



C-489-836

Investigation

POI: 01/01/2018 – 12/31/2018

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September 20, 2019

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

FROM: Scot T. Fullerton
Director, Office VI
Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Affirmative Preliminary
Determination of the Countervailing Duty Investigation of Dried
Tart Cherries from the Republic of Turkey

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of dried tart cherries (cherries) from the Republic of Turkey (Turkey), as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Case History

On April 23, 2019, Commerce received a countervailing duty (CVD) petition concerning imports of cherries from Turkey, filed in proper form on behalf of the Dried Tart Cherry Trade Committee (the petitioner).¹ Supplements to the petition and our consultations with the Government of Turkey (GOT) are described in the Initiation Checklist.²

On May 6, 2019, we released the U.S. Customs and Border Protection (CBP) entry data under administrative protective order (APO), and requested comments regarding the data and respondent selection. On May 13, 2019, we initiated a CVD investigation on cherries from

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties: Dried Tart Cherries from the Republic of Turkey," dated April 23, 2019 (Petition).

² See "Countervailing Duty Initiation Checklist: Dried Tart Cherries from the Republic of Turkey (Turkey)," dated May 13, 2019 (Initiation Checklist).



Turkey.³ We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on CBP entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁴ We received comments from the petitioner on May 23, 2019.⁵ No other party filed comments regarding respondent selection.

On May 31, 2019, pursuant to section 777A(e) of the Act, we selected, in alphabetical order, Isik Tarim Urunleri Sanayi ve Ticaret A.S. (Isik Tarim) and Yamanlar Tarim Urunleri (Yamanlar Tarim) as the mandatory respondents in this investigation.⁶ On June 3, 2019, we issued the CVD questionnaire to the GOT, as well as a sourcing questionnaire to the mandatory respondents regarding the sources of their fresh, frozen and dried tart cherries.⁷ Neither company responded to either questionnaire. Additionally, the GOT indicated that it would not respond to our questionnaire.⁸

B. Postponement of the Preliminary Determination

On June 6, 2019, the petitioner timely requested that Commerce postpone the preliminary determination.⁹ Commerce granted the petitioner's request and, on July 3, 2019, published the notification of postponement of the preliminary determination, until September 20, 2019, in the *Federal Register*, in accordance with section 703(c)(1)(A) of the Act.¹⁰

C. Period of Investigation

The period of investigation (POI) is January 1, 2018 through December 31, 2018.

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is cherries from Turkey. A full description of the products covered by this investigation is provided in Appendix I of the preliminary determination published in the *Federal Register*.

³ See *Dried Tart Cherries from the Republic of Turkey: Initiation of Countervailing Duty Investigation*, 84 FR 22813 (May 20, 2019) (*Initiation Notice*).

⁴ *Id.*, 84 FR at 22813.

⁵ See Petitioner's Letter, "Dried Tart Cherries from Turkey: Respondent Selection Comments," dated May 23, 2019.

⁶ See Memorandum, "Countervailing Duty Investigation of Dried Tart Cherries from the Republic of Turkey: Respondent Selection," dated May 31, 2019.

⁷ For reasons explained in the *Initiation Notice*, we determined that subsidies allegedly provided to growers and processors of tart cherries should be included in this investigation. See Initiation Checklist at 6; see also Commerce's Letter, "Countervailing Duty Investigation of Dried Tart Cherries from the Republic of Turkey: Countervailing Duty Questionnaire," dated June 3, 2019; Commerce's Letter to Yamanlar Tarim, "Questionnaire on Sources of Fresh, Frozen and Dried Tart Cherries," dated June 3, 2019; and Commerce's Letter to Isik Tarim, "Questionnaire on Sources of Fresh, Frozen and Dried Tart Cherries," dated June 3, 2019.

⁸ See GOT's Letter, "Response of Republic of Turkey: Countervailing Duty Petition on Dried Tart Cherries (C-489-836)," dated July 24, 2019.

⁹ See Petitioner's Letter, "Dried Tart Cherries from Turkey: Request to Extend the Preliminary Determination Deadline," dated June 6, 2019.

¹⁰ See *Dried Tart Cherries from the Republic of Turkey: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 84 FR 31840 (July 3, 2019).

IV. INJURY TEST

Because Turkey is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a U.S. industry. On June 7, 2019, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of cherries from Turkey.¹¹

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner.”¹² Commerce’s practice also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹³

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹⁴ Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or

¹¹ See *Dried Tart Cherries from Turkey*, 84 FR 27359 (June 12, 2019); see also *Dried Tart Cherries from Turkey*, Inv. Nos. 701-TA-622 and 731-TA-1448 (Preliminary), USITC Publication 4902, June 2019.

¹² See, e.g., *Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011).

¹³ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA), H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

¹⁴ See 19 CFR 351.308(d).

any previous review under section 751 concerning the subject merchandise.”¹⁵ It is Commerce’s practice to consider information to be corroborated if it has probative value.¹⁶ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.¹⁷ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.¹⁸

Finally, under section 776(d) of the Act, when applying AFA, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.¹⁹

For purposes of this preliminary determination, we are applying AFA in the circumstances outlined below.

B. Application of Total AFA: Isik Tarim, Yamanlar Tarim, and the GOT

As discussed in the “Case History” section above, Isik Tarim and Yamanlar Tarim were selected as mandatory respondents in this investigation, but failed to respond to the initial CVD questionnaire. In addition, the GOT notified Commerce that it would not respond to Commerce’s initial CVD questionnaire. Therefore, we preliminarily find that, by not responding to any section of Commerce’s questionnaire, both companies, and the GOT, withheld information that had been requested and failed to provide information within the deadlines established. By not responding to the initial CVD questionnaire, each of these respondents significantly impeded this proceeding. Thus, in reaching a preliminary determination, pursuant to sections 776(a)(2)(A), (B) and (C) of the Act, we based the CVD rates for these companies and our findings regarding specificity and financial contribution by the GOT on facts otherwise available.

Moreover, we preliminarily determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because by not responding to the initial CVD questionnaire, Isik Tarim, Yamanlar Tarim, and the GOT failed to cooperate to the best of their ability to comply with the requests for information in this investigation. Accordingly, we preliminarily find that use of AFA is warranted to ensure that these companies (the “non-responsive companies”) and the GOT do not obtain a more favorable result by failing to cooperate than if they had fully complied with our requests for information.

¹⁵ See SAA at 870.

¹⁶ *Id.*

¹⁷ *Id.* at 869.

¹⁸ *Id.* at 869-870.

¹⁹ See section 776(d)(3) of the Act.

Commerce is, therefore, finding all programs in this proceeding to be countervailable - that is, they provide a financial contribution within the meaning of sections 771(5)(B)(i) and (D) of the Act, confer a benefit within the meaning of sections 771(5)(B) and (E) of the Act, and are specific within the meaning of section 771(5A) of the Act. We are, therefore, including these programs in our preliminary determination of the AFA rate. We selected an AFA rate for each of these programs and included them in the determination of the AFA rate applied to Isik Tarim and Yamanlar Tarim. Additionally, we find that current record information provides additional bases to infer, as AFA, that these programs constitute financial contributions and meet the specificity requirements of the Act.

We have included all programs upon which Commerce initiated in this investigation to determine the AFA rate. We are adversely inferring from the non-responsive companies' decision not to participate in this investigation that they, in fact, used these programs during the POI.

Selection of the AFA Rate

It is Commerce's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation, or, if not available, rates calculated in prior CVD cases involving the same country.²⁰ When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a countervailing duty proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.²¹ Accordingly, when selecting AFA rates, if we have cooperating respondents in the investigation, we first determine if there is an identical program in the instant investigation and use the highest calculated rate for the identical program. However, here, we have no cooperating respondents. If we have no cooperating respondents, as is the case in this investigation, we look outside the current investigation to other CVD proceedings involving products from the same country (*i.e.*, Turkey). We first determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding *de minimis* rates).²² If no such rate exists, we then determine if there is a

²⁰ See, e.g., *Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination with Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018), and accompanying Preliminary Decision Memorandum (PDM) at "X: Use of Facts Otherwise Available and Adverse Inferences: A. Application of Total AFA: Chalco Ruimin and Chalco-SWA," unchanged in *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018), and accompanying Issues and Decision Memorandum (IDM).

²¹ See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 12-14; see also *Essar Steel, Ltd. v. United States*, 753 F. 3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

²² For purposes of selecting AFA program rates, we normally consider rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at "E. Various Grant

similar/comparable program (based on the treatment of the benefit) in any CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company specific program in a CVD case involving the same country that the company's industry could conceivably use.²³

Commerce's methodology is consistent with section 776(d)(1)(A) of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, Commerce may (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce's existing practice of using an adverse facts available hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an adverse facts available rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available." No legislative history accompanied this provision. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice, and the structure and provisions of section 776(d) of the Act itself.

We find that the Act anticipates a two-step process for determining an appropriate adverse facts available rate in CVD cases: (1) Commerce may apply its hierarchy methodology; and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of adverse facts available, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.²⁴

In applying the adverse facts available rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated

Programs: 1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

²³ See *Shrimp from China* IDM at 13-14.

²⁴ This differs from AD proceedings, for which no hierarchy applies, under section 776(d)(1)(B) of the Act. Under that provision, "any dumping margin from any segment of the proceeding under the applicable antidumping order" may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

fully.”²⁵ Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”²⁶ It is pursuant to this knowledge and experience that Commerce has implemented its adverse facts available hierarchy in CVD cases to select an appropriate adverse facts available rate.²⁷

In applying its adverse facts available hierarchy in CVD investigations, Commerce’s goal is as follows: in the absence of necessary information from cooperative respondents, Commerce is seeking to find a rate that is a relevant indicator of how much the government of the country under investigation is likely to subsidize the industry at issue, through the program at issue, while inducing cooperation. Accordingly, in sum, the three factors that Commerce takes into account in selecting a rate are: (1) the need to induce cooperation, (2) the relevance of a rate to the industry in the country under investigation (*i.e.*, can the industry use the program from which the rate is derived), and (3) the relevance of a rate to a particular program, though not necessarily in that order of importance.

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a “pool” of available rates that Commerce can rely upon for purposes of identifying an adverse facts available rate for a particular program. In investigations for example, this “pool” of rates could include the rates for the same or similar programs used in either that same investigation, or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among that “pool” of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry and to the particular program.

Under the first step of Commerce’s investigation hierarchy, Commerce applies the highest nonzero rate calculated for a cooperating company for the identical program in the investigation. Under this step, we will even use a *de minimis* rate as adverse facts available if that is the highest rate calculated for another cooperating respondent in the same industry for the same program. However, if there is no identical program match within the investigation, or if the rate is zero,

²⁵ See SAA, H.R. Doc. No. 103-316, vol. 1, at 870, reprinted in 1994 U.S.C.C.A.N 4040, 4090; see also *Essar Steel*, 678 at 1276 (citing *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. 3d 1027, 1032 (Fed. Cir. 2000) (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate’ with Commerce’s investigation, not to impose punitive damages.”) (*De Cecco*).

²⁶ See *De Cecco*, 216 F. 3d at 1032.

²⁷ Commerce has adopted a practice of applying its hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at Comment 4 at 28-31 (applying the AFA hierarchical methodology within the context of a CVD investigation); 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 11-15 (applying the AFA hierarchical methodology within the context of a CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

then Commerce will shift to the second step of its investigation hierarchy, and either apply the highest non-*de minimis* rate calculated for a cooperating company in another CVD proceeding involving the same country for the identical program, or if the identical program is not available, for a similar program. This step focuses on the amount of subsidies that the government has provided in the past under the investigated program. The assumption under this step is that the non-cooperating respondent under investigation uses the identical program at the highest above *de minimis* rate of any other company using the identical program.

Finally, if no such rate exists, under the third step of Commerce's investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any noncompany-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.²⁸

In all three steps of Commerce's adverse facts available investigation hierarchy, if Commerce were to choose low adverse facts available rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the "reward" for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce's investigation adverse facts available hierarchy (which is different from selecting the highest possible rate in the "pool" of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.²⁹

Furthermore, we find that section 776(d)(2) of the Act applies as an exception to the selection of an adverse facts available rate under section 776(d)(1) of the Act; that is, after "an evaluation of the situation that resulted in the application of an adverse inference," Commerce may decide that given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate.

There are no facts on this record that suggest that a rate other than the highest rate envisioned under the appropriate step of the hierarchy applied in accordance with section 776(d)(1) of the Act should be applied as adverse facts available. As explained above, Commerce is

²⁸ In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

²⁹ It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. *See, e.g., Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying IDM at 2 ("As AFA in the instant case, the Department is relying on the highest calculated final subsidy rates for income taxes, VAT and Policy lending programs of the other producer/producer in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed..."). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as adverse facts available under its hierarchy.

preliminarily applying adverse facts available because the non-responsive companies chose not to participate in this investigation. Therefore, we preliminarily find that the record does not support the application of an alternative rate, pursuant to section 776(d)(2) of the Act.

In determining the AFA rate we will apply to each of the non-responsive companies, we are guided by Commerce's methodology detailed above. We begin by calculating the program rate for the following income tax reduction programs on which Commerce initiated an investigation; we applied an adverse inference that each of the non-responsive companies referenced above paid no income tax during the POI. The standard income tax rate for corporations in Turkey is 20 percent.³⁰ Thus, the highest possible benefit for these income tax programs is 20 percent. Accordingly, we are applying the 20 percent AFA rate on a combined basis (*i.e.*, the two programs, combined, provide a 20 percent benefit). These programs include "Deductions from Taxable Income for Export Revenue" and "Tax Incentives for Research and Development (R&D) Activities." Consistent with past practice,³¹ application of this AFA rate for preferential income tax programs does not apply to tax credit, tax rebate, or import tariff and VAT exemption programs, because such programs may provide a benefit in addition to a preferential tax rate.

For all other programs not mentioned above, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a Turkey CVD investigation or administrative review. For this preliminary determination, we are able to match, based on program names, descriptions, and benefit treatments, the following programs to the same or similar programs from other Turkey CVD proceedings:

- Export Financing: Rediscount Credit Program
- Pre-Export Credit Program
- Post Shipment Rediscount Credit Program
- Foreign Trade Companies Short-Term Export Credits Program
- Specific Export Credit Program
- Investment Credit for Export
- Export-Oriented Business Investment Loans
- Credit Program for Participating in Overseas Trade Fairs
- Export Buyer's Credits
- General Investment Incentive Scheme
- Regional Investment Incentive Scheme
- Provision of Land for Less than Adequate Remuneration (LTAR)
- Law 5084: Support for Energy Payments

³⁰ See Petition at 7 (citing *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 14, 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).

³¹ See, *e.g.*, *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 84 FR 5989 (February 25, 2019), and accompanying IDM at 28; unchanged in *Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Final Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances*, 84 FR 32723 (July 9, 2019).

- Law 5084: Withholding of Income Tax on Wages and Salaries
- Exemption from Property Tax
- Social Security Premium Incentive
- Preferential Tax Benefits for Producers Located in Free Zones
- Export Subsidy Program
- Payments for Fuel and Fertilizer
- Sapling Support
- Organic Farming Support
- Agriculture Insurance Support
- Payments for Good Agricultural Practices
- Policy Lending
- Instrument for Pre-Accession Assistance for Rural Development
- Frontier R&D Laboratory Support Program

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for each of the non-responsive companies to be 204.93 percent *ad valorem*. The Appendix to this memorandum contains a chart summarizing our calculation of this rate.

Corroboration of AFA Rate

Section 776(c)(1) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”³² The SAA provides that to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.³³

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.³⁴ Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.³⁵

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of

³² See SAA at 870.

³³ *Id.*

³⁴ *Id.* at 869-870.

³⁵ See section 776(d) of the Act.

corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.³⁶

In the absence of record evidence concerning the non-responsive companies' usage of the subsidy programs at issue due to their decision not to participate in the investigation, Commerce reviewed the information concerning Turkish subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this case. The relevance of these rates is that they are actual calculated CVD rates for Turkish programs, from which the non-responsive companies could actually receive a benefit. Due to the lack of participation by these companies and the resulting lack of record information concerning these programs, Commerce has corroborated the rates it selected to use as AFA to the extent practicable for this preliminary determination.

VI. ANALYSIS OF PROGRAMS

As AFA, based on our analysis of the petition, as reflected in the Initiation Checklist, we are preliminarily finding that all of the 28 programs detailed above are countervailable. Specifically, we are determining for all 28 of these programs, as AFA, that these programs constitute financial contributions, are specific, and confer a benefit upon the recipients within the meaning of the Act.

VII. RECOMMENDATION

We recommend that you approve the preliminary findings described above.



Agree

Disagree

9/20/2019

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

³⁶ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

APPENDIX

AFA Rate Calculation

Program Name		AFA Rate (%)
Direct Tax Exemptions and Reductions		
	Deductions from Taxable Income for Export Revenue	20.00 ³⁷
	Tax Incentives for R&D Activities	
Loan Programs		
	Export Financing: Rediscount Credit Program	1.96 ³⁸
	Pre-Export Credit Program	8.82 ³⁹
	Post Shipment Rediscount Credit Program	8.82 ⁴⁰
	Foreign Trade Companies Short-Term Export Credits Program	8.82 ⁴¹
	Specific Export Credit Program	8.82 ⁴²
	Investment Credit for Export	8.82 ⁴³
	Export-Oriented Business Investment Loans	8.82 ⁴⁴
	Credit Program for Participating in Overseas Trade Fairs	8.82 ⁴⁵
	Export Buyer’s Credits	8.82 ⁴⁶
	Policy Lending	8.82 ⁴⁷
Grant Programs		
	Export Subsidy Program	2.11 ⁴⁸
	Law 5084: Support for Energy Payments	2.11 ⁴⁹

³⁷ The standard income tax rate for corporations in Turkey is 20 percent. Thus, the highest possible benefit for these income tax programs is 20 percent. Accordingly, we are applying the 20 percent AFA rate on a combined basis (*i.e.*, that the two programs, combined, provide a 20 percent benefit).

³⁸ See *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), and accompanying IDM at 6.

³⁹ See *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*WLP Investigation*), and accompanying IDM at 8.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See *Pasta from Turkey: Preliminary Results of Countervailing Duty Administrative Review*; 2014, 81 FR 52825 (August 10, 2016), and accompanying PDM at 6, unchanged in *Pasta from Turkey: Final Results of Countervailing Duty Administrative Review*; 2014, 81 FR 90775 (December 15, 2016).

⁴⁹ *Id.*

Payments for Fuel and Fertilizer	2.11 ⁵⁰
Sapling Support	2.11 ⁵¹
Organic Farming Support	2.11 ⁵²
Agriculture Insurance Support	2.11 ⁵³
Payments for Good Agricultural Practices	2.11 ⁵⁴
Instrument for Pre-Accession Assistance for Rural Development	2.11 ⁵⁵
Frontier R&D Laboratory Support Program	2.11 ⁵⁶
LTAR Programs	
Provision of Land for LTAR	.54 ⁵⁷
Tax Programs	
General Investment Incentive Scheme	14.01 ⁵⁸
Regional Investment Incentive Scheme	14.01 ⁵⁹
Law 5084: Withholding of Income Tax on Wages and Salaries	14.01 ⁶⁰
Exemption from Property Tax	14.01 ⁶¹
Social Security Premium Incentive	14.01 ⁶²
Preferential Tax Benefits for Producers Located in Free Zones	14.01 ⁶³
Total AFA Rate:	204.93%

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016), and accompanying IDM at 15.

⁵⁸ *See WLP Investigation* IDM at 8.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*