net countervailable subsidy" as the gross countervailable subsidy amount less three statutorily prescribed offsets: (1) the deduction of application fees, deposits or similar payments necessary to qualify for or receive a subsidy, (2) accounting for value losses due to deferred receipt of the subsidy, and (3) the subtraction of export taxes, duties or other charges levied on the export of merchandise to the U.S. specifically intended to offset the countervailable subsidy.[182] Both Congress and the courts have indicated that Commerce is limited in the offsets it can make under the statute.[183] As noted in the *Preliminary Results*, the verification report, and by Icdas itself in its case brief, all fossil fuel power producers are required to support the YEKDEM system through payments made to EPIAS; however, only YEKDEM participants receive YEKDEM support payments.[184] Thus, while Icdas, like all fossil fuel power producers in Turkey, made obligated payments to support the YEKDEM system, our benefit analysis is correctly limited to the verified support amounts Icdas received for its participation in the program.[185] While the statute allows for the offset of certain deductions of payments, the record does not reflect that Icdas' payments into the YEKDEM system are required to qualify for or receive the subsidy. To the contrary, the verified record clearly demonstrates that the only requirement to apply for and benefit from the YEKDEM program is to sell electricity produced by renewable sources.[186]

In sum, Icdas' payments and repayments to EPIAS are not among the permissible offsets enumerated in our statute. To conclude otherwise would conflict with Commerce's established methodology and practice.[187] Accordingly, we agree with the petitioner that our benefit calculation is consistent with our practice and regulations and are thus not making any adjustments to our subsidy calculation, aside from the revision of Icdas' sales denominator, as explained in Comment 3.

---

[181] *See* Icdas Verification Report at 7-9.
[182] *See* section 771(5)(E) of the Act.
[183] *See* Trade Agreements Act of 1979, U.S. Senate Report No. 96-249 (1979) at 86 ("{t}he list is narrowly drawn and is all inclusive."); *see also Kajaria Iron Castings Pvt. Ltd. v. United States*, 156 F.3d 1163, 1174 (Fed. Cir. 1998) (*Kajaria Iron Castings*) ("we agree that 19 U.S.C. § 1677(6) provides the exclusive list of permissible offsets ...."); and *Geneva Steel v. United States*, 914 F. Supp. 563 (CIT 1996) (explaining that section 771(6) "provides an exclusive list of offsets that may be deducted from the amount of a gross subsidy….").
[184] *See Preliminary Results* PDM at 15; *see also* Icdas Verification Report at 7-8; and Colakoglu and Icdas Case Brief at 10.
[185] *See Preliminary Results* PDM at 15-16.
[186] *See* Icdas Verification Report at 8.
[187] *See, e.g., Kajaria Iron Castings*.

Comment 6: Whether Commerce Should Adjust the Calculation of Icdas' Benefit Under the Investment Incentives Program

Icdas' Case Brief

- Commerce should adjust its subsidy calculation for the investment incentives program because Icdas Elektrik's investment certificates are unrelated to the production of subject merchandise,[188] and Commerce previously determined that the certificates were tied to the production of non-subject merchandise.[189]
- Commerce erred in attributing the entire support Icdas Elektrik received through its investment certificate to the steelmaking operation because Icdas Elektrik only sold a small amount of scrap to Icdas in the POR, which would not support a finding of material support.[190]
- Should Commerce continue to apply Icdas Elektrik's investment certificate to overall Icdas operations, it should use the consolidated revenue figure of the Icdas Group as the sales denominator because any benefit to Icdas Elektrik was shared by all Icdas affiliates.[191]
- This subsidy program is a grant consisting of forgiveness of customs duties and VAT for imported inputs, thus there is no loan component.[192]
- Whether Icdas meets the ultimate conditions of the investment incentive certificate in later years does not change the fact that the grant was received when the equipment was imported.[193]
- Commerce should use Icdas Elektrik and Icdas' actual borrowing rates in USD instead of the International Monetary Fund (IMF) benchmark rates in Turkish Lira (TL) converted to USD in calculating any interest free benefit because the benchmark is unnecessary.[194]
- If Commerce continues to apply TL interest rates, then Commerce should calculate the benefit for this program based on the reported TL amounts instead of USD amounts converted to TL using the average 2016 exchange rate because the conversion risks introducing distortion into the calculations, and some equipment was imported prior to 2016.[195]
- Commerce should allocate the waived liability benefits of the grant beginning the year after the equipment was imported because the grant is received when the inputs were imported.[196]

Petitioner's Rebuttal Brief

- Commerce should not adjust its calculation of benefits attributed through the investment incentive program because it is consistent with its practice and regulations, and Icdas has provided no basis for Commerce to deviate from this methodology.[197]

[188] *See* Colakoglu and Icdas Case Brief at 10.
[189] *Id.* at 11.
[190] *Id.*
[191] *Id.* at 11-12.
[192] *Id.* at 12.
[193] *Id.*
[194] *See* Colakoglu and Icdas Case Brief at 12.
[195] *Id*. at 13-14.
[196] *Id*. at 14.
[197] *See* Petitioner Rebuttal Brief at 17-18.

- Commerce should revise the interest rate benchmark used to calculate a benefit under this program to an uncreditworthy benchmark because Icdas and Icdas Elektrik are both uncreditworthy.[198]

Commerce's Position: We disagree with Icdas and continue to countervail and attribute the full support provided to Icdas Elektrik under the general investment incentives scheme (GIIS)[199] program to the combined sales of Icdas Elektrik and Icdas, minus intercompany sales. We also disagree with Icdas that we should modify our treatment of this program as a contingent-liability, interest-free loan. Further, we are unpersuaded by the arguments raised by interested parties that we should rely on a different interest rate benchmark for these final results. Therefore, for the reasons set forth below, we have not made any changes to our analysis of this program since the *Preliminary Results*, except to revise Icdas' sales denominator as explained above.

Pursuant to section 351.525(b)(5)(i), "(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." In making this determination, Commerce analyzes the intended purpose of the subsidy based on information available at the time the subsidy is bestowed.[200] In so doing, Commerce's practice is to identify the type and monetary value of a subsidy at the time of bestowal, rather than examine the use or effect of subsidies (*i.e.*, to trace how the benefits are used by companies).[201] A subsidy is tied only when the intended use is known to the subsidy provider (in this case, the GOT) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. For example, in determining whether a loan is tied to a particular product, Commerce examines the loan approval documents; likewise, to determine whether a grant is tied to a particular product, Commerce examines the grant approval documents.[202] The courts have previously upheld Commerce's analysis in this regard.[203]

In this case, officials from the GOT stated that the intended purpose of the customs duty and VAT exemptions provided under the GIIS is to encourage general investments in the country.[204] Notwithstanding Icdas' claim that the electricity produced by the exempted equipment was used solely for the production of non-subject merchandise, the record does not reflect and Icdas has not demonstrated that the purpose of the exemptions "at the time of bestowal" was specifically intended to benefit the production of certain products only. Officials from the GOT and Icdas itself stated that the purpose of this program is to support a variety of investments in Turkey.[205] Further, Icdas' point that the support Icdas Elektrik received through the GIIS program benefited its power plant[206] is irrelevant because Commerce does not tie subsidies on a plant- or factory-

[198] *Id*. at 18-19.
[199] This program is also known and referred to as the Investment Encouragement Program (IEP).
[200] *See CVD Preamble* at 65403-65404.
[201] *See Certain Uncoated Groundwood Paper from Canada: Final Affirmative Countervailing Duty Determination*, 83 FR 39414 (August 9, 2018) and accompanying IDM at comment 34.
[202] *Id.*; *see also CVD Preamble* at 65403.
[203] *See Maverick Tube Corp. v. United States*, Slip Op. 16-16, Consol. Court No. 14-00229 (CIT 2016), *aff'd*, *Maverick Tube Corp. v. United States*, 857 F. 3d 1353, (Fed. Cir. 2017).
[204] *See* GOT Verification Report at 6.
[205] *Id*. at 6-7.
[206] *See* Icdas Case Brief at 10.

specific basis.[207] Moreover, neither the Act nor Commerce's regulations "provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm."

For these reasons, we disagree with Icdas and find that there is no record evidence establishing that the exemptions Icdas Elektrik received under the investment incentives program are tied to the production of non-subject merchandise. Consistent with *Wire Rod from Turkey*, we continue to find that because the duty and VAT exemptions are not tied to the production or sale of a particular product as provided under 19 CFR 351.525(b)(5)(i), the exemptions are thus "untied" and attributable to the company's overall operations.[208] Further, as Icdas notes in its case briefs, Commerce recognizes that money is fungible and its use for one purpose effectively frees up money to benefit another purpose.[209] Thus, subsidies provided to one division of a company, such as an electricity plant, impact the overall production and sale of all other products of the company. Icdas argues that if Commerce continues to find that Icdas Elektrik's investment incentives benefit overall Icdas operations, then Commerce should increase the denominator used in its subsidy calculation to the consolidated sales of the Icdas Group.[210] This clearly conflicts with Commerce's established practice and regulations, and for that reason, we disagree.

Our attribution rules expressly state that subsidies provided to a cross-owned input supplier are normally attributed to the combined sales of the input and downstream product produced by both corporations, excluding intercompany sales. The statute does not, however, require Commerce to consider the quantity or otherwise measure the impact of an input provided by an input supplier in determining whether to attribute its subsidies to the downstream producer. In the *Preliminary Results*, we determined that Icdas Elektrik was cross-owned with Icdas.[211] Further, because Icdas Elektrik sold an input primarily dedicated to the production of the downstream product to Icdas, we stated our intention to attribute any subsidies received by Icdas Elektrik to Icdas, in accordance with 19 CFR 351.525(b)(6)(iv).[212]

Nonetheless, Icdas misinterprets Commerce's attribution rules, stating in its briefs that Icdas Elektrik "only sold a small amount of scrap to Icdas...and would not support a finding of material input support."[213] As noted above, the attribution statute does not include a threshold for the amount of input supplied by a cross-owned company in order to meet our attribution standard, nor does it define material support. Moreover, Icdas provided no precedent where Commerce has considered the quantity of an input supplied in its attribution analysis. Accordingly, because Icdas Elektrik produced and sold scrap (*i.e.*, an input primarily dedicated to the production of subject merchandise) to Icdas during the POR, we continue to find that it is appropriate to attribute the subsidies conferred to Icdas Elektrik under the GIIS program to its combined sales with Icdas, less intercompany sales.[214] Our attribution regulations are clear; therefore, we are unpersuaded by Icdas' reasoning and find no basis to depart from our longstanding methodology.

---

[207] *See CVD Preamble* at 65404.
[208] *See Preliminary Results* PDM at 29.
[209] *See* Colakoglu and Icdas Case Brief at 6-7.
[210] *Id.* at 11-12.
[211] *See Preliminary Results* PDM at 9.
[212] *Id.* at 18-19.
[213] *See* Colakoglu and Icdas Case Brief at 11.
[214] *Id.*; *see also* Icdas Preliminary Analysis Memorandum.

Concerning Icdas' contention that there is no loan component to this program, we disagree. Our preliminary determination supporting the finding of contingent liability was firmly grounded on case precedent, as well as the information provided by the GOT and Icdas which was subsequently verified.[215] Because these facts have not changed since the *Preliminary Results*, we find no basis to abandon our preliminary treatment of this program as a contingent-liability, interest free loan, pursuant to 19 CFR 351.505(d).

In the *Preliminary Results* we stated that,

> It is Commerce's practice to treat any balance on an unpaid liability, that may be waived in the future, as a contingent-liability interest-free loan pursuant to 19 CFR 351.505(d)(1). Accordingly, since the unpaid IEP duties and VAT are a liability contingent on subsequent events, we regard the amount of unpaid duty liabilities as an interest-free contingent-liability loan. Accordingly, we find that the amount the respondent would have paid during the POR, had it borrowed the full amount of the duty and VAT exemption or reduction at the time of importation, to constitute the first benefit under the IEP customs duty and VAT exemption program.
>
> Furthermore, we find that a second benefit arises based on the amount of customs duties and VAT forgone by the GOT on the imports and/or domestic purchases covered by an IEP certificate at the time the GOT certifies that the investment requirements have been met and issues a completion visa. Pursuant to 19 CFR 351.505(d)(2), under such circumstances, we treat the total customs duty and VAT exemptions under a given IEP certificate as grants received in the year in which the GOT waived the contingent liability on those exemptions. Additionally, in accordance with 19 CFR 351.524(c)(2)(iii), because the import duty and VAT exemptions under this program are approved for the purchase of capital equipment, and thus tied to the company's capital assets, we are treating the exemptions as a non-recurring benefit as of the date of the receipt of the completion visa from the GOT.[216]

As explained in detail in the *Preliminary Results* and our verification reports, under this program, before the company obtains a final waiver in the form of a "completion visa," it must pass the mandatory, on-site inspection by the government confirming, *inter alia*, that it has installed all the pre-approved machinery and equipment, and that the machinery and equipment meet the eligibility requirements for duty-free and VAT-free importation under the program.[217] Further, our verification reports clearly demonstrate that if the company fails inspection, it must repay all

---

[215] *See, e.g.*, *Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey*, 71 FR 43111 (July 31, 2006), and accompanying IDM at 10-11; *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 *Welded Line Pipe from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34113 (July 19, 2018) (*Welded Pipe Turkey Final*) and accompanying IDM at 7.

[216] *See Preliminary Results* PDM at 17-18 (internal citations omitted).

[217] *Id.* at 16-17; *see also* GOT Verification Report at 8.

the exempted duty and VAT, plus interest (*i.e.*, like a loan).[218] Thus, the well-developed and verified information on the record of this review clearly demonstrates that because Icdas remains liable for the exempted duties pending the issuance of a completion by the GOT, this program does include a loan component within the meaning of 19 CFR 351.505(d). Icdas' arguments neither negate this review's verified facts, nor detract from the preliminary conclusion, that the exemptions it receives under the GIIS are contingent liabilities for which it remains obligated until "some future action" (*i.e.*, mandatory inspection) is taken or "some goal" achieved (*i.e.*, passing inspection) to satisfy requirements for a final waiver from the government. Thus, we find no new facts or arguments on the record that would warrant a change in our treatment of this program as a contingent-liability, interest-free loan. In instances where Commerce determines that a program is contingently liable, our regulations and *CVD Preamble* require that we must countervail it in a manner so as to take into account the fact that the monies foregone may one day either be forgiven, and thus become a grant, or they may be reclaimed by the government and repaid, or not granted.[219] In such a case, if Commerce were to have originally considered the monies as a grant, we would be left with no remedy to restore the subsidies attributed and duties paid. Thus, we must countervail contingent liability programs as such, when there is clearly a contingent liability.

Concerning Icdas' request that we use Icdas Elektrik's actual borrowing interest rates in USD, for the calculation of the interest-free loan portion of this program, we disagree that it would be appropriate to do so. For the *Preliminary Results*, we relied on the TL interest rates from the IMF because neither Icdas nor Icdas Elektrik reported opening long-term commercial loans in the years in which a benchmark interest rate is required for our calculations.[220] While we recognize that the terms of Icdas Elektrik's loans include variable interest rates covering the years used in our calculations, the structure of these rates was set at the time the loans were opened, and thus reflect the financial reality of the company at that time.[221] Moreover, had Icdas paid the exempted duties, it would have paid the duties in TL, not USD. Thus, an interest rate representing the cost of borrowing TL in Turkey (like the IMF rate) is needed, not a rate representing the cost of borrowing USD in Turkey (like the rate on Icdas' actual borrowings). Further, as noted in Commerce's position under issue 4, we also disagree with the petitioner that the application of an uncreditworthy benchmark is required in this case (because the petitioner did not submit a timely allegation of uncreditworthiness for these years). Accordingly, we continue to find that the IMF interest rates are the most appropriate benchmark to measure the benefit conferred by the contingent liabilities. Our reliance on IMF interest rates is consistent with our practice and has been upheld by the courts.[222]

---

[218] *Id.*

[219] *See* 19 CFR 351.505(d); and *CVD Preamble*, 63 FR at 65369-65370.

[220] *See* Icdas Preliminary Analysis Memo. Divulging the years required for our calculations would risk disclosing Icdas' BPI regarding the years in which it received loans.

[221] *See* Icdas NSAR at Exhibit 7.

[222] *See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination*, 75 FR 59209 (September 27, 2010), and accompanying IDM at 4; *see also Usinor Scilor v. United States*, 893 F. Supp. 1112, 1135 (CIT 1995) (rejecting plaintiff's claim that IMF lending rates are not long-term rates because plaintiffs' reliance on a passage indicating that the lending rates reflect costs of short-term and medium-term financing was not probative of whether the IMF rates apply to loans that are long-term, as defined by Commerce).

Icdas also argues that should Commerce continue to use the TL interest rates from the IMF, it should also use the TL customs values for the exempted equipment in its calculations.[223] According to Icdas, its proposal "eliminates distortions in the calculation that would occur by converting from TL to USD."[224] We disagree. Icdas reported that the value of the imported equipment was invoiced in USD.[225] Thus, the TL value of the exempted duties (had they been paid) would have been based on the USD invoice amount. Further, there is no indication that converting Icdas' reported USD values to TL risks introducing significant distortion into our calculations. Accordingly, for our subsidy calculations, we are continuing to rely on Icdas' and Icdas Elektrik's reported and verified actual invoice values in USD for the exempted equipment to determine the amount of the exempted duties, and thus the amount of the contingent liability and the eventual grant (if applicable), converted to TL.

In its case brief, Icdas reiterates its claim that because the grant is received in the year the exempted equipment was imported/VAT waived, we should adjust our waived liability allocation table.[226] Icdas' argument is misguided and improperly premised on Commerce's treatment of a grant as defined under 19 CFR 351.504, again ignoring the clear contingent-liability aspect of the program. The *CVD Preamble* and section 19 CFR 351.506(4)(b)(2) of the Act provide that, "if, at any point in time, the Secretary determines that the event upon which repayment depends is not a viable contingency, the Secretary will treat the outstanding balance as a grant received in the year in which this condition manifests itself." As noted above, Icdas remains liable for the exemptions it received for the imported equipment pending a successful inspection and receipt of a completion visa by the GOT. Thus, the contingent liabilities become grants only once the unpaid duties and VAT are forgiven by the government through the issuance of the final waiver. Accordingly, we are continuing to treat any benefits resulting from the receipt of a completion visa issued in the POR (2016) as grants, and allocating any benefits that pass the 0.05 percent test starting the year after the loan is forgiven. Moreover, as set forth in the *CVD Preamble*, it is Commerce's practice to treat such benefits as a grant bestowed at the time of forgiveness, in this case upon receipt of a completion visa.[227] Thus, we find Icdas' argument that the utilization of a 2016 exchange rate in our calculations overstates its benefit, as some equipment was imported prior to 2016, to be moot. As explained above, Commerce's use of the 2016 exchange rate for the exempted equipment is warranted and necessary because the interest-free loans it receives under the GIIS do not become grants until the completion visa is issued. This is yet another claim by Icdas falsely predicated on the notion that the grant is received at the time of import, which we reject for the aforementioned reasons. Therefore, for any completion visas issued during the POR, we are continuing to apply the 2016 exchange rate. This is consistent with our established practice.[228]

In sum, Icdas' arguments do not lead us to reconsider our finding in the preliminary determination that this program functions as both a contingent-liability, interest-free loan and a grant within the meaning of section 19 CFR 351.505(4)(d)(1) and (2). Accordingly, the only

[223] *See* Colakoglu and Icdas Case Brief at 13.
[224] *Id*. at 14.
[225] *See* Icdas IQR at Exhibit 34.
[226] *See* Colakoglu and Icdas Case Brief at 14.
[227] *See CVD Preamble* at 65370.
[228] *See, e.g., Welded Pipe Turkey Final* IDM at Comment 7.

change we are making with respect to this program for these final results is to revise Icdas' denominator on the basis of AFA.

IX. RECOMMENDATION

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

☒	☐
_____	_____
Agree	Disagree

7/18/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance