



UNITED STATES DEPARTMENT OF COMMERCE  
International Trade Administration  
Washington, D.C. 20230

C-489-817  
Sunset Review  
**Public Document**  
E&C/OI: AP/MJK

October 2, 2019

MEMORANDUM TO: P. Lee Smith  
Deputy Assistant Secretary  
for Policy and Negotiations  
Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the First  
Expedited Five-Year Sunset Review of the Countervailing Duty  
Order on Certain Oil Country Tubular Goods from the Republic of  
Turkey

---

## I. SUMMARY

We analyzed the substantive response of the domestic interested parties<sup>1</sup> in this first sunset review of the countervailing duty (CVD) order<sup>2</sup> covering oil country tubular goods (OCTG) from the Republic of Turkey (Turkey).<sup>3</sup> We also received a substantive response from the government of Turkey (GOT).<sup>4</sup> No respondent interested party submitted a substantive response.

---

<sup>1</sup> The domestic interested parties are: Benteler Steel/Tube Manufacturing Corp., Boomerang Tube, LLC, IPSCO Tubulars, Inc., Maverick Tube Corporation, Tenaris Bay City, Inc., United States Steel Corporation, Vallourec Star, L.P. and Welded Tube USA Inc.

<sup>2</sup> See *Certain Oil Country Tubular Goods from India and the Republic of Turkey: Countervailing Duty Orders and Amended Affirmative Final Countervailing Duty Determination for India*, 79 FR 53688 (September 10, 2014)(Order), amended by *Oil Country Tubular Goods from the Republic of Turkey: Amendment of Countervailing Duty Order*, 82 FR 46483 (October 5, 2017) (Amended Order).

<sup>3</sup> See Domestic Interested Parties' Letter, "Oil Country Tubular Goods from Turkey: Substantive response of the Domestic Industry to Commerce's Notice of Initiation of Five-Year ("Sunset") Reviews," dated July 3, 2019 (Domestic Interested Parties' Substantive Response); see also Domestic Interested Parties' Letter, "Oil Country Tubular Goods from Turkey: Rebuttal to the Substantive Response of the Government of Turkey to Commerce's Notice of Initiation of Five-Year (Sunset) Reviews," dated July 9, 2019 (Domestic Interested Parties' Rebuttal).

<sup>4</sup> See GOT's Letter, "Response of the Government of Turkey to the Five-Year Review (Sunset Review) of Antidumping and Countervailing Duty Orders on Imports of Certain Oil Country Tubular Goods from the Republic



Accordingly, we conducted an expedited (120-day) sunset review of the CVD order pursuant to section 751(c)(3)(B) of the Tariff Act of 1930, as amended (the Act).<sup>5</sup> We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of issues for which we received a substantive response:

1. Likelihood of continuation or recurrence of a countervailable subsidy; and
2. Net Countervailable Subsidy Likely to Prevail
3. Nature of the subsidy

## II. BACKGROUND

On June 4, 2019, the Department of Commerce (Commerce) published the notice of initiation of the first sunset review of the CVD order on OCTG from Turkey, in accordance with section 751(c) of the Act.<sup>6</sup> Subsequently, Commerce received notices of intent to participate from the domestic interested parties.<sup>7</sup> Each notice was timely filed within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under section 771(9)(C) of the Act as producers of OCTG.

In July 2019, Commerce received a substantive response from the domestic interested parties and the GOT within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).<sup>8</sup> Shortly thereafter, the domestic interested parties filed a timely rebuttal response to the GOT’s submission.<sup>9</sup> In accordance with 19 CFR 351.218(e)(1)(ii)(C)(2), because we did not receive a substantive response from exporters of OCTG from Turkey, we determined that the substantive response provided by respondent interested parties was not adequate.

On July 29, 2019, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.<sup>10</sup> As a result, pursuant to 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the CVD order on OCTG from Turkey.

---

of Turkey,” dated September 10, 2019 (GOT’s Substantive Response).

<sup>5</sup> See *Procedures for Conducting Five-year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 70 FR 62061 (October 28, 2005) (Commerce normally will conduct an expedited sunset review where respondent interested parties provide an inadequate response.)

<sup>6</sup> See *Initiation of Five-Year (Sunset) Reviews*, 84 FR 25741 (June 4, 2019).

<sup>7</sup> See Benteler Steel/Tube, Boomerang Tube, LLC’s, IPSCO Tubulars, Inc.’s, Vallourec Star, L.P.’s, and Welded Tube USA Inc.’s Letter, “Oil Country Tubular Goods from Turkey: Notice of Intent to Participate,” dated June 13, 2019; Maverick Tube and Tenaris Bay City, Inc.’s Letter, “Notice of Intent to Participate in First Sunset Reviews of the Antidumping and Countervailing Duty Orders on Oil Country Tubular Goods from Turkey,” dated June 17, 2019; and United States Steel Corporation’s Letter, “Five-Year (Sunset) Review of Antidumping and Countervailing Duty Orders on Oil Country Tubular Goods from Turkey: Notice of Intent to Participate,” dated June 19, 2019.

<sup>8</sup> See Domestic Interested Parties’ Substantive Response; see also GOT’s Letter, “Response of the Government of Turkey to the Five-Year Review (Sunset Review) of Antidumping and Countervailing Duty Orders on Imports of Certain Oil Country Tubular Goods from the Republic of Turkey,” dated July 4, 2019

<sup>9</sup> See Domestic Interested Parties’ Letter, “Oil Country Tubular Goods from Turkey: Rebuttal to the Substantive Response of the Government of Turkey to Commerce’s Notice of Initiation of Five-Year (Sunset) Reviews,” dated July 9, 2019.

<sup>10</sup> See ITC’s Letter, “Sunset Reviews Initiated on June 1, 2019,” dated July 29, 2019.

### III. SCOPE OF THE ORDER

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

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

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

The merchandise subject to the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

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

### IV. HISTORY OF THE ORDER

On July 18, 2014, Commerce published its final affirmative CVD determination and final affirmative critical circumstances determination on OCTG from Turkey.<sup>11</sup> Commerce determined that countervailable subsidies within the meaning of section 701 of the Act were being provided by the GOT to Turkish manufacturers, producers, and exporters of this merchandise.

---

<sup>11</sup> See *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM).

Commerce determined the following net countervailable subsidy rates:

<b>Manufacturers/Producers/Exporters</b>	<b>Net Countervailable Subsidy Rate (percent)</b>
Borusan Mannesmann Boru Sanayi ve Ticaret A.S., and cross-owned affiliates Borusan Istikbal Ticaret, Borusan Mannesmann Boru Yatirim Holding A.S., Borusan Holding A.S. (collectively, Borusan)	15.89
Toscelik Profil ve Sac Endustrisi A.S., and cross-owned affiliates Tosyali Elektrik Enerjisi Toptan Satis Ith. Ihr. A.S., Tosyali Holding A.S., Tosyali Dis Ticaret A.S., and Tosyali Demir Celik San. A.S. (collectively, Toscelik)	2.53
All-Others	9.21

Following notification of an affirmative injury determination by the ITC, Commerce published the CVD order on OCTG from Turkey on September 10, 2014.<sup>12</sup> Following domestic litigation at the Court of International Trade (CIT) and the U.S. Court of Appeals for the Federal Circuit,<sup>13</sup> Commerce amended the CVD order and revised the net countervailable subsidy rates as follows:

- 2.39 percent for Borusan;
- 2.39 percent for all other producers and exporters of subject merchandise.<sup>14</sup>

Because its net countervailable subsidy rate was *de minimis* (i.e., 0.95 percent), Toscelik was excluded from the CVD order.<sup>15</sup>

Since the issuance of the CVD order, two administrative reviews have been completed and one is ongoing. The first administrative review covered the period January 1, 2015, through December 31, 2015.<sup>16</sup> Although Commerce selected Borusan and Toscelik for individual examination as mandatory respondents, it later rescinded the administrative review with respect to Toscelik in light of the company being excluded from the CVD order.<sup>17</sup> The second administrative review

---

<sup>12</sup> See *Order*, 79 FR at 53688.

<sup>13</sup> *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 61 F. Supp. 3d 1306 (CIT 2015); *Maverick Tube Corporation v. United States*, 2016 WL 703575 (CIT 2016) (*Opinion After Remand*), *aff'd* *Maverick Tube Corporation v. United States*, 857 F. 3d 1353 (Fed. Cir. 2017); *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 61 F. Supp. 3d 1306 (CIT 2015), *aff'd* *Maverick Tube Corporation v. United States*, 857 F. 3d 1353 (Fed. Cir. 2017); and *Maverick Tube Corp. v. United States*, 2015 WL 3706539 (CIT 2015), *Maverick Tube Corporation v. United States*, 2016 WL 703575 (CIT 2016) (*Opinion After Remand*), *aff'd* *Maverick Tube Corporation v. United States*, 857 F. 3d 1353 (Fed. Cir. 2017).

<sup>14</sup> See *Amended Order*, 82 FR at 46483.

<sup>15</sup> *Id.*

<sup>16</sup> See *Oil Country Tubular Goods from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part*, 82 FR 46767 (October 6, 2017); and *Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*, 83 FR 6511 (February 14, 2018).

<sup>17</sup> *Id.*

covered the period January 1, 2016, through December 31, 2016;<sup>18</sup> Borusan was the only company for which a review was requested. In each segment, Commerce found that Turkish producers/exporters of OCTG continued to benefit from the subsidy programs provided by the GOT. The ongoing review covers the period from January 1, 2017, through December 31, 2017.<sup>19</sup>

## V. LEGAL FRAMEWORK

In accordance with section 751(c)(1) of the Act, Commerce conducted this sunset review to determine whether revocation of the *Order* would likely lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, Commerce shall consider: (1) the net countervailable subsidy determined in the investigation and any subsequent reviews, and (2) whether any changes in the programs which gave rise to the net countervailable subsidy have occurred that are likely to affect the net countervailable subsidy.

Pursuant to section 752(b)(3) of the Act, Commerce shall provide the ITC with the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, Commerce shall provide the ITC with information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (ASCM).

## VI. DISCUSSION OF THE ISSUES

Below we address the comments of the interested parties.

### 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy

#### *Interested Party Comments*<sup>20</sup>

Because Commerce found that respondents benefitted from numerous countervailable programs in the original investigation and has made no findings in the subsequent administrative reviews that any of the programs has been terminated, domestic interested parties argue that revocation of the *Order* would likely lead to the continuation or recurrence of countervailable subsidization of OCTG from Turkey.<sup>21</sup> Furthermore, they contend that the imposition of the *Order* has had the intended effect on U.S. imports of OCTG from Turkey, with U.S. import volumes declining substantially each year since the imposition of the *Order* in 2014.<sup>22</sup>

---

<sup>18</sup> See *Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 11504 (March 27, 2019).

<sup>19</sup> See *Oil Country Tubular Goods from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review*; 2017, 84 FR 39797 (August 12, 2019).

<sup>20</sup> See Domestic Interested Parties' Substantive Response at 10-11; see also GOT's Substantive Response at 3-5.

<sup>21</sup> See Domestic Interested Parties' Substantive Response at 10-11.

<sup>22</sup> *Id.* at 11.

The GOT disagrees with the domestic interested parties' position and states that there is no likelihood of continuation or recurrence of countervailable subsidies if the *Order* is revoked.<sup>23</sup> According to the GOT, during the 2016 administrative review, which is the most recently completed, Commerce found that a number of programs were not used by Turkish producers/exporters of OCTG.<sup>24</sup> The GOT maintains that the SAA stipulates that, if a "company has a long track record of not using a program, the mere availability of the program should not indicate the likelihood of continuation or recurrence of countervailable subsidies."<sup>25</sup> Because the programs were found to be not used continuously, the GOT requested that Commerce consider this point in evaluating the likelihood of continuation or recurrence of countervailable subsidization of OCTG from Turkey.

To provide further evidence that the order should be revoked, the GOT explained that three of the programs examined in the 2016 administrative review did not confer a benefit and that the total four programs found countervailable calculated a subsidy rate only slightly above the 0.5 percent *de minimis* rate.<sup>26</sup> Moreover, according to the GOT, three of the 15 programs found not used during the 2016 administrative review expired on December 31, 2012. These programs are: Provision of Land for LTAR; Law 5084: Withholding of Income Tax on Wages and Salaries; Provision of Land for LTAR, Law 5084: Incentive for Insurance Premiums; and Provision for Electricity for LTAR. Additionally, the GOT contends that the imposition of duties under Section 232 on U.S. imports of steel from Turkey, which includes OCTG, makes the continuation or recurrence of injury unlikely.<sup>27</sup>

Finally, the GOT maintains that because Turkey's share of total U.S. imports of OCTG was 1.5 percent in 2018, revocation of the *Order* will not lead to a continuation or recurrence of a countervailable subsidy.<sup>28</sup>

The domestic interested parties argue that the GOT fails to substantiate its position that there would be no continuation or recurrence of countervailable subsidies if the *Order* were revoked. The domestic interested parties contend that the GOT is not following the statutory requirement under Section 752(b)(1) of the Act. Specifically, the domestic parties contend that the GOT fails to consider the subsidy program findings in the original investigation and each of the subsequent administrative reviews, but focuses solely on the 2016 administrative review. The domestic interested parties emphasize that, by focusing only on the 2016 administrative review, the GOT has ignored the fact that Commerce found ten countervailable subsidy programs in the original investigation and has continued to find some of the programs countervailable in the 2015 and 2016 administrative reviews.<sup>29</sup>

---

<sup>23</sup> See GOT's Substantive Response at 6.

<sup>24</sup> *Id.* at 3-4.

<sup>25</sup> *Id.* at 5 (citing Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol 1 (1994) at 888 (SAA)).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> See Domestic Interested Parties' Rebuttal at 3.

Similarly, the domestic interested parties rebut the GOT's position that, since many of the programs in the 2016 administrative review were not used, the *Order* should be revoked. The domestic interested parties argue that none of the programs was found by Commerce to have been terminated, which suggests that the programs continue to exist. The domestic interested parties also emphasize that the SAA provides that "continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies."<sup>30</sup> In light of the SAA, the domestic interested parties argue that the continued existence of subsidy programs found countervailable in the original investigation justifies maintaining the CVD order on OCTG from Turkey.

### **Commerce's Position:**

In determining the likelihood of continuation or recurrence of a countervailable subsidy, section 752(b)(1) of the Act directs Commerce to consider the net countervailable subsidy determined in the investigation and subsequent reviews and whether there have been any changes in a program found to be countervailable that are likely to affect that net countervailable subsidy. According to the SAA, Commerce will consider the net countervailable subsidies in effect after the issuance of an order and whether the relevant subsidy programs have been continued, modified, or eliminated.<sup>31</sup> The SAA further states that continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies.<sup>32</sup> The continued existence of programs that have not been used, and have not been terminated without residual benefits or replaced, is also probative of the likelihood of continuation or recurrence of a countervailable subsidy.<sup>33</sup> Where a subsidy program is found to exist, Commerce normally will determine that revocation of the CVD order is likely to lead to continuation or recurrence of a countervailable subsidy regardless of the level of subsidization.<sup>34</sup>

Consistent with prior determinations, two conditions must be met in order for a subsidy program not to be included in determining the likelihood of continued or recurring subsidization: (1) the program must be terminated; and (2) any benefit stream must be fully allocated.<sup>35</sup> In order to determine whether a program has been terminated, we will consider the legal method by which the government eliminated the program and whether the government is likely to reinstate the program. Commerce normally expects a program to be terminated by means of the same legal mechanism used to institute it. Where a subsidy is not bestowed pursuant to a statute, regulation or decree, Commerce may find no likelihood of continued or recurring subsidization if the

---

<sup>30</sup> See SAA at 888.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> See, e.g., *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Results of Full Sunset Review of Countervailing Duty Order*, 75 FR 75455 (December 3, 2010), and accompanying IDM at Comment 1.

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

<sup>35</sup> See *Certain Pasta from Italy: Final Results of the Expedited Fourth Sunset Review of the Countervailing Duty Order*, 83 FR 62839 (December 6, 2019) and accompanying IDM at 11; see also *Preliminary Results of Full Sunset Review: Certain Corrosion-Resistant Carbon Steel Flat Products from France*, 71 FR 30875 (May 31, 2006) and accompanying Preliminary Decision Memorandum at 5-7 (*unchanged in Corrosion-Resistant Carbon Steel Flat Products from France: Final Results of Full Sunset Review*, 71 FR 58584 (October 4, 2006)).

subsidy in question was a one-time, company-specific occurrence and was not granted as part of a broader, government program.

Because the GOT provided no documentation in the original investigation or subsequent administrative reviews concerning termination of programs, we continue to find that the following subsidy programs continue to exist: (1) Deductions from Taxable Income for Export Revenue; (2) Export Financing: Short-Term Pre-Shipment Rediscount Program; (3) Export Financing: Pre-Export Credit Program; (4) Investment Encouragement Program (IEP), Customs Duty and value added tax (VAT) Exemptions; (5) Provision of Electricity for Less Than Adequate Remuneration/Law 5084: Energy Support; (6) Provision of Land for LTAR; (7) Provision of Hot Rolled Steel for LTAR; (8) Law 5084: Withholding of Income Tax on Wages and Salaries; (9) Exemptions from Property Tax; (10) Law 5084: Incentive for Employers' Share in Insurance Premiums; (11) Inward Processing Certificate.

We disagree with the GOT's argument that, for certain programs that "are continuously being found to not have been used repeatedly," the mere availability of a program should not weigh in favor of a finding of likelihood of continuation or recurrence of countervailable subsidies.<sup>36</sup> Given that Commerce has completed only two administrative reviews since the original investigation, the GOT has no basis to argue that certain subsidy programs were "continuously" found to not be used. As mentioned above, the GOT has not provided documentation to demonstrate that any particular program has been terminated.

Commerce is also unpersuaded by the GOT's argument that revocation of the order is unlikely to result in the continuation or recurrence of countervailable subsidies given that, in the 2016 administrative review, three of the programs did not confer a benefit and were found not countervailable, 15 programs were not used, and only four programs conferred rates which combined to be only slightly above *de minimis*.<sup>37</sup> Regardless of whether certain programs were found not used in a particular administrative review, without documentation demonstrating the termination of a program or programs, Commerce finds that the 10 programs found countervailable in the original investigation and an additional program found countervailable in a subsequent administrative reviews remain in effect. Whether a rate is only slightly above *de minimis* is inconsequential; it remains a countervailable subsidy.

Similarly, Commerce is unpersuaded by the GOT argument that U.S. imports of OCTG from Turkey account for only 1.5 percent of total U.S. OCTG imports in 2018 as a reason to revoke the *Order*. Rather, declining U.S. import levels convey to Commerce that continuation of the order is appropriate and provides to the domestic industry the remedy available under the statute.

Finally, Commerce does not consider the impact of Section 232 duties applied to OCTG imports from Turkey in determining the effects on revocation of the order. Rather, Commerce follows the requirements under Section 752(b)(1) of the Act to examine only the impact of revocation on the likelihood of countervailable subsidization to continue or recur.

---

<sup>36</sup> See GOT's Substantive Response at 5.

<sup>37</sup> *Id.* at 3-5.



Because the continuation of programs is highly probative of the likelihood of the continuation or recurrence of countervailable subsidies, we determine that revocation of the *Order* would likely lead to continuation or recurrence of countervailable subsidies.

## 2. Net Countervailable Subsidy Rates that Are Likely to Prevail

### *Interested Party Comments*

The domestic interested parties contend that Commerce should follow the instructions set forth in the SAA and its *Policy Bulletin* which state that it should, in most cases, begin by selecting the subsidy rate established in the original investigation because it “is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place.”<sup>38</sup> However, they maintain that Commerce’s *Policy Bulletin* directs Commerce to make certain adjustments to the net countervailable subsidy rates determined in the original investigation based on findings in administrative reviews, such as, termination of programs with no residual benefits and no likelihood of reinstatement. According to the domestic interested parties, adjustments are not required because Commerce has not made a finding in a subsequent administrative review, that would call for such adjustments.<sup>39</sup>

Therefore, they argue that Commerce should rely on the following net countervailable subsidy rates found in the original investigation, as amended.

Producer/Exporter	Net Countervailable Subsidy Rate (percent)
Borusan	2.39
All Others	2.39

The GOT did not comment on this issue.

### **Commerce’s Position:**

Consistent with the SAA and legislative history, Commerce normally will provide to the ITC the net countervailable subsidy rates that were determined in the investigation as these are the rates likely to prevail if the order is revoked because these are the only calculated rates that reflect the behavior of exporters and foreign governments without the discipline of the order in place.<sup>40</sup> Section 752(b)(1)(B) of the Act provides, however, that Commerce also will consider whether any change in the program which gave rise to the net countervailable subsidy determination in the investigation has occurred that is likely to affect the net countervailable subsidy rate. Therefore, although the SAA provides that Commerce normally will select a rate from the investigation, this rate may not be the most appropriate if the rate was derived from countervailable subsidy programs found in subsequent reviews to be terminated, there has been a

---

<sup>38</sup> See Domestic Interested Parties’ Substantive Response at 12 (citing SAA at 890; and *Policies Regarding the Conduct of Five-year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18875 (April 16, 1998) (*Policy Bulletin*)).

<sup>39</sup> *Id.* at 13.

<sup>40</sup> See SAA at 890; see also H.R. Rep. No. 103-826 (1994) at 64.

program-wide change, or the rate does not include a program or programs found to be countervailable in subsequent reviews.<sup>41</sup>

Consistent with the SAA and the *Policy Bulletin*, Commerce has started with the rates for the programs found to be countervailable in the original investigation in order to determine the company-specific net countervailable subsidy rates likely to prevail. The subsidy programs found in the original investigation include:

- (1) Deductions from Taxable Income for Export Revenue;
- (2) Export Financing-Rediscount Program (Short-Term Pre-Shipment Rediscount Program);
- (3) Export Financing-Pre-Export Credit Program;
- (4) Investment Encouragement Program: Customs Duty and VAT Exemptions;
- (5) Provision of Electricity for LTAR;
- (6) Provision of Land for LTAR;
- (7) Provision of HRS for LTAR;
- (8) Law 5084: Withholding of Income Tax on Wages and Salaries;
- (9) Exemption from Property Tax;
- (10) Law 5084: Incentive for Employer's Share Insurance Premiums.

To the rates determined in the original investigation, as amended through the litigation, we have added the rate from the subsidy programs found to be countervailable in the administrative review covering the period of January 1, 2015, through December 31, 2015, *i.e.*, the Inward Processing Certificate program.

On this basis, Commerce finds that the net countervailable subsidy rates that are likely to prevail are above *de minimis*. Consistent with section 752(b)(3) of the Act, Commerce will provide to the ITC the net countervailable subsidy rates that are likely to prevail if the *Order* is revoked. Commerce normally chooses a net countervailable subsidy that was determined in a countervailing duty investigation or administrative review. The adjusted countervailable subsidy rates, which Commerce determines are likely to prevail upon revocation of the *Order*, are provided in the "Final Results of Review" section of this memorandum.

### **3. Nature of the Subsidies**

Consistent with section 752(a)(6) of the Act, Commerce is providing the following information to the ITC concerning the nature of the subsidy, and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the ASCM. We note that Article 6.1 of the ASCM expired effective January 1, 2000.

#### *Article 3*

In this sunset review, there are programs that fall under Article 3.1 of the ASCM, which states that the following subsidies shall be prohibited: (a) subsidies contingent, in law or in fact

---

<sup>41</sup> See, e.g., *Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Final Results of Expedited Second Sunset Review*, 75 FR 62101 (October 7, 2010), and accompanying IDM at Comment 2.

whether solely or as one of several other conditions, upon export performance, and (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

*1. Deductions from Taxable Income for Export Revenue*<sup>42</sup>

This program, under Addendum 4108 of Article 40 of the Income Tax Law Number 193, effective June 2, 1995, allows taxpayers engaged in export activities to claim a lump sum deduction from gross income resulting from exports, construction, maintenance, assembly, and transportation activities abroad in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings from such activities. This deduction is to cover the expenditures without documentation incurred from exports, construction, maintenance, assembly, and transportation activities abroad.

*2. Export Financing (Short-Term Pre-Shipment Rediscount Program)*<sup>43</sup>

The "Rediscount Program," known previously as the "Short-Term Pre-Shipment Rediscount Program," was established in 1999 and is administered by the Export Credit Bank of Turkey (Turk Eximbank-TE). The Rediscount Program was designed to provide financial support to Turkish exporters, manufacturer-exporters and manufacturers supplying exporters. This program is contingent upon an export commitment.

*3. Export Financing - Pre-Export Credit Program*<sup>44</sup>

The Pre-Export Credit Program in TL (PEC-TL) and the Pre-Export Credit Program in foreign currency (PEC-FX) were established in 1997 and 1994, respectively. The Turk Eximbank-TE administers this program. The GOT designed this program to provide financial support to exporters, manufacturer-exporters and manufacturers supplying exporters, except Foreign Trade Corporate Companies and Sectoral Foreign Trade Companies without requiring any past export performance. Companies must submit a written export commitment to receive the loan.

*4. Inward Processing Certificate*<sup>45</sup>

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

---

<sup>42</sup> See *Final Determination* IDM at 13.

<sup>43</sup> *Id.* at 14.

<sup>44</sup> *Id.* at 15.

<sup>45</sup> See *Oil Country Tubular Goods from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review*, in Part, 82 FR 46767 (October 6, 2017) and accompanying PDM at 9; unchanged in *Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*, 83 FR 6511 (February 14, 2018) accompanying IDM at 4.

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

#### *Article 6.1*

The following subsidy programs do not fall within the meaning of Article 3.1 of the ASCM, but they may be subsidies described in Article 6.1 of the ASCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex I of the ASCM. The subsidies may also fall within the meaning of Article 6.1 if they constitute debt forgiveness, a grant to cover debt repayment, or are subsidies to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record to make such a determination. We are, in any case, providing the ITC with the following program descriptions:

##### *1. Investment Encouragement Program (IEP): Customs Duty and VAT Exemptions<sup>46</sup>*

The GOT provides certificates through the IEP that qualified recipients use to import items duty-free. The Council of Ministers' Decree No: 2012/3305 established in June 2012, which replaced Decision No. 2009/15199, provides producers Investment Encouragement Certificates to receive customs and VAT exemptions on equipment imported for use. Investments in excess of TL 50 million and within certain regions are eligible to benefit under this program. Additionally, the decree limits such exemptions for iron and steel investments to certain regions.

##### *2. Provision of Electricity for Less Than Adequate Remuneration/Law 5083: Energy Support<sup>47</sup>*

The Ministry of Economy, General Directorate of Incentives and Implementation and Foreign Investments administers the energy support program pursuant to Articles 2 and 6 of Law 5084. According to the GOT, the main objective of this program is to reduce inter-regional disparities and to increase employment. Specifically, all enterprises or industries established in the 49 provinces which have a GDP *per capita* equal to or less than USD 1,500 (as determined by the State Institute of Statistics as of 2001) or which have a negative socio-economic development index value (as determined by the State Planning Organization as of 2003) can benefit from this program. The GOT states that enterprises operating or investing in the designated provinces are eligible for support at rates ranging from 20 percent to 50 percent of the cost of electricity consumption depending on their existing employment levels and the number of new hires (not to exceed 50 percent support).

##### *3. Provision of Land for LTAR<sup>48</sup>*

According to the GOT, all enterprises or industries established in the 49 provinces which have a GDP *per capita* equal to or less than USD 1,550 (as determined by the State Institute of Statistics as of 2001), or which have a negative socio-economic development index value (as determined by the State Planning Organization as of 2003) that are also located in certain industrial zones or OIZs, can benefit from free land allocation support pursuant to Provisional

---

<sup>46</sup> See *Final Determination* IDM at 16.

<sup>47</sup> *Id.* at 17.

<sup>48</sup> *Id.* at 18.

Article 1 of Law 5084. This program is used to promote development and increase employment in selected provinces.

#### *4. Provision of Hot Rolled Steel for LTAR<sup>49</sup>*

In the investigation, we found that the Borusan Companies purchased hot rolled steel from Eriği Demir ve Çelik Fabrikaları T.A.S. (Erdemir) and İskenderun Demir ve Çelik A.Ş. (Isdemir), Turkish producers of hot rolled steel. We found that Erdemir and Isdemir are public bodies or authorities and that Borusan purchased hot rolled steel from them at prices below market value.

#### *5. Law 5084: Withholding of Income Tax on Wages and Salaries<sup>50</sup>*

The Ministry of Finance of the GOT administers the withholding of income tax on wages and salaries program pursuant to Article 2 and Article 3 of Law 5084. The purpose of this program under Law 5084, as set forth in Article 3, is to increase investments and employment opportunities in certain provinces of Turkey by canceling the income tax calculated on the wages and salaries of the workers. According to the GOT, all enterprises or industries established in 49 specific provinces can benefit from this program.

#### *6. Exemption of Property Tax<sup>51</sup>*

The Ministry of Finance administers this program pursuant to Article 4 of Law No. 3365, which came into force on January 1, 1987. The program's objective is to increase investment opportunities. The GOT provides an exemption of property tax for the first five years following the completion date of the construction of buildings. According to the GOT, there were 199 active industrial zones in Turkey at the end of the POI.

#### *7. Law 5084: Incentive for Employers' Share in Insurance Premiums<sup>52</sup>*

The Social Security Institution of the GOT administers the incentive for the Employer's Share in Insurance Premiums Program (Insurance Premiums Program) pursuant to Article 2 and Article 4 of Law 5084. The purpose of this program, as set forth in Article 4 of Law 5084, is to increase investments and employment opportunities in certain provinces of Turkey by providing support for the employer's share of insurance premiums. According to the GOT, all enterprises or industries in the 49 provinces that hire at least ten workers can benefit from this program.

---

<sup>49</sup> *Id.* at 20-26.

<sup>50</sup> *Id.* at 26-28.

<sup>51</sup> *Id.* at 28.

<sup>52</sup> *Id.* at 28-29.

## VII. FINAL RESULTS OF REVIEW

As a result of this sunset review, Commerce finds that revocation of the *Order* would likely lead to a continuation or recurrence of a countervailable subsidy at the rates listed below:

Producer/Exporter	Net Countervailable Subsidy Rate (percent)
Borusan	2.71
All Others	2.71

## VIII. RECOMMENDATION

Based on our analysis of the substantive response received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final results of this sunset review in the *Federal Register* and notify the ITC of our findings.



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

10/2/2019

X 

Signed by: PRENTISS SMITH

\_\_\_\_\_  
P. Lee Smith  
Deputy Assistant Secretary  
for Policy and Negotiations  
Enforcement and Compliance