



C-489-817
Administrative Review
POR: 1/1/2017 - 12/31/2017
Public Document
E&C AD/CVD OI: Team

DATE: August 5, 2019

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Results of 2017
Countervailing Duty Administrative Review: Oil Country Tubular
Goods from the Republic of Turkey

I. Summary

The Department of Commerce (Commerce) is conducting an administrative review of countervailing duty (CVD) order on oil country tubular goods (OCTG) from the Republic of Turkey (Turkey) for the period of review (POR) January 1, 2017, through December 31, 2017. Commerce preliminarily determines that Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (BMB), Borusan Istikbal Ticaret T.A.S. (Istikbal), Borusan Mannesmann Boru Yatirim Holding A.S. (BMBYH), and Borusan Holding A.S. (Borusan Holding) (collectively, Borusan), received countervailable subsidies at a 1.00 percent *ad valorem* net countervailable subsidy rate during the POR.

II. Background

On September 10, 2014, Commerce published the CVD order on OCTG from Turkey.¹ On September 11, 2018, Commerce published a notice of opportunity to request an administrative review of the CVD order on OCTG from Turkey for the period January 1, 2017, through December 31, 2017.² On September 28, 2018, Commerce received a review request from United

¹ See *Certain Oil Country Tubular Goods from India and the Republic of Turkey: Countervailing Duty Orders and Amended Affirmative Final Countervailing Duty Determination for India*, 79 FR 53688 (September 10, 2014).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 83 FR 45888 (September 11, 2018).



States Steel Corporation, Maverick Tube Corporation, Tenaris Bay City Inc., TMK IPSCO, Vallourec Star, L.P., and Welded Tube USA (domestic interested parties), for BMB and Istikbal.³ On October 1, 2018, BMB requested a review of itself.⁴ On November 15, 2018, Commerce published a notice of initiation of an administrative review of the CVD order on OCTG from Turkey.⁵ On December 3, 2018, Commerce released CBP entry data.⁶ No party submitted comments to Commerce. Consistent with section 777A(e) of the Tariff Act of 1930, as amended (the Act), Commerce is individually examining Borusan, the largest exporter and/or producer of the subject merchandise, by export volume, as the sole mandatory respondent.⁷

On December 3, 2018, Commerce issued the Initial Questionnaire to the Government of Turkey (GOT) and Borusan.⁸ Borusan timely responded to the affiliation section of the Initial Questionnaire on December 17, 2018.⁹ Borusan also timely responded to the remaining sections of the Initial Questionnaire on May 4, 2019.¹⁰ The GOT timely responded to the Initial Questionnaire on January 9, 2019.¹¹ On April 17, 2019, Commerce issued Borusan a supplemental questionnaire, to which Borusan timely responded on May 1, 2019.¹² On April 19, 2019, Commerce issued the GOT a supplemental questionnaire, to which GOT timely responded on May 13, 2019.¹³

On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial closure of the Federal Government from December 22, 2018, through the resumption of operations on January 29, 2019.¹⁴ Accordingly, the deadline for the preliminary results was

³ See Letter from domestic interested parties, “Oil Country Tubular Goods from Turkey: Request for Administrative Review,” dated September 28, 2018.

⁴ See Letter from Borusan, “Oil Country Tubular Goods from Turkey, Case No. C-489-817: Request for Countervailing Duty Administrative Review,” dated October 1, 2018. In the investigation, Commerce determined that BMB and Istikbal are cross-owned and applied a single CVD rate to both companies. See *Certain Oil Country Tubular from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey Final Determination*), and accompanying, Issues and Decision Memorandum (IDM) at 4-5.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 57411, 57418 (November 15, 2018).

⁶ See Memorandum re: Release of U.S. Customs and Border Protection Data, dated December 3, 2018.

⁷ *Id.*

⁸ See Commerce Letter re: Administrative Review of the Countervailing Duty Order on Certain Oil Country Tubular Goods from the Republic of Turkey: Initial Questionnaire, dated December 3, 2018 (Initial Questionnaire).

⁹ See Borusan’s December 17, 2018 Affiliation Response (Borusan Affiliation Response).

¹⁰ See Borusan’s March 12, 2019 Initial Questionnaire Response (Borusan March 04, 2019 IQR).

¹¹ See GOT January 9, 2019 Initial Questionnaire Response (GOT January 9, 2019 IQR).

¹² See Commerce Letter re: Borusan’s Supplemental Questionnaire, dated April 17, 2019, Borusan’s February May 1, 2019 Supplemental Questionnaire Response.

¹³ See Commerce Letter re: GOT’s Supplemental Questionnaire, dated April 19, 2019, and Commerce Letter re: GOT’s Second Supplemental Questionnaire Response, dated May 13, 2019 (GOT May 13, 2019 SQR).

¹⁴ See Memo from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operation, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadline Affected by Partial Shutdown of the Federal Government,” dated January 28, 2019. All deadlines in this segment of the proceeding affected by the partial closure of the Federal government have been extended by 40 days.

rescheduled to July 12, 2019. On July 3, 2019 Commerce extended the deadline for the preliminary results to August 21, 2019.¹⁵

On June 12, 2019, United States Steel Corporation (U.S. Steel), a domestic interested party and a party to this proceeding, timely filed factual information related to the Turkish market for hot-rolled steel (HRS).¹⁶ On June 20, 2019, Borusan submitted information to rebut, clarify or correct the information provided by U.S. Steel.¹⁷

III. Scope of the Order

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

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

The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55,

¹⁵ See Memo to James Maeder, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Administrative Review of the Countervailing Duty Order on Oil Country Tubular Goods from the Republic of Turkey: Extension of Deadline for Preliminary Results,” dated July 3, 2019.

¹⁶ See Letter from United States Steel Corporation, *Certain Oil Country Tubular Goods from the Republic of Turkey: Factual Information in Support of Finding the Turkish HRS Market Distorted*, June 12, 2019 (US Steel NFI).

¹⁷ See Letter from Borusan, *Oil Country Tubular Goods from Turkey, Case No. C-489-817: BMB’s Rebuttal to Petitioner’s Submission of Factual Information*, June 20, 2019 (BMB Rebuttal Submission).

7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

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

IV. Subsidies Valuation Information

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The AUL in this proceeding is 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, which is updated by the Department of the Treasury.¹⁸ This AUL applies unless a party claims and establishes that it does not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. No party in this review disputed the allocation period. Commerce notified the respondents of the 15-year AUL in the Initial Questionnaire and requested data accordingly.¹⁹

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

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce will normally attribute a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. These attribution rules cover subsidies to the following types of cross-owned affiliates: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of Commerce's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or

¹⁸ See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

¹⁹ See Initial Questionnaire at II-2.

more) corporations. The *Preamble* to the Commerce’s regulations further clarifies that the Commerce’s cross-ownership standard is met where:

the interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.²⁰

Thus, Commerce’s regulations make clear that the agency must look at the facts in each case to determine whether cross-ownership exists. The U.S. Court of International Trade (CIT) has upheld Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.²¹

Borusan

Borusan responded to Commerce’s initial questionnaire on behalf of BMB, BMBYH, and Borusan Holding.²² The majority of the equity share capital in both BMB and Istikbal, the trading company, is owned by BMBYH, a holding company, which is majority-owned by Borusan Holding.²³ By virtue of Borusan Holding’s majority shareholdings of BMBYH, and BMBYH’s majority shareholdings of BMB and Istikbal, we preliminarily find that BMB, Istikbal, BMBYH, and Borusan Holding are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).

Borusan stated that, during the POR, neither BMBYH nor Borusan Holding was engaged in production or sales activities that would make them eligible for any of the alleged subsidies in this review.²⁴ Borusan also reported that neither BMBYH nor Borusan Holding received any subsidies from the programs listed in Commerce’s Initial questionnaire.²⁵ Therefore, although we preliminarily find that BMBYH and Borusan Holding are cross-owned with Borusan within the meaning of 19 CFR 351.525(b)(6)(vi), there is no evidence on the record of this proceeding that Borusan Holding or BMBYH received any countervailable subsidies that are attributable to BMB during the POR. On that basis, for these preliminary results, we are attributing subsidies received by BMB (the only company that reported receiving subsidies) to the sales reported by BMB consistent with 19 CFR 351.525(b)(6)(i).

²⁰ See *Countervailing Duties, Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).

²¹ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

²² See Borusan Affiliation Response at 3, 10; see also Borusan March 4, 2019 IQR at 1-2.

²³ See Borusan Affiliation Response at 4 and Exhibit 3.

²⁴ *Id.* at 10.

²⁵ See Borusan March 4, 2019 IQR at 12-50.

BMB produces subject merchandise for both the domestic and export markets. During the POR, BMB accounted for all subject merchandise exported to the United States by Borusan.²⁶ Borusan reported that Istikbal exported its subject merchandise only to non-U.S. locations during the POR;²⁷ thus, the attribution rule under 19 CFR 351.525(c) does not apply.²⁸ Moreover, Borusan reported that Istikbal received no subsidies allocable to the POR. Accordingly, for these preliminary results, we are attributing no subsidy benefits with regard to Istikbal.²⁹

Finally, Borusan identified other affiliated companies with which it was affiliated during the POR based on cross-ownership with Borusan Holding.³⁰ However, because Borusan reported that none of these companies were involved in the production or sale of subject merchandise, provided inputs to BMB for subject merchandise, or were a holding company,³¹ we preliminarily find that these companies do not meet any of the conditions of 19 CFR 351.525(b)(6)(ii)–(v). Therefore, these companies are not included in our subsidy analysis.

C. Denominators

In accordance with 19 CFR 351.525(b)(1)–(5), Commerce considers the basis for the respondent’s receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent’s export sales (where the program is determined to be countervailable as an export subsidy) or total sales (where the program is determined to be countervailable as a domestic subsidy). In the “Analysis of Programs - Programs Preliminarily Determined to Be Countervailable” section below, we describe the denominators used to calculate the countervailable subsidy rate for the various subsidy programs.

D. Benchmark Interest Rates

We are examining export loans and non-recurring, allocable subsidies that Borusan received.³² In the section below, we discuss the derivation of the benchmarks for the POR and previous years.

Short-Term Interest Rate Benchmarks

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,” indicating that a benchmark must be a market-based rate. To determine whether government-provided loans under review conferred a benefit, Commerce uses, where possible, company-specific

²⁶ See Borusan Affiliation Response at 10; *see also* Borusan March 4, 2019 IQR at 1-2.

²⁷ See Borusan Affiliation Response at 3 and 10.

²⁸ See, *e.g.*, *Steel Congrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 82 FR 23188 (May 22, 2017), and accompanying IDM under “Attribution of Subsidies.”

²⁹ See Borusan Affiliation Response at 3, and 10-12.

³⁰ See Borusan Affiliation Response at 4-11 and Exhibit 2.

³¹ *Id.*

³² See 19 CFR 351.524(b)(1).

interest rates for comparable commercial loans obtained by the company.³³ When loans are denominated in a foreign currency, 19 CFR 351.505(a)(2)(i) directs us to use a benchmark denominated in the same foreign currency as the loan. As discussed below, Borusan reported receiving short-term loans from a subsidy program under examination that were denominated in U.S. dollars (USD), Euros (EUR), and Turkish Lira (TL). Borusan also submitted information regarding the interest rates on its comparable commercial short-term loans.³⁴ Consistent with 19 CFR 351.505(a)(2)(ii), we are using the interest rates that Borusan paid on comparable commercial short-term loans as benchmarks to calculate the benefit. To calculate the short-term interest rate benchmarks for Borusan, we derived an annual average of the interest rates on comparable commercial loans that Borusan obtained during the years in which the government loans were issued, weighted by the principal amount of each loan.

Long-Term Benchmark

As discussed above, to determine whether government-provided long-term loans under review conferred a benefit, Commerce uses, where possible, company-specific interest rates for comparable commercial loans.³⁵ Where such benchmark rates are unavailable, consistent with 19 CFR 351.505(a)(3)(ii), we used lending rate data from the International Monetary Fund's International Financial Statistics as our national average benchmark.³⁶

Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), in instances requiring the use of a long-term discount rate, we have used the long-term interest rate calculated according to the methodology described above for the year in which the government approved non-recurring subsidies.

V. Analysis of Programs

Based on our analysis and the responses to Commerce's questionnaires, we preliminarily find the following:

A. Programs Preliminarily Determined to be Countervailable

1. Deductions from Taxable Income for Export Revenue

Addendum 4108 of Article 40 of the Income Tax Law Number 193, effective June 2, 1995, provides that all taxpayers engaged in export activities may claim a lump sum deduction from gross income resulting from exports, and from construction, maintenance, assembly, and

³³ See 19 CFR 351.505(a)(2)(ii).

³⁴ See Borusan's March 4, 2019 IQR at 13, Exhibit A-1 and A-2.

³⁵ See 19 CFR 351.505(a)(2)(ii).

³⁶ See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013), and accompanying IDM at "Benchmarks and Interest Rates."

transportation activities abroad, in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings from such activities.³⁷ The deduction for export earnings may either be taken as a lump sum on a company's annual income tax return or reported under the company's marketing, selling, and distribution expense account of the income statement.³⁸ Under this program, marketing, selling, and distribution expenses are deductible expenditures for tax purposes. The Ministry of Finance is responsible for administering the program.³⁹

Consistent with prior determinations, we preliminarily find that this tax deduction is a countervailable subsidy.⁴⁰ The income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, because it represents revenue forgone by the GOT. The deduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. It is also specific under section 771(5A)(B) of the Act because its receipt is contingent upon export earnings. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of Commerce's prior finding of countervailability for this program.

During the POR, BMB reported using the deduction for export earnings in 2016 against its 2016 income as shown on its 2016 income tax return filed in 2017, the POR.⁴¹

Commerce typically treats a tax deduction as a recurring benefit, in accordance with 19 CFR 351.524(c)(1). The amount of the benefit is equal to the amount of tax that would have been paid absent the program. The total POR benefit to BMB under this program, *i.e.*, the total tax savings in 2017, is the sum of the deductions for 2016, multiplied by the tax rate applicable to BMB. To calculate the countervailable subsidy rate for Borusan, we divided the total tax savings in 2017 by BMB's total export sales value for the POR. On this basis, we preliminarily determine the net countervailable subsidy for this program to be 0.07 percent *ad valorem* for Borusan.⁴²

2. Inward Processing Certificate

The Ministry of Economy administers the Inward Processing Certificate (IPC) program.⁴³ Under the IPC program, companies are exempt from paying customs duties and value-added tax (VAT) on raw materials and intermediate unfinished goods that are imported and used in the production of exported goods, as well as goods sold domestically.⁴⁴ Companies may choose to exercise an exemption from the applicable duties and taxes upon importation (*i.e.*, the suspension system) or to have the duties and taxes reimbursed after exportation of the finished goods (*i.e.* the duty

³⁷ See GOT January 9, 2019 IQR at 21; see also *OCTG from Turkey Final Determination* and accompanying IDM at 8-9.

³⁸ See GOT January 9, 2019 IQR at 21

³⁹ *Id.*

⁴⁰ See *OCTG from Turkey Final Determination* and accompanying IDM at 13-14.

⁴¹ See Borusan March 4, 2019 IQR at 16 and Exhibits B-1, B-2.

⁴² See Memorandum to the File, "Preliminary Results Calculations for Borusan," dated concurrently with this memorandum (Borusan Preliminary Calculation Memorandum).

⁴³ See GOT January 9, 2019 IQR at 23.

⁴⁴ *Id.* at 24-26.

drawback system). Under both systems, companies provide a letter of guarantee that is returned to them upon fulfillment of the export commitment.⁴⁵

To participate in this program, a company must hold an IPC, which lists the quantity of raw materials/intermediate unfinished goods to be imported and the quantity of finished product to be exported.⁴⁶ To obtain an IPC, an exporter must submit an application which provides information about the goods to be produced and the raw materials to be imported.⁴⁷ There are two types of IPCs: (1) D-1 certificates for imported raw materials or intermediate unfinished goods used in the production of exported goods; and (2) D-3 certificates for imported raw materials or intermediate unfinished goods used in the production of goods sold in the domestic market.⁴⁸

Concerning D-1 certificates, pursuant to 19 CFR 351.519(a)(1)(ii), a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input. With regard to the VAT exemption granted under this program, pursuant to 19 CFR 351.517(a), the exemption upon export of indirect taxes provides a benefit to the extent that the Commerce determines that the amount of the exemption exceeds the VAT levied with respect to the production and distribution of like products when sold for domestic consumption

In previous Turkish CVD proceedings, Commerce found that, in accordance with 19 CFR 351.519(a)(4)(i), the GOT had a system in place to confirm which inputs, and in what amounts, were consumed in the production of the exported product, making normal allowance for waste, and that the system was reasonable for the purposes intended.⁴⁹ Commerce also found that the exemption granted on certain methods of payment used in purchasing imported raw materials under this program did not constitute a subsidy pursuant to 19 CFR 351.517(a), because the tax exempted upon export did not exceed the amount of tax levied on like products when sold for domestic consumption.⁵⁰ No new information is on the record of this review that would warrant a reconsideration of Commerce's earlier findings.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 16994 (April 7, 2017) (*CWCS Pipes and Tubes Prelim Results 2015 AR*), and accompanying Preliminary Decision Memorandum (PDM) at 13-16, *unchanged in Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 47479 (October 12, 2017) (*CWCS Pipes and Tubes Final Results 2015 AR*), and accompanying IDM at 7; *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) (*CWCS Pipes and Tube Final Results 2013 AR*), and accompanying IDM at 11-13; and *Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey*, 71 FR 43111 (July 31, 2006), and accompanying IDM at 10-12.

⁵⁰ *Id.*

Borusan reported that BMB received VAT and duty exemptions on imported inputs under D-1 certificates of the IPC program.⁵¹ Consistent with Commerce’s prior findings,⁵² and based on our review of the information provided by Borusan regarding this program, we preliminarily find no evidence on the record of this administrative review indicating that the amounts of VAT and duty exemptions on inputs Borusan imported under the program using D-1 certificates were excessive or that BMB did not use the imported inputs to produce goods for export. Therefore, we preliminarily determine that the tax and duty exemptions that BMB received under D-1 certificates of the IPC program did not confer countervailable benefits, because the exemptions were applied only to imported inputs consumed in the production of the exported product, making normal allowance for waste. We further preliminarily find that the VAT exemption did not confer countervailable benefits to Borusan, because the exemption does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

Borusan also reported that BMB received duty exemptions on imported inputs under D-3 certificates of the IPC program.⁵³ Business activities under the D-3 certificate program are defined as “domestic sales and deliveries considered exports” and that the holder of the D-3 certificates makes domestic sales instead of export sales.⁵⁴ Export commitments are not required in connection with the use of D-3 certificates.⁵⁵ Based on our review of the information provided by Borusan, we preliminarily find use of D-3 certificates themselves is not contingent upon export performance. However, consistent with our finding in *CWCS Pipes and Tubes Final Results 2015 AR*, we preliminarily find that the eligibility for D-3 certificates is contingent upon the firm holding an IPC, and that in granting IPCs, the GOT solicits information regarding the applicants’ export activities.⁵⁶

With regard to the duty exemptions associated with D-3 certificates, pursuant to 19 CFR 351.519(a)(1)(ii), in the case of the exemption of import charges, a benefit exists to the extent that Commerce determines that the duty exemption extends to imported inputs that are not consumed in the production of the exported product, making normal allowances for waste.⁵⁷

We preliminarily find that the duty exemptions under D-3 certificates provide a countervailable subsidy. The duty exemption provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, in the form of revenue forgone by the GOT. In accordance with the criteria specified under 19 CFR 351.519(a)(1)(ii), we preliminary determine that duty exemptions received in connection with D-3 certificates are provided on imported inputs that are not consumed in the production of the exported product and are used in the production of

⁵¹ See Borusan March 4, 2019 IQR at 17-19 and at Exhibits C-2, C-3.

⁵² See, e.g., *CWCS Pipes and Tubes Prelim Results 2015 AR*, and accompanying PDM at 13-16, *unchanged in CWCS Pipes and Tubes Final Results 2015 AR*, and accompanying IDM at 7.

⁵³ See Borusan March 4, 2019 IQR at 17-19 and Exhibits C-2, C-3, C-5.

⁵⁴ See Borusan March 4, 2019 IQR at 18. See also *CWCS Pipes and Tubes Prelim Results 2015 AR*, and accompanying PDM at 15, *unchanged in CWCS Pipes and Tubes Final Results 2015 AR*, and accompanying IDM at 7.

⁵⁵ See *CWCS Pipes and Tubes Prelim Results 2015 AR*, and accompanying PDM at 15, *unchanged in CWCS Pipes and Tubes Final Results 2015 AR*, and accompanying IDM at 7.

⁵⁶ *Id.*

⁵⁷ *Id.* at 15-16.

finished products for sale in the domestic market. Moreover, these duty exemptions result in a benefit within the meaning of section 771(5)(E) of the Act in the amount of the tax and duty exemption or rebate. We also find that the receipt of D-3 certificates is contingent upon a firm receiving an IPC and that, in issuing IPCs, the GOT takes into account the level of a firm's export activity. Thus, because the receipt of D-3 certificates is contingent upon export activities, as one or more eligibility conditions, the program is specific as an export subsidy under 771(5A)(B) of the Act.

Therefore, we preliminarily determine that the duty exemptions on inputs imported for the production of finished products sold in the domestic market that BMB received during the POR under D-3 certificates of the IPC program conferred countervailable benefits. To calculate the net subsidy rate attributable to BMB, we summed all of the duty exemptions provided for the D-3 certificate import purchases during the POR. We divided this sum of benefits by BMB's total FOB export sales value for the POR. On this basis, we find that Borusan received a net countervailable subsidy of 0.10 percent *ad valorem*.⁵⁸

3. Export Financing - Rediscount Program

Borusan reported that BMB received benefits from one Export Financing program, "Rediscount Program" from the Turk Eximbank-TE.⁵⁹ The "Rediscount Program," known previously as the "Short-Term Pre-Shipment Rediscount Program," was established in 1999 to provide financial support to Turkish exporters, manufacturer-exporters and manufacturers supplying exporters.⁶⁰ This program was previously administered only by the Export Credit Bank of Turkey (Turk Eximbank-TE).⁶¹ However, the GOT reported that, effective October 4, 2016, firms can also use this program *via* commercial banks that apply to the Central Bank of the Republic of Turkey (CBRT). As such, these commercial banks, through the CBRT, also administer the program.⁶² This program is contingent upon an export commitment.⁶³ Upon the approval of an exporter's program application, the CBRT instructs the disbursement of the approved TL loan amount, minus interest, to the recipient.⁶⁴ Companies can repay the principal and interest either in the foreign currency in which the loan was obtained, or in the TL equivalent (using the exchange rate determined by the Turk Eximbank-TE).⁶⁵

Commerce previously found this program to be countervailable.⁶⁶ Because the entity providing the assistance is the CBRT, either through the Turk Eximbank-TE or through approved

⁵⁸ See Borusan Preliminary Calculation Memorandum.

⁵⁹ See Borusan March 4, 2019 IQR at 13-16.

⁶⁰ See GOT January 9, 2019 IQR at 6; *see also OCTG from Turkey Final Determination*, and accompanying IDM at 14.

⁶¹ See *OCTG from Turkey Final Determination* and accompanying IDM at 14.

⁶² See GOT January 9, 2019 IQR at 3-6 and Exhibit 1, 2, and 4.

⁶³ *Id.*

⁶⁴ *Id.* at 7.

⁶⁵ *Id.*

⁶⁶ See *OCTG from Turkey Final Determination* and accompanying IDM at 11-12; *see also, e.g., Heavy Walled Rectangular Welded Circular Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*Heavy WRWC Pipe and Tube Turkey Final Determination*), and accompanying IDM at 16-17.

commercial banks,⁶⁷ we determine the program remains consistent with our findings in prior case segments. Additionally, because Borusan reported receiving the loans under this program through the Turk Eximbank-TE,⁶⁸ we continue to evaluate this program consistent with *OCTG from Turkey Final Determination*.⁶⁹ Thus, we preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between what the company paid on the loans during the POR and what the company would have paid on comparable commercial loans, including related lending costs.⁷⁰ The program is also specific, in accordance with section 771(5A)(B) of the Act, because receipt of the loans is contingent upon export performance.

Under this program, the interest on the loan is paid when the loan is received. Therefore, we have calculated the benefit based on loans that were granted during the POR. To compute the benefit, we applied a discounted benchmark interest rate calculated using the respondent's short-term weighted-average commercial USD interest rate, Euro interest rate, and TL interest rate as discussed above at "Benchmark Interest Rates." For each loan, we compared the effective interest that BMB paid to the effective interest that BMB would have paid at the appropriate USD, Euro, or TL benchmark interest rate. We summed the difference between the actual interest paid by BMB and the interest that BMB would have paid at the benchmark rates. In accordance with section 771(6)(A) of the Act, we subtracted from this benefit amount the fees BMB paid to commercial banks for the required letters of guarantee. Our approach in this regard is consistent with Commerce practice.⁷¹ In accordance with 19 CFR 351.525(b)(2), we then divided BMB's net benefit amount by BMB's total fob export sales value for the POR. On this basis, we preliminarily calculate a net countervailable subsidy rate of 0.32 percent *ad valorem* for this program.⁷²

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

Commerce examined the provision of HRS to BMB during the POR. Commerce has previously found that this program provides countervailable subsidies.⁷³ BMB reported purchasing HRS from Eriğli Demir ve Çelik Fabrikaları T.A.S. (Erdemir) and İskenderun Demir ve Çelik A.Ş. (Isdemir) during the POR.⁷⁴

⁶⁷ See GOT January 9, 2019 IQR at 6.

⁶⁸ See Borusan March 4, 2019 IQR at 13 and Exhibit A-1.

⁶⁹ See *OCTG from Turkey Final Determination*, and accompanying IDM at 11-12.

⁷⁰ It is Commerce's practice normally to compare effective interest rates rather than nominal rates in making the loan comparison. See *Preamble*, 63 FR at 65362. "Effective" interest rates are intended to take into account the actual cost of the loan, including the amount of fees, commissions, compensating balances, government charges, or penalties paid in addition to the "nominal" interest rate.

⁷¹ See, e.g., *CWCS Pipes and Tubes Final Results 2015 AR*, and accompanying IDM at 9.

⁷² See Borusan's Preliminary Calculation Memorandum.

⁷³ See *OCTG from Turkey Final Determination*, and accompanying IDM at 26; see also *Heavy WRWC Pipe and Tube Turkey Final Determination*, and accompanying IDM at 11-14 and *CWCS Pipes and Tubes Final Results 2015 AR*, and accompanying IDM at 6-7.

⁷⁴ See Borusan March 4, 2019 IQR at 25.

The information submitted by the GOT in this review with regard to this program remains consistent with our previous findings. The GOT provided information on Erdemir and Isdemir, producers of HRS, as well as Ordu Yardımlaşma Kurumu (OYAK), the Turkish military pension fund that is a shareholder of Erdemir and Isdemir.⁷⁵ During the POR, OYAK owned 49.29 percent of Erdemir's shares through a wholly-owned holding company, Ataer Holding A.S.⁷⁶ Moreover, because 3.08 percent of Erdemir's shares were owned by Erdemir itself in the form of treasury shares,⁷⁷ less than 48 percent of Erdemir's shares were accounted for by other shareholders, thus making OYAK the single largest, and controlling, shareholder of Erdemir. During the POR, Erdemir owned 95.07 percent of Isdemir.⁷⁸

In its initial questionnaire response, the GOT responded to the Input Producer Appendix for Erdemir, Isdemir, and OYAK.⁷⁹ In addition, we asked the GOT to submit certain documents relevant to the Turkish flat steel industry.⁸⁰ The GOT claimed it could not submit these documents under its confidentiality agreements with the European Union.⁸¹ However, the GOT did provide limited public summaries of the contents of these documents.⁸²

The law establishing OYAK (the Military Personnel Assistance and Pension Fund Law), which was enacted on January 3, 1961, states that the GOT created OYAK “as an institution related to the Ministry of Defense.”⁸³ Information in the GOT's questionnaire responses indicates the GOT's significant involvement in OYAK. For example, pursuant to the pension fund law, OYAK's Representative Assembly is comprised of not less than 50 and not more than 100 members of the Turkish Armed Forces “Designated by their respective commanders or superiors.”⁸⁴ The Representative Assembly, in turn, elects 20 of the 40 members of OYAK's General Assembly.⁸⁵ Of the General Assembly's remaining 20 members, 17 are, by statute, government officials (e.g., Ministers of Finance and Defense). Members of the General Assembly elect the eight-person Board of Directors.⁸⁶ Also, OYAK's property has, by law, the “same rights and privileges of state property,” OYAK is exempt from corporate and other taxes, and members of the armed forces must, by law, contribute part of their salaries to OYAK.⁸⁷

⁷⁵ See GOT January 9, 2019 IQR at 30.

⁷⁶ *Id.* at 43 and Exhibit 9 at 4-5 and 9-N.

⁷⁷ *Id.* at Exhibit 9 at 4-5 and Exhibit 9C “OYAK 2017 Annual Report” at 5.

⁷⁸ *Id.*

⁷⁹ *Id.* at Exhibit 9.

⁸⁰ See GOT January 9, 2019 IQR at 36-41 and Exhibits 11-13, 2-4. Specifically, we requested that the GOT provide: 1) Advanced assessment of Turkish state aids to the steel industry (the WYG Report); 2) The Turkish authorities' observations on the WYG Report; 3) the National Restructuring Plan for the Turkish Steel Industry (National Restructuring Plan) and its annexes; and 4) two reports drafted by the Commission in 2008 (Point 2: State aid of May 7, 2008, and Point 3: Capacity Changes of May 7, 2008).

⁸¹ *Id.* at 37 and Exhibit 12.

⁸² *Id.* at 38-41.

⁸³ See GOT's January 9, 2019 IQR at Exhibit 9G, Article 1.

⁸⁴ *Id.* at Exhibit 9G, Article 3.

⁸⁵ *Id.* at Exhibit 9G, Article 4.

⁸⁶ *Id.* at Exhibit 9G, Article 5.

⁸⁷ *Id.* at Exhibit 9G, Articles 18, 35, and 37.

Record evidence indicates that the GOT's significant involvement in OYAK extended to Erdemir and Isdemir during the POR. For example, Erdemir's 2016 Annual Report states, "In 2016 . . . flat steel exports increased by 29%," and Erdemir "aims to meet the present and future needs of the Turkish industry to the highest level by investing in the production of value products."⁸⁸ These policies are in line with the GOT's stated policy in its 2012-2014 Medium Term Programme to improve Turkey's balance of payments.⁸⁹ The 2016 Annual Report indicates sustained growth stating that its "sales revenues stood at US\$ 3.9 billion in 2016," and that it "exported 1.1 million tons of finished products and increased the share of exports" in its "total sales to 12.4%."⁹⁰ Also, the GOT explained that the Turkish Privatization Administration (TPA) holds veto power over decisions on reduction in capacity of Erdemir and Isdemir's integrated steel production facilities and mining facilities.⁹¹ Further, Erdemir's 2016 Annual Report indicates that OYAK and the TPA continue to have members on Erdemir's Board of Directors.⁹²

Additionally, Erdemir's 2017 Annual Report shows continued growth during the POR, stating that Erdemir "realized the highest final flat production in its history, at 7.7 million tons," and that its exports increased "by 10%...{to} 1.2 million tons of steel to 45 countries over a wide geographical area."⁹³ Erdemir's 2017 Annual Report further indicates that OYAK and the TPA continue to have members on Erdemir's Board of Directors.⁹⁴

We preliminarily determine that the record evidence cited above indicates that the GOT exercises meaningful control over Erdemir and Isdemir such that Erdemir and Isdemir possess, exercise, or are vested with, government authority. This meaningful control is evident from both the role of OYAK as an institution through which the GOT exercises control over Erdemir and Isdemir, and the alignment of Erdemir's Annual Report with the Medium Term Programme. Therefore, consistent with the *OCTG from Turkey Final Determination*, we preliminarily determine that Erdemir and Isdemir are public bodies and, hence, "authorities," pursuant to section 771(5)(B) of the Act.⁹⁵ Consequently, we find that the HRS supplied by Erdemir and Isdemir to BMB is a financial contribution in the form of a government provision of a good under section 771(5)(D)(iii) of the Act.

Regarding the specificity of the provision of HRS for LTAR, the GOT provided a list of the industries that purchased HRS in Turkey during the POR: steel pipe and profile, rerolling producers, chain of distribution, machinery manufacturing, automotive, heavy industry, consumer products, pressure purposes (pressure vessels, steam boilers), panel radiator, white

⁸⁸ *Id.* at Exhibit 9C (Erdemir 2016 Annual Report at 3 and 34, respectively).

⁸⁹ See *CWCS Pipes and Tubes Final Results 2013 AR*, and accompanying IDM at 8-11.

⁹⁰ See GOT's January 9, 2019 IQR. at Exhibit 9C (Erdemir 2016 Annual Report at 11).

⁹¹ *Id.* at Exhibit 9A (Erdemir's Articles 21, 22, 27 of Association).

⁹² *Id.* at Exhibit 9C (Erdemir's 2016 Annual Report at 64-65).

⁹³ *Id.* at Exhibit 9C (Erdemir's 2017 Annual Report at 12 and 43).

⁹⁴ *Id.* at Exhibit 9C (Erdemir's 2017 Annual Report at 15).

⁹⁵ See *OCTG from Turkey Final Determination*, and accompanying IDM at Comment 1; see also *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. Unite States*, 61 F. Supp. 3d 1306, 1324 (sustaining Commerce's finding that Erdemir and Isdemir are "authorities").

appliances, and shipbuilding.⁹⁶ Consistent with Commerce’s prior determinations,⁹⁷ we preliminarily determine that the financial contribution provided by the GOT under this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, because the number of industries or enterprises using HRS is limited in number. We also preliminarily determine that the financial contribution provided by the GOT under this program is specific within the meaning of section 771(5A)(D)(iii)(II) of the Act, because the Steel Pipe and Profile industry is the predominant user of HRS.⁹⁸

Regarding benefit, Commerce identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services, in accordance with 19 CFR 351.511(a)(2). This section of Commerce’s regulations specifies potential benchmarks in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided at 19 CFR 351.511(a)(2), the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation,⁹⁹ because such prices generally reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving Turkish buyers and sellers that can be used to determine whether Erdemir and Isdemir sold HRS to the respondent for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where Commerce finds that the government owns or controls the majority, or a substantial portion, of the market for the good or service, Commerce will consider such prices to be significantly distorted and not an appropriate basis of comparison for determining whether there is a benefit.¹⁰⁰

Consistent with Commerce’s prior final determinations, we determine that the record evidence does not support a finding that the Turkish HRS market is so distorted that it cannot serve as a source for an appropriate benchmark.¹⁰¹ The record shows that for 2015, 2016, and 2017, the combined domestic HRS production of Erdemir and Isdemir accounted for 40.27, 38.44, and 36.22 percent of supply, respectively, while imports of HRS accounted for 39.63, 38.67, and

⁹⁶ See GOT January 9, 2019 IQR at 31, 45 and Exhibit 16.

⁹⁷ See *OCTG from Turkey Final Determination*, and accompanying IDM at 20-26; see also *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*Welded Line Pipe from Turkey Final Determination*), and accompanying IDM at 11-14.

⁹⁸ See GOT January 9, 2019 IQR at 30-32.

⁹⁹ See, *e.g.*, *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002), and accompanying IDM at “Market-Based Benchmark.”

¹⁰⁰ See *Preamble*, 63 FR at 65377.

¹⁰¹ See *CWCS Pipes and Tube Final Results 2013 AR*, and accompanying IDM at 10-11; see also *Welded Line Pipe from Turkey Final Determination*, and accompanying IDM at 11-14; and *Heavy WRWC Pipe and Tube Turkey Final Determination*, and accompanying IDM at 13.

34.15 percent in the same years, respectively.¹⁰² Moreover, the record shows no evidence of market-distortive export restraints on HRS, such as export taxes, quotas or licensing requirements.¹⁰³ Given the minority share of government production, the substantial levels of imports, and the lack of other record evidence indicative of distortion, we preliminarily find, consistent with our prior determinations noted above, that the HRS market in Turkey was not distorted by the government's presence for this period. Therefore, we determine that the prices at which Borusan reported both purchasing HRS from domestic HRS producers (other than Erdemir and Isdemir) and importing HRS from foreign suppliers can serve as tier one benchmarks. Accordingly, pursuant to 19 CFR 351.511(a)(2)(i), we used the respondent's actual domestic and import prices for HRS as the benchmark against which to compare Borusan's purchases of HRS from Erdemir and Isdemir, during the POR.

In making this determination for these preliminary results of review, we considered the information and arguments provided in *U.S. Steel NFI* and *Borusan Rebuttal Submission*. U.S. Steel provided information regarding Commerce's finding the existence of a particular market situation (PMS) in Turkey¹⁰⁴ and argued that the PMS finding is dispositive of distortion in the Turkish HRS market. According to U.S. Steel, this distortion renders unusable as tier one benchmarks the observed market prices in Turkey. BMB argued that Commerce cannot rely on the PMS finding in *LDWP from Turkey LTFV* to abandon its history of finding that the Turkish HRS market is not distorted. BMB further argued that Commerce cannot consider whether the PMS decision has an impact on the distortion analysis in this CVD administrative review, because it is currently under review by the CIT. Moreover, according to BMB, the price data provided by U.S. Steel contradict the evidence of a PMS that distorts the HRS market.

The analyses conducted by Commerce under section 773(e) of the Act, to examine whether a PMS exists, and under 19 CFR 351.511, to determine whether goods are being provided for LTAR, are based on different considerations and for different purposes. For purposes of determining whether there is a PMS, Commerce has looked at market factors external and internal to the market at issue.¹⁰⁵ These factors include actions by the government with regard to the market (ownership of production, provision of subsidies) as well as circumstances outside the market (import trends).¹⁰⁶ In the CVD context, the analysis of distortion focuses on whether the price of a government-provided good or service confers a subsidy, and the central focus of this analysis is whether the government's involvement in the market results in distortion such that prices in that market cannot serve as benchmarks for the government price.¹⁰⁷ Commerce normally examines government involvement in the market through the ownership of production and the share of domestic apparent consumption accounted for by government production; and,

¹⁰² See GOT January 9, 2019 IQR at 35.

¹⁰³ *Id.* at 42.

¹⁰⁴ See *Large Diameter Welded Pipe from the Republic of Turkey; Final Determination of Sales at Less Than Fair Value*, 84 FR 6362 (February 27, 2019), and accompanying IDM (*LDWP from Turkey LTFV*).

¹⁰⁵ *Id.* at Comment 1; see also *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 26401 (June 6, 2019), and accompanying IDM at Comment 1.

¹⁰⁶ *Id.*

¹⁰⁷ See, e.g., *Preamble* 63 FR at 65377 ("Where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy" (emphasis added)).

whether the government has taken action that constrains supply, for example, by imposing export taxes, export quotas or other restraints on exports, which leads to an artificial, distortive, oversupply in the domestic market. For these preliminary results, we find that the determination that there is a PMS in Turkey in *LDWP from Turkey LTFV* is not dispositive of distortion in the HRS market for the purpose of identifying a benchmark to measure the adequacy of remuneration.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Because we are using actual domestic and import prices paid by Borusan, the benchmark prices are inclusive of delivery charges, import duties (where applicable), and VAT paid.

We then compared the monthly average benchmark prices to BMB's actual purchase prices on a transaction-specific basis for HRS from Erdemir and Isdemir, including taxes and delivery charges, as appropriate. In instances in which BMB paid Erdemir and Isdemir a lower unit price than the benchmark unit price, we multiplied the difference by the quantity of HRS purchased to calculate the benefit.¹⁰⁸ Under this methodology, we find that Borusan received a benefit to the extent that the prices paid for HRS produced by Erdemir and Isdemir were for LTAR.¹⁰⁹

To calculate the net subsidy rate attributable to Borusan, we summed the benefits resulting from purchases that were made at prices below the applicable benchmark price (*i.e.*, for LTAR) and we divided the aggregate of the benefits by BMB's total sales during the POR. We preliminarily determine a net countervailable subsidy rate of 0.42 percent *ad valorem* for this program.¹¹⁰

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

The GOT provides certificates through the IEP that qualified recipients use to import items duty free. The Council of Ministers' Decision No. 2009/15199, replaced with Decree No: 2012/3305 in June 2012, provides producers Investment Encouragement Certificates to receive customs and VAT exemptions on equipment imported for use.¹¹¹ Investments in excess of TL 50 million and within certain regions are eligible to benefit under this program.¹¹² Additionally, the decree limits such exemptions for iron and steel investments to certain regions.¹¹³ The Ministry of Economy and the Ministry of Customs and Trade administer this program.¹¹⁴ Borusan reported receiving certificates under this program after 2009 and receiving completion visas, representing the final exemption of customs duty and VAT on imports of equipment under this program, during the AUL.¹¹⁵

¹⁰⁸ See Borusan Preliminary Calculation Memorandum.

¹⁰⁹ See section 771(5)(E)(iv) of the Act.

¹¹⁰ See Borusan Preliminary Calculation Memorandum.

¹¹¹ See GOT January 9, 2019 IQR at 27; *see also* GOT May 14, 2019 SQR at 6 and Exhibit 3; *OCTG from Turkey Final Determination*, and accompanying IDM at 16.

¹¹² *OCTG from Turkey Final Determination*, and accompanying IDM at 16.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See Borusan March 4, 2019 IQR at 20-22, Exhibit C-8.

In the *OCTG from Turkey Final Determination*, Commerce found that benefits received under exemption licenses granted after January 1, 2009, conferred countervailable subsidies, and constitute a financial contribution in the form of revenue forgone within the meaning of section 771(5)(E) of the Act in the amount of tax savings.¹¹⁶ We determined that this program is specific under sections 771(5A)(D)(i) and (iv) of the Act, because it is limited to firms making investments in excess of TL 50 million and to firms located in certain geographic regions.¹¹⁷ In a CVD administrative review of the same order, we do not revisit past determinations of countervailability, absent new evidence,¹¹⁸ and none has been presented here. Therefore, we continue to find that this program provides a countervailable subsidy.

As Commerce found in *Welded Line Pipe from Turkey 2015 AR*, there are two types of benefits provided under the IEP program. The first is provided upon the importation of the goods on which the customs duties and VAT are exempted, pending their final waiver with the issuance of a completion visa by the GOT. In *Welded Line Pipe from Turkey 2015 AR*, we treated this benefit as a contingent liability interest free loan, and we calculated the interest that the recipient would have paid during the POR if it had borrowed money to pay the customs duty and VAT otherwise due. The second type of benefit arises when GOT certifies that the investment requirements of the IEP certificate have been met and the customs duty and VAT are finally waived with the GOT's issuance of a completion visa.¹¹⁹ Pursuant to 19 CFR 351.505(d)(2), under such circumstances, we treat the customs duty and VAT exemptions as grants received in the year in which the GOT waived the contingent liability on those exemptions. In accordance with 19 CFR 351.524(c)(2)(iii), because the import duty and VAT exemptions under this program are approved for the purchase of capital equipment and, thus, tied to the company's capital assets, we are treating the import duty and VAT exemptions finally granted with the issuance of a completion visa as a non-recurring benefit as of date of the receipt of the completion visa from the GOT.

In this review, Borusan reported that, although it had no outstanding IEP certificate during the POR, it received completion visas during the AUL for IEP certificates for which it satisfied the requirements for the final waiver of customs duty and VAT. Consistent with our practice, we are calculating a subsidy rate based on the full amount of the duties and VAT forgone by the GOT at the time Borusan received the final approval/closure of the completion visa from the GOT. For each year in which a completion visa was granted, we conducted the 0.5 percent test, using the total amount finally exempted, pursuant to 19 CFR 351.524(b)(2) we found that the benefit was

¹¹⁶ See *OCTG from Turkey Final Determination*, and accompanying IDM at 16. Although Commerce had previously found the program not countervailable, in light of changes to the program that were effective January 1, 2009, we reexamined the program and found it countervailable.

¹¹⁷ See *OCTG from Turkey Final Determination*, and accompanying IDM at 16.

¹¹⁸ See *Magnola Metallurgy, Inc. v. United States*, 508 F.3d 1349 (Fed. Cir. 2007); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 80 FR 41003 (July 14, 2015) and accompanying IDM at 27.

¹¹⁹ See *Welded Line Pipe from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review*; 2015, 83 FR 1237 (January 10, 2018) and accompanying PDM at 14-16, unchanged in *Welded Line Pipe from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*; 2015, 83 FR 34113 (July 19, 2018), and accompanying IDM at 4-11 (*Welded line Pipe from Turkey 2015 AR*).

greater than 0.5 percent of Borusan's total sales in the year the completion visa was granted.¹²⁰ Therefore, we allocated the total benefit over the AUL using the discount rate discussed above in "Discount Rates," to determine the amount attributable to the POR. We divided this total benefit attributable to the POR by the appropriate total sales denominator during the POR.¹²¹ On this basis, we preliminarily determine the countervailable subsidy rate to be 0.09 percent *ad valorem* for Borusan.¹²²

B. Programs Preliminarily Determined Not to Confer a Benefit During the POR¹²³

Borusan reported receiving benefits under various additional programs. Based on the record evidence, we preliminarily determine that the benefits from certain programs: (1) were less than 0.5 percent of the relevant sales value in the year of receipt, and thus, were fully expensed prior to the POR and not allocated to the POR ; or (2) if allocable to the POR, were less than 0.005 percent *ad valorem* in the POR when attributed to the respondent's applicable sales as discussed above in the "Attribution of Subsidies" section above. Consistent with Commerce's practice,¹²⁴ we have not included these programs in our preliminary subsidy rate calculations for Borusan.

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

C. Programs Preliminarily Found Not to be Countervailable

1. Law 687: Social Security Premium Support Program

Borusan reported receiving benefits under this program in its questionnaire response.¹²⁵ The GOT also provided a response with respect to this program.¹²⁶

According to the GOT, this program was established in February 2017 under Decree Law 687 as a provision added to Law 4447; under Turkish law, the program took effect on February 9, 2017.¹²⁷ The Social Security Institution of the GOT administers this program.¹²⁸ The purpose of this program, as set forth in Article 17 of Decree No. 687, is to support all companies that hire

¹²⁰ See GOT May 13, 2019 SQR at Exhibit 2.

¹²¹ See Borusan Preliminary Calculation Memorandum.

¹²² *Id.*

¹²³ See Borusan March 4, 2019 IQR at 46-50 and Exhibit O-1.

¹²⁴ See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) and accompanying IDM at 32, footnote 144.

¹²⁵ See Borusan March 4, 2019 IQR at 49-50, Exhibit O-1.

¹²⁶ See GOT January 9, 2019 IQR at 64-76 and GOT May 13, 2019 SQR at 6-9.

¹²⁷ See GOT January 9, 2019 IQR at 65.

¹²⁸ *Id.* at 66.

new employees who were previously unemployed by reducing the cost of the insurance premiums paid by employers.¹²⁹

We preliminarily find, based on the record information, that the program is not specific within the meaning of sections 771(5A)(A)-(C) of the Act. We also preliminarily find that the program is not *de jure* specific to an enterprise or industry, or group(s) thereof, within the meaning of section 771(5A)(D)(i) of the Act. We further preliminarily find that the program is not used by a limited number of enterprises or industries, and that no enterprise or industry, or group(s) thereof, is a preponderant user or a disproportionate beneficiary of the social security premium support program within the meaning of section 771(5A)(D)(iii) of the Act. In particular, the information on the record for this program demonstrates that: 1) Borusan's benefit compared to that received by other companies is insignificant; and 2) the steel pipe manufacturing sector's benefit compared to that received by other sectors is also insignificant.¹³⁰ Finally, we also preliminarily find that this program is not limited to enterprises located in designated geographic regions and, thus, not specific under section 771(5A)(D)(iv) of the Act. As a result, we preliminarily find that this program is not countervailable during the POR.¹³¹

D. Programs Preliminarily Determined to be Not Used During the POR

- Strategic Investment Incentives
 - i. Tax Reductions
 - ii. Income Tax Withholding
 - iii. Social Security and Interest Support
 - iv. Land Allocation
- Large Scale Investment Incentives
 - i. VAT and Customs Duty Exemptions
 - ii. Tax Reductions
 - iii. Income Tax Withholdings
 - iv. Social Security and Interest Support
 - v. Land Allocation
- Export Insurance Provided by Turk Eximbank
- Preferential Tax Benefits for Turkish OCTG Producers Located in Free Zones
- Incentives for Research and Development Activities
 - i. Product Development R&D Support-UFT
 - ii. Tax Breaks
- Provision of Steam Coal for LTAR
- Investment Encouragement Program: Customs Duty and VAT Exemptions
- Provision of Electricity for LTAR/Law 5084: Energy Support

¹²⁹ *Id.* at 65.

Id. at 73-75 and Exhibit 22; *see also* GOT May 13, 2019 SQR at 7-8 and Exhibits 6 and 7.

¹³¹ *See Large Diameter Welded Pipe from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 30697 (June 29, 2018), and accompanying PDM at 23-24, *unchanged in Large Diameter Welded Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019), and accompanying IDM at 6 (*LDWP from Turkey CVD*). We note that period of investigation examined in *LDWP from Turkey CVD* covered calendar year 2017, which is the same time period examined in the instant review.

- Provision of Land for LTAR
- Law 5084: Withholding of Income Tax on Wage and Salaries
- Exemption from Property Tax
- Law 5084: Incentive for Employers' Share in Insurance Premiums
- Law 6486: Regional Program for Employer's Share of Social Security Withholding
- Eximbank Working Capital Loan
- Export Financing: Pre-Export Credit Program

VI. Recommendation

Based on our analysis, we recommend adopting the preliminary results described above. If this recommendation is accepted, we will publish the preliminary results of review in the *Federal Register*.



Agree



Disagree

8/5/2019

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance