



C-489-830
Administrative Review
3/1/2017-12/31/2017
Public Document
E&C/VII: KT

September 6, 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: Decision Memorandum for the Preliminary Results of
Countervailing Duty Administrative Review: Steel Concrete
Reinforcing Bar from the Republic of Turkey; 2017

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey). The period of review (POR) is March 1, 2017, through December 31, 2017. The mandatory respondent is Habaş Sinai ve Tibbi Gazlar İstihsal Endüstrisi A.Ş. (Habas). We preliminarily find that Habas received countervailable subsidies during the POR.

II. BACKGROUND

On May 22, 2017, and July 14, 2017, Commerce published the CVD *Order* and *Amended Order* on rebar from Turkey, respectively.¹ On July 3, 2018, we published the notice of opportunity to request an administrative review of the *Order* for the period starting March 1, 2017, through December 31, 2017.² On July 30, 2018, Habas submitted its request for an administrative review.³ On September 10, 2018, we published the notice initiating a review of Habas, a producer/exporter of rebar from Turkey.⁴

¹ See *Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 82 FR 23188 (May 22, 2017) (*Order*); and *Steel Concrete Reinforcing Bar From the Republic of Turkey: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 82 FR 32531 (July 14, 2017) (*Amended Order*) (collectively, *Turkey Rebar II Final*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 83 FR 31121 (July 3, 2018).

³ See Habas's Letter, "Steel Concrete Reinforcing Bar from Turkey; Request for CVD administrative review," dated July 30, 2018.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 45596, 45606 (September 10, 2018) (*Initiation Notice*).

We issued the initial questionnaire on February 21, 2019.⁵ On March 7, 2019, we received a timely response to the affiliation questions contained within section III of the initial questionnaire from Habas.⁶ On March 21, 2019, the Rebar Trade Action Coalition (RTAC, or the petitioner)⁷ submitted new factual information to rebut, clarify, or correct information contained within Habas's Affiliation QR.⁸ On April 15, 2019, we received timely initial questionnaire responses from the Government of Turkey (GOT) and Habas.⁹ Subsequently, on April 29, 2019, and April 30, 2019, we received comments from the petitioner in response to the initial questionnaire responses.¹⁰ On June 28, 2019, and July 1, 2019, we issued supplemental questionnaires to the GOT and Habas, respectively.¹¹ Based on the information provided in Habas's Affiliation QR, Commerce requested that Habas provide full questionnaire responses on behalf of three affiliates and two subcontractor companies: Habas Endüstri Tesisleri A.S. (Habas Endüstri), Habas Petrol Ürtmleri Sanayi ve Ticaret A.S. (Habas Petrol), Pegagaz A.S. (Pegagaz), Cebitas Demir Çelik Endüstrisi A.S. (Cebitas) and Osman Sonmez Ins. Taah. (OSIT).¹² The GOT and Habas, along with the identified parties related to Habas, timely responded to the supplemental questionnaires.¹³

On June 18, 2018, the petitioner filed timely new subsidy allegations (NSA), and requested that Commerce examine two additional programs in our review: Comprehensive Investment Incentives and the Provision of Liquefied Natural Gas (LNG) for Less Than Adequate Remuneration (LTAR).¹⁴ Based on the evidence contained within the NSA, on August 1, 2019,

⁵ See Commerce's Letter, "First Administrative Review of Countervailing Duty Order on Steel Concrete Reinforcing Bar from Turkey: Countervailing Duty Questionnaire," dated February 21, 2019.

⁶ See Habas's Letter, "Steel Concrete Reinforcing Bar from Turkey; Habaş "affiliation" questionnaire response," dated March 7, 2019 (Habas Affiliation QR).

⁷ The individual members of the Rebar Trade Action Coalition are Nucor Corporation, Gerdau Ameristeel US Inc., Commercial Metals Company, Byer Steel Group, Inc. and Steel Dynamics, Inc.

⁸ See Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: RTAC's Comments on Habas's Affiliation Questionnaire Response," dated March 21, 2019.

⁹ See GOT's Letter, "First Administrative Review of Countervailing Duty Order on Steel Concrete Reinforcing Bar from Turkey: Questionnaire Response of the Government of Turkey," dated April 15, 2019 (GOT IQR); and Habas's Letter, "Steel Concrete Reinforcing Bar from Turkey; Habas questionnaire response," dated April 15, 2019 (Habas IQR).

¹⁰ See Petitioner's Letters, "Steel Concrete Reinforcing Bar from Turkey: RTAC's Comments on Habas's Initial Questionnaire Response," dated April 29, 2019; and "Steel Concrete Reinforcing Bar from Turkey: RTAC's Comments on GOT's Initial Questionnaire Response," dated April 30, 2019.

¹¹ See Commerce's Letters, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Countervailing Duty Questionnaire," dated June 28, 2019 (GOT SQ); and "Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Countervailing Duty Questionnaire for Habaş Sinai ve Tibbi Gazlar İstihsal Endüstrisi A.Ş.," dated July 1, 2019 (Habas SQ).

¹² See Habas SQ.

¹³ See GOT's Letter, "First Administrative Review of Countervailing Duty Order on Steel Concrete Reinforcing Bar from Turkey: Supplemental Questionnaire Response of the Government of Turkey," dated July 29, 2019 (GOT SQR); see also Habas's Letter, "Steel Concrete Reinforcing Bar from Turkey; Habaş supplemental questionnaire response," dated July 29, 2019 (Habas SQR); Cebitas' Letter, "Steel Concrete Reinforcing Bar from Turkey; Çebitas questionnaire response," dated July 29, 2019 (Cebitas SQR); and OSIT's Letter, "Steel Concrete Reinforcing Bar from Turkey; Osman Sonmez questionnaire response," dated July 29, 2019 (OSIT SQR).

¹⁴ See Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: New Subsidy Allegations," dated May 6, 2019 (Petitioner NSA).

we initiated an investigation into these programs.¹⁵ On August 1, 2019, we issued NSA questionnaires to the GOT and Habas.¹⁶ On August 26, 2019, and August 27, 2019, we received timely responses to the initial NSA questionnaires from the GOT and Habas, respectively.¹⁷

On August 7, 2019, Habas and the petitioner submitted benchmark pricing data for the provision of natural gas for LTAR on the record of this review.¹⁸ On August 19, 2019, Habas and the petitioner submitted rebuttal comments and rebuttal factual information, respectively, regarding the benchmark pricing data for natural gas on the record.¹⁹ On August 15, 2019, Commerce placed additional benchmark pricing data for natural gas on the record, as well as benchmark pricing data for the LNG for LTAR program, and granted interested parties the opportunity to submit rebuttal factual information.²⁰ On August 22, 2019, Habas and the petitioner submitted rebuttal factual information regarding Commerce's benchmark pricing data.²¹ On August 27, 2019, the petitioner submitted pre-preliminary comments for this review, and on August 30, 2019, Habas submitted a response to the petitioner's pre-preliminary comments.²²

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, 2019.²³

¹⁵ See Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: New Subsidy Allegations in Countervailing Duty Administrative Review for 2017," dated August 1, 2019 (NSA Initiation Memorandum).

¹⁶ See Commerce Letters, "Steel Concrete Reinforcing Bar from the Republic of Turkey: New Subsidy Allegation Questionnaire for the Government of the Republic of Turkey in the Countervailing Duty Administrative Review for 2017," dated August 1, 2019; and "Steel Concrete Reinforcing Bar from the Republic of Turkey: New Subsidy Allegation Questionnaire in the Countervailing Duty Administrative Review for 2017," dated August 1, 2019.

¹⁷ See GOT's Letter, "First Administrative Review of Countervailing Duty Order on Steel Concrete Reinforcing Bar from Turkey: New Subsidy Allegation Questionnaire Response of the Government of Turkey," dated August 26, 2019 (GOT NSA QR); see also Habas's Letter, "Steel Concrete Reinforcing Bar from Turkey; Habas NSA questionnaire response," dated August 27, 2019 (Habas NSA QR).

¹⁸ See Habas's Letter, "Steel Concrete Reinforcing Bar from Turkey; Habas natural gas benchmark submission," dated August 7, 2019 (Habas Natural Gas Benchmark); and Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: RTAC's Benchmark Submission," dated August 7, 2019 (Petitioner Natural Gas Benchmark).

¹⁹ See Habas's Letter, "Steel Concrete Reinforcing Bar from Turkey; Habas comments in response to petitioners' natural gas benchmark submission," dated August 19, 2019 (Habas Rebuttal Natural Gas Benchmark); and Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: RTAC's Rebuttal Benchmark Submission," dated August 19, 2019 (Petitioner Rebuttal Natural Gas Benchmark).

²⁰ See Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Benchmark Data for the Provision of Natural Gas for Less Than Adequate Remuneration (LTAR) and the Provision of Liquefied Natural Gas (LNG) for LTAR," dated August 15, 2019 (Commerce Benchmark).

²¹ See Habas's Letter, "Steel Concrete Reinforcing bar from Turkey; Habas LNG benchmark submission," dated August 22, 2019 (Habas LNG Benchmark); see also Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: RTAC's Benchmark Submission Regarding Liquefied Natural Gas," dated August 22, 2019 (Petitioner LNG Benchmark).

²² See Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: RTAC's Pre-Preliminary Determination Comments," dated August 27, 2019 (Petitioner Pre-Preliminary Comments); see also Habas's Letter, "Steel Concrete Reinforcing Bar from Turkey; Habas reply to RTAC pre-preliminary comments," dated August 30, 2019 (Habas Pre-Preliminary Comments). Commerce was unable to fully consider all comments in its preliminary decision given that they were submitted less than two weeks prior to the deadline.

²³ 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.

On March 28, 2019, Commerce extended the deadline for these preliminary results from May 13, 2019, to September 6, 2019.²⁴

III. SCOPE OF THE ORDER

The merchandise subject to this order is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade or lack thereof. Subject merchandise includes deformed steel wire with bar markings (*e.g.*, mill mark, size, or grade) and which has been subjected to an elongation test.

The subject merchandise includes rebar that has been further processed in the subject country or a third country, including but not limited to cutting, grinding, galvanizing, painting, coating, or any other processing that would not otherwise remove the merchandise from the scope of the order if performed in the country of manufacture of the rebar.

Specifically excluded are plain rounds (*i.e.*, nondeformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size, or grade) and without being subject to an elongation test.

At the time of the filing of the petition, there was an existing countervailing duty order on steel reinforcing bar from the Republic of Turkey. *Steel Concrete Reinforcing Bar from the Republic of Turkey*, 79 Fed. Reg. 65,926 (Dep't Commerce Nov. 6, 2014) (2014 Turkey CVD Order). The scope of this countervailing duty order with regard to rebar from Turkey covers only rebar produced and/or exported by those companies that are excluded from the 2014 Turkey CVD Order. At the time of the issuance of the 2014 Turkey CVD Order, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. was the only excluded Turkish rebar producer or exporter.

The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010. The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0017, 7221.00.0018, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6030, 7227.90.6035, 7227.90.6040, 7228.20.1000, and 7228.60.6000.

HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains 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

²⁴ See Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Extension of Deadline for Preliminary Results in 2017 Countervailing Duty Administrative Review," dated March 28, 2019.

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.²⁵ No party in this review disputed the allocation period.

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 the benefits are allocated to the year of receipt rather than across the AUL. Based on this test, we allocated benefits over the AUL in this review.

B. Cross-Ownership

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) directs that Commerce will attribute subsidies received by certain other companies to the combined sales of those companies if: (1) cross-ownership exists between the companies; and (2) the cross-owned companies produce the subject merchandise; are a holding or parent company of the subject company; produce an input that is primarily dedicated to the production of the downstream product; or transfer a subsidy to a cross-owned company.

In accordance with 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *Preamble* to Commerce's regulations further clarifies Commerce's cross-ownership standard.²⁶ According to the *Preamble*, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.²⁷

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case to determine whether cross-ownership exists. The U.S. Court of International Trade (CIT) has upheld Commerce's authority to attribute subsidies based on whether a company could

²⁵ See *Turkey Rebar II Final*, and accompanying Issues and Decision Memorandum (IDM), at 3.

²⁶ See *Countervailing Duties, Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).

²⁷ *Id.*, 63 FR at 65401.

use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.²⁸

In response to Commerce's affiliation questionnaire, Habas reported multiple affiliated companies.²⁹ As noted above, Commerce subsequently requested that Habas submit complete questionnaire responses on behalf of three affiliates, namely Habas Endustri, Habas Petrol and Pegagaz, that supplied Habas with inputs, such as scrap, for the production of subject merchandise.³⁰ Based on the information contained in Habas's affiliation questionnaire response, we preliminarily find that Habas, Habas Endustri, Habas Petrol and Pegagaz are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi).³¹ Furthermore, consistent with our finding in *Turkey Rebar II Final*,³² because Habas Endustri, Habas Petrol, and Pegagaz supply inputs that are primarily dedicated to the production of subject merchandise under 351.525(b)(6)(iv), subsidies received by these affiliates will be attributed to Habas as discussed in the "Denominators" section, below.

In addition to its affiliates, Habas identified an unaffiliated subcontractor, namely Cebitas, to which it outsourced the rolling of billets into rebar during the POI.³³ Habas described its relationship with Cebitas as "a tolling agreement," in which Habas provides billets to Cebitas, who then rolls the billets into rebar for a service fee.³⁴ As noted above, Commerce subsequently received a full questionnaire response from Cebitas.³⁵ We preliminarily determine that the record reflects a relationship between Cebitas and Habas that is akin to the relationship between a producer and its trading company under 19 CFR 351.525(c). Accordingly, we are preliminarily cumulating the benefits from subsidies provided to Cebitas with benefits from subsidies provided to Habas, in a manner similar to the attribution of a trading company's subsidies to an unaffiliated producer. We find that such a determination is consistent with the general understanding of attribution of subsidies, as reflected in Commerce's regulations and further addressed in the *Preamble*, as cited above. This finding is also consistent with Commerce's determination regarding Cebitas in *Turkey Rebar II Final*.³⁶

Habas identified another unaffiliated subcontractor, namely OSIT, which subsequently submitted a full questionnaire response, as noted above.³⁷ We find that Habas and OSIT are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) because, under the relevant agreement, Habas

²⁸ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

²⁹ See Habas Affiliation QR, at Exhibit 1.

³⁰ *Id.* at 4.

³¹ *Id.*

³² See *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) (*Turkey Rebar II Prelim*), and accompanying Preliminary Decision Memorandum (PDM), at 6-7, unchanged in *Turkey Rebar II Final*.

³³ See Habas Affiliation QR, at 3.

³⁴ *Id.*, at 3.

³⁵ See Cebitas SQR.

³⁶ See *Turkey Rebar II Prelim*, and accompanying PDM, at 6-7, unchanged in *Turkey Rebar II Final*.

³⁷ See OSIT SQR.

has the capacity to use or direct OSIT's assets in the same way it would use its own assets.³⁸ As such, within the framework of the 19 CFR 351.525(b)(6), any subsidies received by OSIT are attributable to Habas. This finding is also consistent with Commerce's determination regarding OSIT in *Turkey Rebar II Final*.³⁹

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondents' receipt of benefits under each program when attributing subsidies (*e.g.*, to the respondent's export sales for export subsidies or to the respondent's total sales for domestic subsidies). For more information regarding the classification of subsidies as export or domestic, *see* the Preliminary Analysis Memorandum.

As discussed above, Habas Endustri, Habas Petrol and Pegagaz provided Habas with inputs the production of subject merchandise during the POR. Therefore, subsidies received by these affiliates are attributed to the combined sales of Habas and each input supplier, respectively, in accordance with 19 CFR 351.525(b)(6)(iv). Similarly, Commerce also attributes subsidies received by Habas's two subcontractors, Cebitas and OSIT, to Habas. Consequently, any subsidies received by the subcontractors must be cumulated with subsidies received by Habas. However, as noted in the "Analysis of Programs" section below, only Habas received subsidies related to the programs that we preliminarily determine to be countervailable.

D. Loan Benchmarks and Discount Rates

We are examining export financing provided by the GOT under the Rediscount Program. To determine whether government provided loans confer a benefit, we use, where possible, company-specific interest rates for comparable commercial loans.⁴⁰ Under 19 CFR 351.505(a)(2)(iv), when calculating a company-specific short-term benchmark interest rate, Commerce will normally "use an annual average of the interest rates on comparable commercial loans during the year in which the government provided loan was taken out, weighted by the principal amount of each loan." Further, 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 government provided loan. Habas reported that it paid interest against rediscount loans during the POR and provided short-term U.S. dollar (USD) commercial loan data for benchmarking purposes.⁴¹

To calculate the benefit from the rediscount loans, we preliminarily used the USD short-term commercial loans data provided by Habas to derive a weighted-average benchmark rate specific

³⁸ See Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Analysis and Calculations for the Preliminary Countervailing Duty 2017 Administrative Review," dated concurrently with this memorandum (Preliminary Analysis Memorandum).

³⁹ See *Turkey Rebar II Prelim*, and accompanying PDM, at 6-7, unchanged in the *Turkey Rebar II Final*.

⁴⁰ See 19 CFR 351.505(a)(2)(i).

⁴¹ See Habas IQR, at 13, Exhibit 9 and Exhibit 10.

to Habas, because those are comparable commercial loans that the company could obtain on the market during the POR, pursuant to 19 CFR 351.505(a)(3).⁴²

To calculate the benefit received from the Investment Encouragement Program, we relied on long-term interest rates taken from *International Financial Statistics (IFS)*, published by the International Monetary Fund (IMF). The use of the IFS data for benchmarking purposes is consistent with Commerce's past practice in Turkish proceedings.⁴³

V. ANALYSIS OF PROGRAMS

Based on our analysis of the record information, we preliminarily find the following:

A. Programs Preliminarily Determined To Be Countervailable

1. Provision of Natural Gas for LTAR

In the underlying investigation of this review, Commerce found that Habas receives countervailable subsidies through the provision of natural gas for LTAR for purchases from Boru Hatlari ile Petrol Taşıma A.Ş. (BOTAS), a state economic enterprise.⁴⁴ Habas reported that during the POR, it purchased natural gas from BOTAS for power generation, as well as other applications.⁴⁵ Habas Endustri, Habas Petrol, Pegagaz, Cebitas, and OSIT did not purchase natural gas from BOTAS during the POR.⁴⁶ The GOT reported that there was no change to the ownership structure of BOTAS in 2017.⁴⁷ Thus, during the POR, BOTAS remained a state economic enterprise with 100 percent of its capital owned by the Undersecretariat of Treasury of Prime Ministry, which is a central government agency.⁴⁸ The GOT also reported that *Decree Law No. 233 (Law 233)* was still in effect during the POR.⁴⁹ In accordance with Article 6 of *Law 233*, all of BOTAS's board members are appointed by the Turkish President and the Turkish Prime Minister.⁵⁰ The GOT stated that all board members and senior managers are government

⁴² This approach is consistent with Commerce's practice in prior cases. See, e.g., *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) (*Turkey Pipe 2015 Final*), and accompanying IDM at Comment 2; *Coated Free Sheet Paper from the Republic of Korea: Notice of Final Affirmative Countervailing Duty Determination*, 72 FR 60639 (October 25, 2007), and accompanying IDM at Comment 19; and *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 77 FR 13093 (March 5, 2012), and accompanying IDM at Comment 1.

⁴³ 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 Sacilor 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).

⁴⁴ See *Turkey Rebar II Prelim PDM*, at 9-13, unchanged in the *Turkey Rebar II Final*.

⁴⁵ See Habas IQR, at 9-12 and Exhibit 6.

⁴⁶ See Habas SQR, at 10; Cebitas SQR, at 9; and OSIT SQR, at 8.

⁴⁷ See GOT IQR, at 5.

⁴⁸ *Id.* at 5 and Exhibit 1.

⁴⁹ *Id.* at 6-8 and Exhibit 4.

⁵⁰ *Id.*

officials.⁵¹ Further, under Articles 29-32 of *Law 233*, all of BOTAS's investment decisions must be approved by the GOT's Council of Ministers and be "in line with determined government programs."⁵² Additionally, all of BOTAS' profits are "transferred to the Treasury" in line with Article 36 of *Law 233*.⁵³ Consequently, we preliminarily find BOTAS to be a government authority within the meaning of section 771(5)(B) of the Act, which provides a financial contribution in the form of a good pursuant to section 771(5)(D)(iii) of the Act, consistent with our determination in the underlying investigation.⁵⁴

Regarding specificity, the GOT reported that, in 2017, the total consumption of natural gas in Turkey was 53,857.14 million standard cubic meters (Sm³)⁵⁵ and that BOTAS sold a significant majority of the natural gas consumed.⁵⁶ In the underlying investigation, data on the record indicated that power producers accounted for the highest sector-specific ratio of natural gas purchases in 2015.⁵⁷ There is no information on the record indicating that the Turkish natural gas market has changed significantly during the POR. Accordingly, we preliminarily find that the natural gas sold by BOTAS is predominantly used by, and specific to, power producers, including Habas, within the meaning of section 771(5A)(D)(iii)(II) of the Act. This is consistent with our finding in the underlying investigation.⁵⁸

Regarding the benefit for natural gas received by Habas, under 19 CFR 351.511(a)(2), Commerce sets forth the basis for identifying an appropriate market-determined benchmark for measuring the adequacy of remuneration for government provided goods or services. These potential benchmarks are listed in order of preference: (1) market prices from actual transactions of the good within the country in question (*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 in question (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided in the regulations, the preferred benchmark in the hierarchy is an observed market price for the good at issue from actual transactions within the country in question.⁵⁹ Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country where Commerce finds that the government provides the majority or, in certain circumstances, a substantial portion of the market for a good or service, prices for such goods and services in the country will be considered significantly distorted and will not be an appropriate basis of comparison for determining

⁵¹ *Id.* at 10.

⁵² *Id.*, at 7 and Exhibit 4.

⁵³ *Id.*

⁵⁴ See *Turkey Rebar II Prelim PDM*, at 9-13, unchanged in the *Turkey Rebar II Final*.

⁵⁵ See GOT IQR, at 11.

⁵⁶ *Id.* at 16. The total volume of domestic sales that were accounted for by BOTAS in 2017 is business proprietary information.

⁵⁷ See *Turkey Rebar II Prelim PDM*, at 10.

⁵⁸ See *Turkey Rebar II Prelim PDM*, at 9-13, unchanged in the *Turkey Rebar II Final*, and accompanying IDM, at 8-12.

⁵⁹ See, *e.g.*, *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Canada Softwood Lumber*), and accompanying IDM, at Provincial Stumpage Programs Determined to Confer Subsidies: Market-Based Benchmark (stating, "Thus, the preferred benchmark in the hierarchy is an observed market price for the good, in the country under investigation, from a private supplier.").

whether or not there is a benefit.⁶⁰ As explained above, BOTAS's natural gas sales account for a significant majority of Turkey's natural gas consumption during the POR.⁶¹ The GOT also reported that domestically-produced natural gas, half of which is produced by a GOT entity, accounts for only 0.64 percent of Turkey's total natural gas consumption in 2017.⁶² Furthermore, all natural gas consumed in Turkey, regardless of whether it is produced domestically or imported, is transported *via* pipelines owned and operated by BOTAS.⁶³

Due to the GOT's overwhelming dominance in the Turkish natural gas market, the use of private transaction prices in Turkey to calculate a benefit would be akin to comparing the benchmark to itself (*i.e.*, such a benchmark would reflect the distortions of the government's presence in the market).⁶⁴ Therefore, we preliminarily conclude that there is no viable tier one benchmark for natural gas in Turkey during the POR, which consistent with Commerce practice.⁶⁵

Under 19 CFR 351.511(a)(2)(ii), if there is no useable market-determined price to make the comparison under a tier one benchmark, then the government price is compared to a world market price where it is reasonable to conclude that such price would be reasonably available to purchasers in the country in question (*i.e.*, a tier two benchmark). In this review, the petitioner provided benchmark data for country-specific natural gas prices in Europe from the International Energy Agency (IEA), as well as information regarding the European Union's (EU) imports of natural gas during the POR.⁶⁶ Habas, on the other hand, provided EU natural gas imports from Russia from the United Nations (COMTRADE) database for use as an appropriate benchmark.⁶⁷ Habas also provided evidence that Russian export prices to the EU are market-driven rather than politically motivated, and therefore not subject to price distortions.⁶⁸

Commerce has previously found that the only applicable tier two benchmark price for natural gas in Turkey "would be the price which is valid in those countries that are connected to Turkey

⁶⁰ See *Preamble*, 63 FR at 65377.

⁶¹ See GOT IQR, at 11. The total volume of domestic sales that were accounted for by BOTAS in 2017 is business proprietary information.

⁶² *Id.* at 11-12 (reporting that TPAO, a wholly-owned GOT entity, produced 257.49 million Sm³ of natural gas and total domestic production was 354.15 million Sm³).

⁶³ *Id.* at 17.

⁶⁴ See *Canada Softwood Lumber*, IDM, at 38-39 (stating that such an analysis "would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.").

⁶⁵ See, e.g., *Turkey Rebar II Prelim*, and accompanying PDM, at 10-11, unchanged in *Turkey Rebar II Final*; see also *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) (*Turkey Rebar I 2016 Prelim*), and accompanying PDM, at 20-21, unchanged in *Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review*; 2016, 84 FR 36051 (July 26, 2019) (*Turkey Rebar I 2016 Final*).

⁶⁶ See *Petitioner Natural Gas Benchmark*, at Exhibit 1, Exhibit 2 and Exhibit 6.

⁶⁷ See *Habas Natural Gas Benchmark*, at 3 and Exhibit 2. Habas also notes at n.2: "Alternatively, Habas would not object if {Commerce} were to use the aggregated COMTRADE data for the top five countries supplying {natural gas to} the EU, namely, Russia, Norway, Algeria, Libya, and Ukraine."

⁶⁸ *Id.*, at Exhibit 3 and Exhibit 4.

through natural gas pipelines” (*i.e.*, Russia, Azerbaijan, and Iran).⁶⁹ European natural gas prices are, therefore, not available to purchasers in Turkey, as these countries are not connected to Turkey *via* natural gas pipelines (*i.e.*, the only method for transporting natural gas into Turkey).⁷⁰ Consequently, we preliminarily find that the IEA European natural gas prices cannot serve as tier two benchmarks under 19 CFR 351.511(a)(2)(ii). As discussed below, we also preliminarily find that natural gas prices from Russia, Azerbaijan and Iran cannot serve as tier two benchmarks.

Regarding Iran and Azerbaijan, neither Habas nor the petitioner has argued for the use of natural gas prices from these countries.⁷¹ Furthermore, Commerce has previously found Azerbaijani natural gas prices to be unusable for benchmark purposes.⁷² With regard to Russia, we preliminarily find that Russian natural gas export prices are distorted and, therefore, unsuitable for use in constructing the natural gas benchmark. Commerce has previously found that Russia’s domestic natural gas market is distorted by the Government of Russia’s (GOR) monopoly over the sales and distribution of natural gas through Gazprom, a state-owned entity, and thus unusable for benchmark purposes.⁷³ Commerce has also previously found that the GOR’s control over domestic natural gas prices extends to Russian export pricing due to the GOR’s position as a dominant supplier in the international market, which enables it to leverage natural gas prices and supplies for geopolitical purposes.⁷⁴

Despite this precedent, Habas argues that Russian natural gas export prices to the EU are market-driven, not political, and are, therefore, suitable for use in constructing a natural gas benchmark.⁷⁵ Habas has submitted evidence on the record of this proceeding to support its argument regarding Russian natural gas prices, including: 1) a statistical analysis comparing Russian prices with other, market-oriented natural gas exporters, using COMTRADE pricing data;⁷⁶ 2) a Gazprom policy report concerning its approach to the EU market;⁷⁷ 3) a 2018 press release from the European Commission regarding an antitrust settlement made with Gazprom;⁷⁸ and 4) an analysis of Gazprom’s activity in the EU from the Oxford Institute of Energy Studies (OIES).⁷⁹ In response, the petitioner submitted rebuttal factual information from several sources

⁶⁹ See *Turkey Rebar I 2016 Prelim PDM*, at 23 (citing *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) (*Turkey Rebar I 2015 Final*), and accompanying IDM, at 12).

⁷⁰ See *Turkey Rebar I 2016 Prelim PDM*, at 22-23, unchanged in *Turkey Rebar I 2016 Final*.

⁷¹ As detailed below, Commerce preliminarily finds the COMTRADE data to be unusable for benchmark purposes. We are thus not relying on the Iranian and Azerbaijani natural gas prices on the record, as they are sourced from COMTRADE.

⁷² *Id.*

⁷³ See *Turkey Rebar I 2016 Prelim PDM*, at 22, unchanged in *Turkey Rebar I 2016 Final*; see also *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) (*Russia Cold-Rolled Steel*), and accompanying IDM, at Comment 5.

⁷⁴ See *Turkey Rebar I 2016 Prelim PDM*, at 22, unchanged in *Turkey Rebar I 2016 Final*.

⁷⁵ See *Habas Natural Gas Benchmark*, at 3-8.

⁷⁶ *Id.*, at 3-5, Exhibit 2 and Exhibit 3.

⁷⁷ *Id.*, at Exhibit 4A.

⁷⁸ *Id.*, at Exhibit 4B.

⁷⁹ *Id.*, at Exhibit 4C.

supporting Commerce’s previous finding that Russian natural gas prices are, in fact, distorted due to the GOR’s ability to leverage prices for geopolitical purposes.⁸⁰

Commerce is not convinced by Habas’s purported evidence suggesting that Russian natural gas exports are market-driven. As explained in detail below, we preliminarily find that the COMTRADE data and, by extension, Habas’s statistical analysis using this data, are unreliable and, thus, unusable for purposes of this review. We also do not find Gazprom’s policy report to be a reliable and unbiased source in this matter. Furthermore, as a 2018 European Parliament report, submitted on the record by the petitioner, states:

Though Russia will never admit when its energy policy decisions are driven by geopolitics, and Gazprom...will always put forward a commercial justification for a policy, when considering a number of instances of supply disruption or pricing disputes, a geopolitical pattern emerges. Simply put, the country has shown a willingness to abuse its dominant market position in support of foreign policy goals.⁸¹

Regarding the European Commission’s antitrust settlement with Gazprom, which “imposes binding obligations on Gazprom to enable free flow of gas at competitive prices in Central and Eastern European gas markets,”⁸² this settlement was not put into effect until after the POR (*i.e.*, it was not implemented until May 24, 2018), and, therefore, has no bearing on this proceeding.⁸³ Similarly, the OIES report acknowledges that, as of March 2018 (*i.e.*, the date of the OIES publication), although “Gazprom has been encouraged to use more competitive pricing by the European Commission...a final resolution has been delayed by on-going negotiations over the finer details.”⁸⁴ Furthermore, information on the record continues to support the fact that Russia can, and does, distort the natural gas market for its own geopolitical purposes.⁸⁵ We, therefore, continue to find that, due to the GOR’s practice of distorting the natural gas market for its own geopolitical purposes, Russian export prices are unsuitable for use in constructing the natural gas benchmark during the POR. This finding is consistent with Commerce practice.⁸⁶

Thus, we preliminarily find that we have no natural gas prices on the record that may serve as tier two benchmarks within the meaning of 19 CFR 351.511(a)(2)(ii) and, thus, must turn to a tier three “market principles” analysis under 19 CFR 351.511(a)(2)(iii) to determine adequate remuneration for natural gas in Turkey.

⁸⁰ See Petitioner Rebuttal Natural Gas Benchmark, at Exhibits 3-10.

⁸¹ *Id.*, at Exhibit 3, page 13.

⁸² See Habas Natural Gas Benchmark, at Exhibit 4B.

⁸³ *Id.*

⁸⁴ *Id.*, at Exhibit 4C, page 4.

⁸⁵ See, *e.g.*, Petitioner Rebuttal Natural Gas Benchmark, at Exhibit 3, page 4, (stating “Gazprom’s policies are shaped by both commercial considerations as well as Russia’s foreign policy objectives... {including} manipulating the pricing policy of energy supplies to their countries; controlling energy assets, such as pipelines and gas operators in key countries; cutting, or disrupting gas supplies; agreeing restrictive supply contracts; {and} developing alternative supply routes to divert gas flows.”).

⁸⁶ See, *e.g.*, *Turkey Rebar I 2016 Prelim PDM*, at 22, unchanged in *Turkey Rebar I 2016 Final*.

Based on further record evidence as discussed below, we preliminarily find that the IEA data on the record for EU natural gas prices, adjusted for the contribution of Russia's distorted export prices to the EU during the POR, are suitable as a basis for our tier three analysis. This is the same methodology used to calculate a natural gas benchmark in *Turkey Rebar I 2016 Final*.⁸⁷

As noted above, the petitioner provided benchmark data for country-specific natural gas prices in Europe from the IEA, as well as information regarding the EU's imports of natural gas during the POR.⁸⁸ Habas, on the other hand, provided monthly EU natural gas imports from Russia from COMTRADE for use as an appropriate benchmark.⁸⁹ Habas also provided factors to convert Habas's natural gas purchases, which were reported by Habas in cubic meters and kilowatt hours (KWh), into kilograms, which is the reported unit used in the COMTRADE data.⁹⁰ In its benchmark rebuttal, the petitioner submitted additional EU import data from Eurostat, which reported a different import quantity from Russia for ten of the eleven European countries included in the COMTRADE data.⁹¹ These differences between the COMTRADE and Eurostat data range from negative 30 percent to 92 percent, with an average difference of 8.45 percent.⁹² Similar discrepancies exist for European import data for natural gas sourced from other countries on the record.⁹³ Additionally, because there is no underlying report to accompany the COMTRADE import data (like there is for the IEA data), Commerce cannot analyze how the import data were collected; specifically, it is unknown how the natural gas imports were originally reported and how COMTRADE converted the original reported quantities into kilograms. As the petitioner notes, this information "is particularly important for a good such as natural gas, where conversion rates can vary based on factors such as pressure and temperature."⁹⁴ The petitioner also submitted additional information regarding the conversion of natural gas measurements from kilograms to cubic meters, which is necessary to use the COMTRADE data to construct a natural gas benchmark.⁹⁵ While Habas's reported ratios for converting kilograms to cubic meters range from 0.73 to 0.75,⁹⁶ two of the sources submitted by the petitioner report a conversion ratio that ranges from 0.7 to 0.9.⁹⁷

The discrepancies highlighted above regarding the reported COMTRADE and Eurostat import data, as well as variable conversion rates on the record that are necessary to use the COMTRADE data in the first place, render the COMTRADE data unreliable for the purposes of this proceeding. This finding is consistent with the underlying investigation, in which

⁸⁷ See *Turkey Rebar I 2016 Final* IDM, at Comment 1.

⁸⁸ See Petitioner Natural Gas Benchmark Submission, at Exhibit 1, Exhibit 2 and Exhibit 6.

⁸⁹ See Habas Natural Gas Benchmark Submission, at 3 and Exhibit 2. Habas also notes at n.2 ("Alternatively, Habas would not object if {Commerce} were to use the aggregated COMTRADE data for the top five countries supplying {natural gas to} the EU, namely, Russia, Norway, Algeria, Libya, and Ukraine."). *Id.*

⁹⁰ *Id.*, at Exhibit 1.

⁹¹ See Petitioner Rebuttal Natural Gas Submission, at Exhibit 1.

⁹² *Id.* The data file submitted for Exhibit 1 shows a difference of negative 30 percent for Hungary (*i.e.*, -977.1 million kg divided by 3.2 billion kg) and a difference of 92 percent for the Czech Republic (*i.e.*, 4.6 billion kg divided by 5 billion kg). See Preliminary Analysis Memorandum for a complete discussion of the data comparison.

⁹³ See Preliminary Analysis Memorandum for a complete discussion of the data comparison.

⁹⁴ See Petitioner Pre-Preliminary Comments, at 10.

⁹⁵ See Petitioner Rebuttal Natural Gas Submission, at Exhibit 2.

⁹⁶ See Habas Natural Gas Benchmark Submission, at Exhibit 1.

⁹⁷ See Petitioner Rebuttal Natural Gas Submission, at Exhibit 2.

Commerce rejected the use of natural gas export prices sourced from Global Trade Information Services (GTIS) due to inconsistent conversion factors.⁹⁸ We, therefore, preliminarily find that the natural gas pricing data from the IEA report, for which there is no conflicting data on the record and no conversion calculation required, as the best available information for constructing a natural gas benchmark under our tier three analysis.

Habas submitted rebuttal benchmark comments arguing that the IEA data is “selective, unrepresentative and opaque.”⁹⁹ However, we are not persuaded by Habas’s arguments regarding the unreliability of European natural gas prices provided in the IEA report. Commerce has previously found that the IEA benchmark data for natural gas are “thoroughly analyzed and annotated, and published and distributed as part of a comprehensive energy price report.”¹⁰⁰ Furthermore, Commerce’s use of IEA data for the natural gas benchmark in the underlying investigation of this review has been upheld by the CIT.¹⁰¹ Given Commerce precedent for using IEA data to construct a natural gas benchmark in Turkey,¹⁰² along with the unreliability of the COMTRADE data as described above, we preliminarily find that IEA report is the best available information on the record for constructing a natural gas benchmark.

The data contained in the 2018 IEA report on the record include annual natural gas ex-tax prices for 22 European countries, 20 of which are members of the EU and have annual prices available.¹⁰³ Consistent with Commerce practice, we are preliminarily using ex-tax prices for industry users and electricity generation for the construction of the natural gas benchmark.¹⁰⁴ Ex-tax prices are defined in the IEA report as “corresponding to all non-tax expenses, including manufacturing costs, distribution and network charges as well as the profit margins for the companies involved in the manufacturing chain.”¹⁰⁵ In other words, this price “includes all expenses one would expect to find in a fully loaded retail price, except for taxes,” which appears to be identical to the level of trade at which BOTAS supplies natural gas to Habas (*i.e.*, Habas is a retail customer of BOTAS, not a wholesaler or a distributor).¹⁰⁶ Therefore, BOTAS’ provision of gas to Habas 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 Habas, that is precisely the type of non-market distortion that Commerce is attempting to account for in its benefit calculation. As noted in *Turkey Rebar I 2016 Final*, “Commerce is not attempting to find a benchmark that replicates BOTAS behavior, but a benchmark that replicates the behavior of a commercially motivated supplier.”¹⁰⁷

⁹⁸ See *Turkey Rebar II Final IDM*, at 9-10.

⁹⁹ See Habas Rebuttal Natural Gas Benchmark, at 1.

¹⁰⁰ See *Turkey Rebar Final Determination IDM*, at Comment 4.

¹⁰¹ See *Rebar Trade Action Coalition v. United States*, Consol. Court No. 17-00202, Slip Op. 19-65 (CIT May 31, 2019).

¹⁰² *Id.*, see also *Turkey Rebar I 2016 AR IDM*, at Comment 1.

¹⁰³ See Petitioner Natural Gas Benchmark, at Exhibit 2, “Quarterly Statistics Energy Prices and Taxes” for the second quarter 2018. We note that the only non-EU country in the IEA report is Switzerland, and the only EU country without an annual average reported is Greece.

¹⁰⁴ See *Turkey Rebar I 2016 Final IDM*, at 19-20.

¹⁰⁵ See Petitioner Natural Gas Benchmark Submission, at Exhibit 2, the IEA report for the second quarter 2018, page 17.

¹⁰⁶ See *Turkey Rebar I 2016 Final IDM*, at 20.

¹⁰⁷ *Id.*

To calculate the EU average unit value (AUV) from the IEA data, we averaged the annual ex-tax prices from 20 EU countries for both industry users and electricity generation. Of the 20 EU countries, only seven countries had reported prices for electricity generation. In order to ensure that the small number of prices for electricity generation do not disproportionately skew the EU AUV, we first averaged the annual industry use and electricity generation prices from the 21 EU countries during the POR, and then averaged these two average prices. Given that the record demonstrates that Russian export prices are distorted (as described above), any Russian shipment to the EU leads to a corresponding distortion of the average EU price reported by the IEA. 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 natural gas market in the EU and that 39.3 percent of those imports came from Russia during the POR.¹⁰⁸ We also relied on information submitted on the record by Commerce, which indicates the average price of Russian exports to the EU during the POR.¹⁰⁹ To account for the distortion, we multiplied the Russian export AUV by Russia's share of the EU natural gas market (*i.e.*, 26.33 percent, considering that 1) an estimated 67 percent of the EU market for natural gas is comprised of imports, and 2) Russia supplied 39.3 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.* 73.67 percent, based on our estimate above that 26.33 percent of the EU market is comprised of Russian imports). For a full explanation of the adjustment, *see* the Preliminary Analysis Memorandum.

Additionally, Habas reported that its invoices for natural gas from BOTAS include delivery fees, a special consumption tax, stamp tax, and a value-added tax (VAT) of 18 percent.¹¹⁰ We therefore found the delivered benchmark AUV by adding the delivery fees, special consumption tax and stamp 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. To calculate the program benefit, we compared the corresponding EU benchmark AUV to the unit monthly prices that Habas paid BOTAS, including delivery fees, special consumption tax, stamp 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 Habas and divided that amount by Habas' total sales during 2017, in accordance with 19 CFR 351.525(b)(3).¹¹¹ On this basis, we calculated a net countervailable subsidy rate of 3.01 percent *ad valorem* for Habas under this program.

¹⁰⁸ See Petitioner Natural Gas Benchmark, at Exhibit 6.

¹⁰⁹ See Commerce Benchmark, at Attachment I.

¹¹⁰ See Habas IQR, at Exhibit 6.

¹¹¹ See Preliminary Analysis Memorandum for a full discussion of the calculation.

2. Deductions from Taxable Income for Export Revenue

Habas reported that it claimed this deduction in its fiscal year 2016 income tax return, which was filed with the tax authorities during the POR.¹¹² Habas Endustri, Habas Petrol, Pegagaz, Cebitas, and OSIT did not participate in this program during the POR.¹¹³ We found this tax program to be countervailable in the underlying investigation.¹¹⁴ In this review, the GOT reported no changes during the POR that would affect the countervailability of the program.¹¹⁵ We, therefore, continue to find that this income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because it constitutes revenue forgone by the GOT by lowering the company's taxable income and, thus, reducing its tax liability. The deduction provides a benefit in the amount of the tax savings to the company, pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). The deduction is also specific under section 771(5A)(B) of the Act, because its receipt is contingent upon export earnings.¹¹⁶

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 tax that would have been paid absent the program (*i.e.*, the tax savings). To calculate the countervailable subsidy rate for Habas, we divided the benefit by Habas' total export sales for the POR.¹¹⁷ On this basis, we preliminarily calculate a net countervailable subsidy rate of 0.07 percent *ad valorem* for Habas under this program.

B. Programs Preliminarily Determined Not To Be Countervailable

1. Provision of LNG for LTAR

As noted in the NSA Initiation Memorandum, Commerce initiated an investigation into the LNG for LTAR program based, in part, on the petitioner's argument regarding specificity of the program, pursuant to section 771(5A)(D)(iii)(II) and (III) of the Act, which describes the following situations in which a subsidy is specific as a matter of fact: (II) an enterprise or industry is a predominant user of the subsidy; and (III) an enterprise or industry receives a disproportionately large amount of the subsidy.¹¹⁸ In particular, the petitioner argued that "because power producers were the predominant purchasers of natural gas, in general, during the POR, it is reasonable to assume that power producers are also the predominant users of LNG, in particular."¹¹⁹ However, as explained below, the data included in responses to the NSA questionnaire from the GOT and Habas indicate that, although Habas purchased LNG from BOTAS during the POR, this program is not specific to any industry or group of enterprises to which Habas belongs.

¹¹² See Habas IQR, at 14, Exhibit 4 and Exhibit 11.

¹¹³ See Habas SQR, at 13; Cebitas SQR, at 12; and OSIT SQR, at 11.

¹¹⁴ See *Turkey Rebar II Prelim* PDM, at 13-14, unchanged in *Turkey Rebar II Final*.

¹¹⁵ See GOT IQR, at 31.

¹¹⁶ *Id.*; see also *Turkey Rebar II Prelim*, and accompanying PDM, at 13-14, unchanged in *Turkey Rebar II Final*.

¹¹⁷ See Preliminary Analysis Memorandum for a full discussion of the calculation.

¹¹⁸ See NSA Initiation Memorandum, at 4-5 (citing Petitioner NSA).

¹¹⁹ *Id.*

According to the data submitted by the GOT, the construction industry accounted for the largest amount of LNG purchases during the POR (about 43 percent), followed by the “other service” industry (about 14 percent), the food and beverage industry (about nine percent) and the mining and quarrying industry (about six percent).¹²⁰ As a company mostly engaged in steel, electricity, and industrial gas production,¹²¹ Habas does not fall into any of these industries that could be considered to be a “predominant user” or receive a “disproportionately large amount” of LTAR benefit, within the meaning of sections 771(5A)(D)(iii)(II) and (III) of the Act. In fact, power producers did not make any purchases of LNG during the POR, while the iron and steel industry accounted for less than two percent of LNG purchases.¹²² Based on this evidence, power producers cannot be predominant users of LNG in Turkey.¹²³

Based on the information above, we preliminarily find that this program is not specific within the meaning of sections 771(5A)(A)-(D) of the Act. Specifically, as outlined above, information provided by the GOT and Habas on the record of this review indicated that eligibility for this program is not limited to specific enterprises or industries, groups of enterprises or industries, or regions, and that the program is not export-contingent.¹²⁴ As a result, we preliminarily find that this program is not countervailable.

2. Insurance Premium Support for Employer’s Share (Under Law 6111)

Habas and Habas Petrol reported receiving benefits under this program during the POR.¹²⁵ The GOT also provided a response regarding this program,¹²⁶ and reported that Habas Endustri, Habas Petrol and Cebitas also benefited from this program during the POR.¹²⁷ According to the GOT, this program was established in March 2011 by Unemployment Insurance Law 4447, which was appended by Law 6111.¹²⁸ The Social Security Institution (SSI) of the GOT administers this program.¹²⁹ The purpose of the program is to increase the employment of young people, women and vocational proficiency certificate holders by reducing the amount of insurance premium shares covered by employers.¹³⁰

Based on the information on the record, we preliminarily find that this program is not specific within the meaning of sections 771(5A)(A)-(D) of the Act. Specifically, the information on the record for this program demonstrates that: 1) the benefits received by Habas, Habas Endustri,

¹²⁰ See GOT NSA QR, at 6-7.

¹²¹ See Habas IQR, at 6.

¹²² See GOT NSA QR, at 6.

¹²³ Commerce also notes that, according to Habas, out of over 1600 power plants in Turkey, only one has the capability to generate electricity from LNG; furthermore, only two percent of Turkey’s power is capable of being generated from LNG. See Habas NSA QR, at Exhibit NSA-1; see also Habas Pre-Preliminary Comments, at 11.

¹²⁴ See GOT NSA QR; see also Habas NSA QR.

¹²⁵ See Habas IQR, at 27, and Habas SQR, at 15. We note that Habas and Habas Petrol refer to this program as “Social Security Premium Support for Hiring New Employees Who {Were} Previously Unemployed.”

¹²⁶ See GOT IQR, at 42-53.

¹²⁷ See GOT SQR, at 13.

¹²⁸ *Id.*, at 43 and Exhibit 19.

¹²⁹ *Id.*, at 43.

¹³⁰ *Id.*, and at Exhibit 19.

Habas Petrol, and Cebitas, compared to that received by other companies, is insignificant;¹³¹ and 2) receipt of the benefit is not limited to any industry or group of industries.¹³² We therefore preliminarily find that this program is not countervailable.

3. Minimum Wage Support

Habas, Habas Endustri, Habas Petrol, Pegagaz, Cebitas and OSIT all reported using this program during the POR.¹³³ Commerce has previously found that this program is not specific within the meaning of sections 771(5A)(A)-(D) of the Act.¹³⁴ Information provided by Habas on the record of this review indicates that eligibility for this program is provided to all entities in Turkey and is thus not limited to specific enterprises or industries, groups of enterprises or industries, or regions, and that the support is not export-contingent.¹³⁵ Accordingly, we preliminarily find that this program is not countervailable. However, because we lack information from the government regarding financial contribution, specificity, and whether this program has changed during the POR, we intend to issue a supplemental questionnaire to the GOT regarding this program and will re-evaluate the countervailability of this program for our final decision.

C. **Programs Preliminarily Determined Not To Confer Countervailable Benefits**

1. Inward Processing Regime (IPR)

Under the IPR, a company that imports raw material and exports finished goods made from that raw material may obtain an inward processing certificated (IPC), which stipulates the quantity of raw material the company may import without paying import duties based on the company's commitment to export the final product.¹³⁶ The IPC also stipulates the quantity of exports required to satisfy the commitment of the IPC.¹³⁷ The Ministry of Economy administers the IPR and has jurisdiction to approve the final approval of IPC closures.¹³⁸

As established in previous Commerce proceedings, there are two type of IPC's available to companies under the IPR: (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.¹³⁹ Companies with a D-1 certificate can choose to use either the Suspension System, wherein they are exempt from the applicable duties and taxes upon importation, but submit a letter of guarantee or a deposit to cover the duties and taxes otherwise owed; or the

¹³¹ See GOT IQR, at 45 and 50, and GOT SQR, at 13; see also Habas IQR, at 27.

¹³² See GOT IQR, at 48 and Exhibit 19.

¹³³ See Habas IQR, at 26-27; Habas SQR, at 15; Cebitas SQR, at 13; and OSIT SQR, at 13.

¹³⁴ See *Turkey Rebar I 2016 Prelim PDM*, at 26-27 (citing *Oil Country Tubular Goods from the Republic of Turkey, Preliminary Results of Countervailing Duty Administrative Review, 2016*, 83 FR 51440 (October 11, 2018) (*Turkey OCTG 2016*), and accompanying PDM at 17-18), unchanged in *Turkey Rebar I 2016 Final*.

¹³⁵ See Habas IQR, at 26-27.

¹³⁶ *Id.*, at 24.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ See, e.g., *Turkey Rebar I 2016 Prelim PDM*, at 27, unchanged in *Turkey Rebar I 2016 Final*.

Drawback System, wherein the duties and taxes are reimbursed after exportation of the finished goods.¹⁴⁰ Companies holding a D-3 certificate may only utilize the Suspension System, as the finished goods are not exported.¹⁴¹ Habas reported using two D-1 certificates, but no D-3 certificates, under the program during the POR.¹⁴²

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. Regarding the VAT exemption granted under this program, pursuant to 19 CFR 351.517(a), in the case of the exemption upon export of indirect taxes, a benefit exists to the extent that Commerce determines that the amount exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

Consistent with previous proceedings, we preliminarily find that, in accordance with 19 CFR 351.519(a)(4)(i), the GOT has a system in place to confirm which inputs, and in what amounts, are consumed in the production of the exported product, and that the system is reasonable for the purposes intended.¹⁴³ We also preliminarily find that the exemption granted on certain methods of payments used in purchasing imported raw materials under this program does not constitute a subsidy pursuant to 19 CFR 351.517(a), because the tax exempted upon export does not exceed the amount of tax levied on like products when sold for domestic consumption.¹⁴⁴

Additionally, as noted above, Habas used D-1 certificates and received customs duty and VAT exemptions on certain imported inputs used in the production of exported goods. Based on our examination of the information submitted by Habas and the GOT, we preliminarily find no evidence on the record of this review to indicate that the amounts of VAT and duty exemptions on inputs imported under the program with D-1 certificates were excessive or that the companies used the imported inputs for any other product besides those exported.

Therefore, consistent with Commerce's prior determinations on the IPR and D-1 certificates,¹⁴⁵ we preliminarily find that the tax and duty exemptions, which Habas received on imported inputs under D-1 certificates, did not confer countervailable benefits as the exemptions were applied only to the imported inputs consumed in the production of the exported product, making normal allowance for waste. Furthermore, we preliminarily find that the VAT exemption did not confer countervailable benefits to Habas because the exemption did not exceed the amount levied with

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² See Habas IQR, at 24 and Exhibit 17.

¹⁴³ See *Turkey Rebar I 2016 Prelim*, and accompanying PDM, at 27-29, unchanged in *Turkey Rebar I 2016 Final*; see also *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 *Turkey Pipe 2015 Final*, and accompanying IDM, at 7.

¹⁴⁴ See *Turkey Rebar I 2016 Prelim* PDM, at 27-29, unchanged in *Turkey Rebar I 2016 Final*.

¹⁴⁵ *Id.*

respect to the production and distribution of like products when sold for domestic consumption. Consequently, we preliminarily determine that the D-1 certificates under the IPR did not provide any countervailable benefits to Habas during the POR.

D. Programs Preliminarily Determined to Provide No Measurable Benefit During the POR

Commerce preliminarily determines that the programs listed below did not confer a measurable benefit during the POR. Consistent with the established practice, we are not including programs with non-measurable benefits (*i.e.*, calculated rates of less than 0.005 percent) in the respondent's net subsidy rate calculation.¹⁴⁶ Furthermore, because the benefits from these programs are non-measurable, we are not making preliminary determinations regarding financial contribution or specificity. Additionally, for certain of these programs, we lack information from the GOT regarding financial contribution and specificity. Accordingly, we intend to issue a supplemental questionnaire to the GOT and will evaluate the countervailability of these programs for our final results, if they are found to provide measurable benefits.

1. Social Security Premium Support for Hiring New Employees Who Were Previously Unemployed (Under Government Decree 687)

Habas and Habas Petrol reported using this program during the POR.¹⁴⁷ Although we preliminarily determine that Habas did not receive measurable benefits under this program,¹⁴⁸ we intend to issue a supplemental questionnaire to the GOT requesting information regarding financial contribution and specificity, and will evaluate the countervailability of this program for our final decision, if it is found to provide measurable benefits.

2. Social Security Premium Support (Under Law 4857)

Habas and OSIT reported using this program during the POR.¹⁴⁹ Although we preliminarily determine that the respondent did not receive measurable benefits under this program,¹⁵⁰ we intend to issue a supplemental questionnaire to the GOT requesting information regarding financial contribution and specificity, and will evaluate the countervailability of this program for our final decision, if it is found to provide measurable benefits.

3. Assistance to Offset Costs Related to AD/CVD Investigations
4. Research and Development Income Tax Deduction
5. Social Security Premium Support (Under Law 6486)¹⁵¹
6. Rediscount Program
7. Investment Encouragement Program

¹⁴⁶ See, *e.g.*, *Russia Cold-Rolled Steel* IDM at 31-32.

¹⁴⁷ See Habas IQR, at 27; *see also* Habas SQR, at 15.

¹⁴⁸ See Preliminary Analysis Memorandum.

¹⁴⁹ See Habas IQR, at 27; and OSIT SQR, at 13.

¹⁵⁰ See Preliminary Analysis Memorandum.

¹⁵¹ We note that although Habas reported receiving a lower benefit amount (*see* Habas IQR, at 18) than what was reported by the GOT (*see* GOT IQR, at 55) during the POR, both amounts are considered non-measurable.

E. Programs Preliminarily Determined to Not Be Used

The respondent reported that it did not receive benefits under the following programs during the POR or AUL, as applicable.

1. Comprehensive Investment Incentives
2. VAT and Import Duty Exemptions
3. Land for LTAR
4. Pre-shipment Turkish Lira Export Credits
5. Pre-shipment Foreign Currency Export Credits
6. Foreign Trade Company Export Loans
7. Pre-export Credits
8. Short-term Export Credit Discounts
9. Regional Investment Scheme
10. Large-Scale Investment Incentives
11. Investments Provided under Turkish Law No. 5746
12. Product Development R&D Support – UFT
13. Electricity for LTAR
14. Withholding of Income Tax on Wages and Salaries
15. Exemption from Property Tax
16. Tax, Duty, and Land Benefits for Turkish Rebar Producers Located in Free Zones
17. Turkish Development Bank Loans
18. Industrial R&D Projects Grant Program

VIII. CONCLUSION

We recommend that you approve the preliminary results described above.



Agree



Disagree

9/6/2019

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance