



C-489-502
Administrative Review
POR: 01/01/17 - 12/31/17
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October 11, 2019

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

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

SUBJECT: Issues and Decision Memorandum for the Final Results of
Countervailing Duty Administrative Review: Circular Welded
Carbon Steel Pipes and Tubes from the Republic of Turkey; 2017

I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty (CVD) order on circular welded carbon steel pipes and tubes from the Republic of Turkey (Turkey), covering the period of review (POR) January 1, 2017, through December 31, 2017. The two mandatory respondents in this review are: (1) Borusan Holding A.S. (Borusan Holding), Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), and Borusan Istikbal Ticaret T.A.S. (Borusan Istikbal) (collectively the Borusan Companies); and (2) Tosçelik Profil ve Sac Endüstrisi A.Ş. (Tosçelik Profil), Tosyali Dis Ticaret A.S. (TDT), Tosyali Holding, Tosçelik Toyo Celik (Tosçelik Toyo), Tosyali Filmasin ve Insaat Demir (Tosyali Filmasin), Tosçelik Spiral Boru (Tosçelik Spiral), Tosyali Demir Celik San A.S. (TDC), Tosçelik Granul San A.S. (Tosçelik Granul), and Tosyali Celik Ticaret A.S. (TCT) (collectively, the Tosçelik Companies).¹ This review also covers 12 firms that were not selected for individual examination.²

¹ Unless otherwise noted, we use the terms the Borusan Companies and the Tosçelik Companies to refer to the mandatory respondents for which net subsidy rates were calculated.

² See *Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review, in Part; Calendar Year 2017*, 84 FR 21327 (May 14, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM); see also *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 19215 (May 2, 2018) (*Initiation Notice*). As indicated in the *Preliminary Results*, the *Initiation Notice* includes additional firms not included in our subsidy analysis that interested parties requested in connection with the Borusan Companies and the Tosçelik Companies.



As a result of this analysis, we have made changes to the *Preliminary Results* with respect to the Borusan Companies. We recommend that you approve the positions described in the “Discussion of Comments” section of this memorandum.

Below is a complete list of the issues in this review for which we received comments from interested parties:

Comment 1: Whether to Include Purchases of X-Series and Non-X-Series Grade Hot-Rolled Steel (HRS) in the HRS Benchmark to Measure the Adequacy of Remuneration for HRS from Turkish “Authorities”

Comment 2: Whether to Apply Adverse Facts Available (AFA) to the Borusan Companies’ Receipt of Land for Less than Adequate Remuneration (LTAR) Under Law 5084

Comment 3: How to Attribute Subsidies Received by the Borusan Companies on a D-3 Certificate Under the Inward Processing Program

II. BACKGROUND

On May 14, 2019, Commerce published the *Preliminary Results* of this administrative review.³ On June 13, 2019, Commerce received timely filed case briefs from the petitioners⁴ and the Borusan Companies.⁵ On June 18, 2019, the Borusan Companies, the Tosçelik Companies, and the petitioners each timely filed a rebuttal brief.⁶ On August 29, 2019, Commerce extended the deadline for the final results to October 11, 2019.⁷

Rescission of the 2017 Administrative Review, in Part

On May 14, 2018, Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan), one of the Turkish firms for which a CVD review was requested, timely submitted a no-shipment claim certifying that it had no entries, exports, or sales of subject merchandise to the United States during the POR.⁸ Commerce transmitted a no-shipment inquiry to U.S. Customs and Border Protection (CBP) regarding Erbosan’s no-shipment claim.⁹

³ See *Preliminary Results* and accompanying PDM.

⁴ The petitioners in this review are Independence Tube Corporation and Southland Tube, Incorporated (Nucor companies) (collectively, the petitioners).

⁵ See Borusan Companies’ Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: Case Brief,” dated June 13, 2019 (Borusan Companies Case Brief); see also Petitioners’ Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey: Petitioners’ Case Brief,” dated June 13, 2019 (Petitioners Case Brief).

⁶ See Borusan Companies’ Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: Rebuttal Brief,” dated June 18, 2019 (Borusan Companies Rebuttal Brief); see also Tosçelik Companies’ Letter, “Welded Carbon Steel Standard Pipe And Tube From Turkey; Tosçelik Rebuttal Brief,” dated June 18, 2019 (Tosçelik Companies Rebuttal Brief); see also Petitioners’ Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey: Rebuttal Brief,” dated June 18, 2019 (Petitioners Rebuttal Brief).

⁷ See Memorandum, “Circular Welded Carbon Steel Pipes and Tubes from Turkey: Extension of Deadline for Final Results of Countervailing Duty Administrative Review,” dated August 29, 2019.

⁸ See Erbosan’s Letter, “No Shipment Certification of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) in the 2017 Administrative Review of the Countervailing Duty Order Involving Certain Welded Carbon Steel Standard Pipe from Turkey,” dated May 14, 2018.

⁹ See Memorandum, “Placement of No-Shipment Inquiry for Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) on Record of Review,” dated April 3, 2019.

On June 1, 2018, Borusan submitted a letter to Commerce timely certifying that its affiliated companies – Borusan Istikbal, Borusan Birlesik Boru Fabrikalari San ve Tic (Borusan Birlesik), Borusan Gemlik Boru Tesisleri A.S. (Borusan Gemlik), Borusan Ithicat ve Dagitim A.S. (Borusan Ithicat), Borusan Iharcet Ithalat ve Dagitim A.S. (Borusan Ithalat), and Tubeco Pipe and Steel Corporation (Borusan Tubeco) – had no entries, exports, or sales of subject merchandise to the United States during the POR.¹⁰ With the exception of Borusan Istikbal, a company that Commerce has found to be cross-owned with Borusan during the POR,¹¹ Commerce transmitted no-shipment inquiries to CBP regarding each of the companies for which Borusan claimed no shipments.¹²

Commerce did not receive any information from interested parties or CBP that was contrary to the claims of Erbosan, Borusan Birlesik,¹³ Borusan Gemlik, Borusan Ithicat, Borusan Ithalat, and Borusan Tubeco. Accordingly, based on record evidence, we determine that Erbosan, Borusan Birlesik, Borusan Gemlik, Borusan Ithicat, Borusan Ithalat, and Borusan Tubeco did not ship subject merchandise to the United States during the POR. Therefore, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice,¹⁴ we are rescinding the review for Erbosan, Borusan Birlesik, Borusan Gemlik, Borusan Ithicat, Borusan Ithalat, and Borusan Tubeco. Because we have found Borusan Istikbal to be cross-owned with Borusan during the POR, we are not rescinding the review with respect to Borusan Istikbal and are assigning it Borusan's rate.

Cimtas Boru Imalatlari ve Tic Ltd. Sirketi.'s Claim of No Shipments

On June 8, 2018, Cimtas Boru Imalatlari ve Tic Ltd. Sirketi (Cimtas) submitted a claim of no shipments.¹⁵ Cimtas filed its no-shipment claim after the deadline Commerce established in the *Initiation Notice*, and Cimtas did not submit a request for an extension pursuant to 19 CFR 351.302(c).¹⁶ Accordingly, we found Cimtas' no-shipment letter to be untimely and rejected its

¹⁰ See Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey. Case No. C-489-502: No Shipment Letter," dated June 1, 2018.

¹¹ See *Preliminary Results*, 84 FR at 21328 n.9 and accompanying PDM at 6-7.

¹² See Message No. 9143305 to CBP, "Re: No shipments inquiry for circular welded carbon steel pipes and tubes from the Republic of Turkey produced and/or exported by Borusan Birlesik Boru Fabrikalari San ve Tic (C-489-502)," dated May 23, 2019; see also Message No. 9143306 to CBP, "Re: No shipments inquiry for circular welded carbon steel pipes and tubes from the Republic of Turkey produced and/or exported by Borusan Iharcet Ithalat ve Dagitim A.S. (C-489-502)," dated May 23, 2019; Message No. 9143307 to CBP, "Re: No shipments inquiry for circular welded carbon steel pipes and tubes from the Republic of Turkey produced and/or exported by Borusan Gemlik Boru Tesisleri A.S. (C-489-502)," dated May 23, 2019; Message No. 9143308 to CBP, "Re: No shipments inquiry for circular welded carbon steel pipes and tubes from the Republic of Turkey produced and/or exported by Tubeco Pipe and Steel Corporation (C-489-502)," dated May 23, 2019; and Message No. 9143309 to CBP, "Re: No shipments inquiry for circular welded carbon steel pipes and tubes from the Republic of Turkey produced and/or exported by Borusan Iharcet Ithalat ve Dagitim A.S. (C-489-502)," dated May 23, 2019.

¹³ For Borusan Birlesik, Commerce received a letter from CBP in response to the no-shipment inquiry, which stated that CBP found no shipments of subject merchandise produced and/or exported by Borusan Birlesik during the POR. See CBP's Letter, "Re: No shipment inquiry with respect to the company below during the period 01/01/2017 through 12/31/2017," dated June 3, 2019.

¹⁴ See, e.g., *Aluminum Extrusions from the People's Republic of China: Notice of Partial Rescission of Countervailing Duty Administrative Review*, 79 FR 2635 (January 15, 2014).

¹⁵ See Cimtas' Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey: Request for Administrative Review, Submission about 'Notice of No Sales,'" dated June 8, 2018.

¹⁶ In the *Initiation Notice*, Commerce informed the public that, "[i]f a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (POR), it must notify Commerce within 30

filing.¹⁷ Thus, we have assigned Cimtas the non-selected subsidy rate applicable to the firms that were not selected for individual examination, as detailed below.

III. SCOPE OF THE ORDER

The products covered by this order are certain welded carbon steel pipe and tube with an outside diameter of 0.375 inch or more, but not over 16 inches, of any wall thickness (pipe and tube) from Turkey. These products are currently provided for under the Harmonized Tariff Schedule of the United States (HTSUS) as item numbers 7306.30.10, 7306.30.50, and 7306.90.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

IV. PERIOD OF REVIEW

The POR is January 1, 2017 through December 31, 2017.

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation period or the allocation methodology used in the *Preliminary Results*. For a description of the allocation period and the methodology used for these final results, see the *Preliminary Results* and accompanying PDM at 5.

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary attribution of subsidies. For a description of the methodologies used for these final results, see the *Preliminary Results* and accompanying PDM at 6-9.

C. Loan Benchmark and Discount Interest Rates

Commerce has made no changes to benchmarks or discount rates used in the *Preliminary Results*. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary benchmarks or discount rates. For a description of the benchmarks and discount rates used for these final results, see the *Preliminary Results* and accompanying PDM at 9-10.

days of publication of this notice in the *Federal Register*.” See *Initiation Notice*, 83 FR at 19215. Thus, the deadline to submit a “no shipment” letter to Commerce was Friday, June 1, 2018.

¹⁷ See Letter, “Rejection of Submission,” dated July 27, 2018.

D. Denominator

Commerce has made no changes to the denominators used in the *Preliminary Results*. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary finding regarding the appropriate denominators. For a description of the denominators used for these final results, see the *Preliminary Results* and accompanying PDM at 9.

VI. NON-SELECTED RATE

The Tariff Act of 1930, as amended (the Act), and Commerce's regulations do not address the establishment of a rate to be applied to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. Generally, when determining the rate for such respondents in an administrative review, Commerce looks to section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs Commerce to use the average of the individually calculated rates as the all-others rate, excluding rates which are zero, *de minimis*, or based entirely on facts available. Accordingly, Commerce's usual practice in administrative reviews for determining the rate for respondents not selected for individual examination has been to average the weighted-average net subsidy rates for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.¹⁸ However, section 705(c)(5)(A)(ii) of the Act provides that, where all the individually calculated rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the all-others rate, including averaging the estimated weighted-average net subsidy rates determined for the exporters and producers individually investigated.

In these final results, we have calculated above-*de minimis* net subsidy rates for the Borusan Companies and for the Tosçelik Companies during the POR that are not based entirely on facts available. Therefore, in keeping with our practice, we used net subsidy rates calculated for the Borusan Companies and the Tosçelik Companies from which to derive the non-selected rate applicable to the following firms that were not selected for individual examination: Cagil Makina Sanayi ve Ticaret A.S., Cayirova Boru Sanayi ve Ticaret A.S., Cimtaz Boru Imalatları ve Ticaret Sirketi, Eksen Makina, Guner Eksport, Guven Steel Pipe (also known as Guven Celik Born San. Ve Tic. Ltd.), MTS Lojistik ve Tasimacilik Hizmetleri TIC A.S. Istanbul, Net Boru Sanayi ve Dis Ticaret Koll. Sti., Tosçelik Metal Ticaret A.S., Umran Celik Born Sanayii A.S., also known as Umran Steel Pipe Inc., Yucel Boru ve Profil Endustrisi A.S., and Yucelboru Ihracat Ithalat ve Pazarlama A.S.¹⁹ Because there are only two mandatory respondents, we cannot rely on the proprietary sales data of the Borusan Companies and the Tosçelik Companies to derive a weighted-average subsidy rate assigned to the non-selected firms because to do so would risk divulging the proprietary information of the Borusan Companies and the Tosçelik Companies. Further, we lack publicly-ranged sales data from the Borusan Companies and the Tosçelik Companies that we could use for purposes of calculating a weighted-average non-

¹⁸ See, e.g., *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386, 37387 (June 29, 2010) (*Pasta from Italy 2008*).

¹⁹ See, e.g., *Pasta from Italy 2008*, 75 FR at 37387.

selected rate. Therefore, we have calculated the non-selected rate as the simple average of the total net subsidy rates calculated for the Borusan Companies and the Tosçelik Companies.

VII. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

1. Provision of Hot-Rolled Steel (HRS) for Less than Adequate Remuneration (LTAR)

The petitioners submitted comments in their case brief, and the Tosçelik Companies and the Borusan Companies submitted rebuttal comments regarding the HRS benchmark in the final results, which are addressed in Comment 1. Commerce did not make any changes to this program. For the description, analysis, and calculation methodology for this program, see the *Preliminary Results*.²⁰ The final program rates for the mandatory respondents are as follows:

The Borusan Companies: 0.42 percent *ad valorem*²¹

The Tosçelik Companies: 0.33 percent *ad valorem*²²

2. Deduction from Taxable Income for Export Revenue

No issues were raised by interested parties regarding this program. Commerce did not make any changes to this program. For the description, analysis, and calculation methodology for this program, see the *Preliminary Results*.²³ As explained in the *Preliminary Results*, the Tosçelik Companies did not use this program during the POR.²⁴ The final program rate for the Borusan Companies is 0.07 percent *ad valorem*.²⁵

3. Export Financing: Short-Term Pre-Shipment Rediscount Program

No issues were raised by interested parties regarding this program. Commerce did not make any changes to this program. For the description, analysis, and calculation methodology for this program, see the *Preliminary Results*.²⁶ The final program rates for the mandatory respondents are as follows:

The Borusan Companies: 0.33 percent *ad valorem*²⁷

The Tosçelik Companies: 0.84 percent *ad valorem*²⁸

4. Export Financing: Export-Oriented Working Capital Loans

²⁰ See PDM at 11-16.

²¹ See Borusan Companies Final Calculation Memorandum.

²² See Tosçelik Companies Final Calculation Memorandum.

²³ See PDM at 16-17.

²⁴ *Id.* at 20.

²⁵ See Borusan Companies Final Calculation Memorandum.

²⁶ See PDM at 17-18.

²⁷ See Borusan Companies Final Calculation Memorandum.

²⁸ See Tosçelik Companies Final Calculation Memorandum.

No issues were raised by interested parties regarding this program. Commerce did not make any changes to this program. For the description, analysis, and calculation methodology for this program, see the *Preliminary Results*.²⁹ As explained in the *Preliminary Results*, the Borusan Companies reported that they did not have any outstanding loans under this program during the POR.³⁰ The final program rate for the Tosçelik Companies is 0.22 percent *ad valorem*.³¹

5. Law 6486: Social Security Premium Incentive

No issues were raised by interested parties regarding this program. Commerce did not make any changes to this program. For the description, analysis, and calculation methodology for this program, see the *Preliminary Results*.³² As explained in the *Preliminary Results*, the Borusan Companies reported that they did not use this program during the POR.³³ The final program rate for the Tosçelik Companies is 0.08 percent *ad valorem*.³⁴

6. Law 5084: Allocation of Free Land and Purchase of Land for LTAR

The petitioners submitted comments in their case brief and the Borusan Companies submitted rebuttal comments regarding whether Commerce should apply AFA with regard to this program in the final results, which are addressed in Comment 2. Commerce did not make any changes to this program. For the description, analysis, and calculation methodology for this program, see the *Preliminary Results*.³⁵ As explained in the *Preliminary Results*,³⁶ the Borusan Companies reported that they did not use this program during the average useful life (AUL) period or during the POR and, as further explained in Comment 2, we continue to find that the Borusan Companies did not use this program. The final program rate for the Tosçelik Companies is 0.05 percent *ad valorem*.³⁷

7. Organized Industrial Zone: Exemption from Property Tax

No issues were raised by interested parties regarding this program. Commerce did not make any changes to this program. For the description, analysis, and calculation methodology for this program, see the *Preliminary Results*.³⁸ As explained in the *Preliminary Results*, the Borusan Companies reported that they did not use this program during the POR.³⁹ The final program rate for the Tosçelik Companies is 0.01 percent *ad valorem*.⁴⁰

²⁹ See PDM at 21.

³⁰ *Id.*

³¹ See Tosçelik Companies Final Calculation Memorandum.

³² See PDM at 22.

³³ *Id.*

³⁴ See Tosçelik Companies Final Calculation Memorandum.

³⁵ See PDM at 22-23.

³⁶ *Id.* at 23.

³⁷ See Tosçelik Companies Final Calculation Memorandum.

³⁸ See PDM at 23-24.

³⁹ *Id.* at 23.

⁴⁰ See Tosçelik Companies Final Calculation Memorandum.

B. Programs Determined Not to Confer a Measurable Benefit During the POR

1. Inward Processing Certificate Duty Exemption Program

In the *Preliminary Results*, we found that the Borusan Companies received a net countervailable subsidy rate equal to 0.10 percent for import duty exemptions it received in connection with its use of a D-3 certificate under the Inward Processing Certificate Program.⁴¹ The Borusan Companies submitted comments in their case brief and the petitioners submitted rebuttal comments regarding this program. As a result of these comments, we find that the duty exemptions the Borusan Companies received under this program during the POR are tied to non-subject merchandise and, thus, we have not included the duty exemptions in our subsidy analysis in these final results. For more information, see Comment 3 below.

2. Various Programs

The Borusan Companies and the Tosçelik Companies reported receiving benefits under various programs, some of which were under review based on specific allegations by the petitioners, while some were self-reported by the respondents. Based on the record evidence, we determine that the benefits from certain programs: (1) were fully expensed prior and thus not allocable to the POR; or (2) if allocable to the POR, are less than 0.005 percent *ad valorem* in the POR when attributed to the respondent's applicable sales.⁴² Consistent with Commerce's practice,⁴³ we have not included these programs in our final subsidy rate calculations for the Borusan Companies and the Tosçelik Companies.⁴⁴

The Borusan Companies

1. Assistance to Offset Costs Related to AD/CVD Investigations
2. Support for Report and Consultancy Services
3. Support for Market Research
4. Intern Salary Support

The Tosçelik Companies

1. Support for Expositions (Participation in Trade Fairs)
2. Eximbank Export Credit Insurance
3. Participation in Trade Fairs

⁴¹ See PDM at 18-21.

⁴² For a description of the attribution methodologies used for these final results, see the *Preliminary Results* and accompanying PDM at 6-9.

⁴³ See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) and accompanying IDM at 32, footnote 144.

⁴⁴ See Borusan Companies Final Calculation Memorandum; see also Tosçelik Companies Final Calculation Memorandum.

C. Programs Determined to Not Be Used

We determine that the Borusan Companies did not use the following programs during the POR:

- Post-Shipment Export Loans
- Pre-Export Credit Programs
- Pre-Shipment Export Credits
- Export Credit Bank of Turkey Buyer Credits
- Foreign Trade Companies Short Term Export Credits
- Exemption from Property Tax
- Exemption from Stamp Duties and Fees in Free Zones
- Investment Incentive Program
- Comprehensive Investment Incentives Program
- Law 5084: Withholding of Income Tax on Wages and Salaries
- Law 5084: Incentives for Employers' Share in Insurance Premiums
- Law 5084: Allocation of Free Land and Purchase of Land for LTAR
- Law 5084: Energy Support
- Subsidized Turkish Lira Credit Facilities
- Subsidized Credit for Proportion of Fixed Expenditures
- Subsidized Credit in Foreign Currency
- Regional Subsidies
- Value-Added Tax (VAT) Support System (Incentive Premium on Domestically Obtained Goods)
- Investment Encouragement Program (IEP): Reductions in Corporate Taxes
- IEP: Customs Duty Exemptions
- IEP: Interest Support
- IEP: Social Security Premium Support
- IEP: Land Allocation
- National Restructuring Program
- Provision of Land for LTAR
- Regional Incentive Scheme (RIS): Reduced Corporate Tax Rates
- RIS: Social Security Premium Contribution for Employees
- RIS: Allocation of State Land
- RIS: Interest Support
- OIZ: Waste Water Charges
- OIZ: Exemptions from Customs Duties, VAT, and Payments for Public Housing Fund, for Investments for which an Income Certificate is Received
- OIZ: Credits for Research and Development Investments, Environmental Investments, Certain Technology Investments, Certain "Regional Development" Investments, and Investments Moved from Developed regions to "Regions of Special Purpose"
- OIZ: Exemption from Building and Construction Charges
- OIZ: Exemption for Property Tax
- OIZ: Exemption from Amalgamation and Allotment Transaction Charges
- Corporate Income Tax Exemption under the Free Zones Law

- Stamp Duties and Fees Exemptions under the Free Zones Law
- Support for Energy Payments
- Customs Duty Exemptions Under the Free Zones Law
- VAT Exemptions Under the Free Zones Law
- Provision of Building and Land Use Rights for Less than Adequate Remuneration under the Free Zones Law

We determine that the Tosçelik Companies did not use the following programs during the POR:

- Post-Shipment Export Loans
- Pre-Export Credit Programs
- Pre-Shipment Export Credits
- Export Credit Bank of Turkey Buyer Credits
- Foreign Trade Companies Short Term Export Credits
- Exemption from Property Tax
- Deduction from Taxable Income for Export Revenue
- Exemption from Stamp Duties and Fees in Free Zones
- Investment Incentive Program
- Comprehensive Investment Incentives Program
- Law 5084: Withholding of Income Tax on Wages and Salaries
- Law 5084: Incentives for Employers' Share in Insurance Premiums
- Law 5084: Energy Support
- Law 5084: Allocation of Free Land and Purchase of Land for LTAR
- Subsidized Turkish Lira Credit Facilities
- Subsidized Credit for Proportion of Fixed Expenditures
- Subsidized Credit in Foreign Currency
- Regional Subsidies
- VAT Support System (Incentive Premium on Domestically Obtained Goods)
- Investment Encouragement Program (IEP): Reductions in Corporate Taxes
- IEP: Customs Duty Exemptions
- IEP: Interest Support
- IEP: Social Security Premium Support
- IEP: Land Allocation
- National Restructuring Program
- Provision of Land for LTAR
- Regional Incentive Scheme (RIS): Reduced Corporate Tax Rates
- RIS: Social Security Premium Contribution for Employees
- RIS: Allocation of State Land
- RIS: Interest Support
- OIZ: Waste Water Charges
- OIZ: Exemptions from Customs Duties, VAT, and Payments for Public Housing Fund, for Investments for which an Income Certificate is Received

- OIZ: Credits for Research and Development Investments, Environmental Investments, Certain Technology Investments, Certain “Regional Development” Investments, and Investments Moved from Developed regions to “Regions of Special Purpose”
- OIZ: Exemption from Building and Construction Charges
- OIZ: Exemption from Amalgamation and Allotment Transaction Charges
- Corporate Income Tax Exemption under the Free Zones Law
- Stamp Duties and Fees Exemptions under the Free Zones Law
- Support for Energy Payments
- Customs Duty Exemptions Under the Free Zones Law
- VAT Exemptions Under the Free Zones Law
- Provision of Building and Land Use Rights for Less than Adequate Remuneration under the Free Zones Law

VIII. ANALYSIS OF COMMENTS

Comment 1: Whether to Include Purchases of X-Series Grade and Non-X-Series Grade HRS in the HRS Benchmark to Measure the Adequacy of Remuneration for HRS from Turkish “Authorities”

The Petitioners’ Case Brief Arguments

- It is not germane to Commerce’s analysis whether the respondents actually used a given grade of HRS to produce subject pipe when deriving the benchmark. Further, even if it were relevant, the respondents have failed to show that the HRS purchases they wish to exclude could not be used to produce subject pipe.⁴⁵
- Commerce should calculate a single HRS benchmark that includes all of the respondents’ respective purchases of HRS from private parties, regardless of the purported grade differences.⁴⁶
- X-series grade HRS is not tied to the production of non-subject pipe and, thus, consistent with Commerce’s regulations and prior practice, all grades of HRS (*i.e.*, both X-series and non-X-series grades) should be included in a single benchmark.⁴⁷
- The distortive effects of government ownership are not limited to particular grades of HRS, and they do not present themselves differently across grades of HRS. As such, to measure benefit by differentiating benchmarks based on HRS grade fails to reflect the full effect of the subsidy.⁴⁸
- In finding the provision of HRS for LTAR program to be specific in the *Preliminary Results*, Commerce stated that the program was specific to all industries/enterprises that use HRS without any reference to grade. Consistent with its specificity finding, Commerce should utilize a single HRS benchmark that includes all HRS purchases regardless of grade.⁴⁹
- The approach of including products in the benchmark even if they are not, or could not be,

⁴⁵ See Petitioners Case Brief at 4.

⁴⁶ *Id.*

⁴⁷ *Id.* at 4-5 (citing 19 CFR 351.525(b)(5) and *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) (*OCTG from Turkey Investigation*) and accompanying IDM at Comment 8).

⁴⁸ *Id.* at 5-6 (citing *Preliminary Results* and accompanying PDM at 12-13).

⁴⁹ *Id.* at 10-11 (citing *Preliminary Results* and accompanying PDM at 13-14).

used to product subject merchandise is supported by Commerce's prior practice.⁵⁰

- In *Kitchen Racks from China*, Commerce rejected the respondents' argument that it did not consume steel strip in the production of subject merchandise and, thus, its kitchen racks (*i.e.*, subject merchandise) could not have benefitted from the steel strip for LTAR program.⁵¹
- In that case, Commerce found "no evidence that steel strip could not be used to produce subject merchandise" and, therefore, did "not find that the benefits conferred by the steel strip LTAR are tied to non-subject merchandise." Accordingly, Commerce countervailed the respondent's purchases of steel strip for LTAR and attributed that subsidy to the respondent's total sales.⁵²
- In *Steel Cylinders from China*, Commerce used U.N. Comtrade data as a benchmark for seamless tube steel even though the data included "seamless tube steel sizes that were not used in the production of subject merchandise."⁵³
- In the *OCTG from Turkey Investigation*, Commerce explained that it "initiated an investigation into the provision of HRS for LTAR, not a specific type of HRS" and further explained that its approach was consistent with past cases in which it had not "limited its investigation of LTAR programs only to grades of an input used in the production of subject merchandise."⁵⁴
- In *Turkey Pipe 2015*, Commerce stated that its inclusion of all available transactions purchased from private parties "produces a conservative benchmark" and that "the HRS purchased by the Tosçelik Companies from Erdemir and the HRS imported or purchased by the Tosçelik Companies from private parties are of the identical product (HRS)." Thus, in *Turkey Pipe 2015*, Commerce found that the proper HRS benchmark was that of a single product that encompassed all grades and sizes.⁵⁵
- In *Citric Acid from China*, Commerce stated that there is no requirement to calculate a benchmark price "solely reflective of a respondent's particularities" as doing so would prevent Commerce from approximating the market price.⁵⁶
- Under 19 CFR 351.511, Commerce is not instructed to alter the products covered under an LTAR program, but rather to account for adjustments like freight costs and delivery charges. Thus, in the interest of comparability, Commerce cannot make adjustments that result in differences between how specificity is defined and how benefit is measured for the same LTAR program.⁵⁷
- The entire point of using broad averages to create a benchmark is so that variations in grade,

⁵⁰ *Id.* at 8.

⁵¹ *Id.* (citing *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Final Results and Partial Rescission of First Antidumping Duty Administrative Review*, 77 FR 21734 (April 11, 2012) (*Kitchen Racks from China*) and accompanying IDM at Comment 6).

⁵² *Id.*

⁵³ *Id.* (citing *High Pressure Steel Cylinders from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2016*, 83 FR 63471 (December 10, 2018) (*Steel Cylinders from China*) and accompanying IDM at Comment 3).

⁵⁴ *Id.* at 10 (citing *OCTG from Turkey Investigation* IDM at Comment 3).

⁵⁵ *Id.* at 13 (citing *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*) and accompanying IDM at Comment 3).

⁵⁶ *Id.* at 14-15 (citing *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid from China*) and accompanying IDM at Comment 5.D.)

⁵⁷ *Id.* at 16 (citing *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) (*Lumber V from Canada Final Determination*) and accompanying IDM at 110-115).

size, quantity, etc. are smoothed. Commerce uses broad averages to calculate benchmarks because the respondents can always point to differences in the products purchased by private suppliers and those purchased by government authorities. Allowing individual grades or sizes of a particular product to be included or excluded from a benchmark opens Commerce's benchmark calculations up to gamesmanship. In contrast, calculating a benchmark based on a broad collection of all HRS purchases results in a conservative and better comparison of actual HRS market prices.⁵⁸

- For example, in the instant review, the respondents merely divided the HRS purchases into X-grade and non-X-grade categories and did not delineate all their purchases into individual grades. This approach demonstrates the type of gamesmanship that Commerce should seek to avoid rewarding.⁵⁹
- Commerce's finding in *HRS from India* that its LTAR benchmarks need not be identical to the good sold by the foreign government should lead it to use a single HRS benchmark in the final results.⁶⁰

The Borusan Companies' Rebuttal Arguments

- Both Commerce's past practice in its investigation of the HRS for LTAR program across numerous steel pipe from Turkey cases and the factual record in this administrative review affirmatively demonstrate that Commerce should continue to exclude X-grade HRS from the HRS benchmark when calculating any benefit that the Borusan Companies received under this program.⁶¹
- The record evidence demonstrates that the Borusan Companies do not purchase X-70 grade HRS from Erdemir and Isdemir and that Erdemir and Isdemir do not produce X-70 grade HRS. Grade X-70 HRS is a highly engineered product that is produced based on specific customer requirements and which requires special production equipment and expertise. The Borusan Companies' purchases of imported X-70 grade HRS were consumed by a mill which only produces non-subject large diameter line pipe and were tied to specific large diameter pipeline projects.⁶²
- The petitioners' reliance on the *OCTG from Turkey Investigation* as evidence of Commerce's alleged practice is inapposite. The comparability of X-series HRS for benchmark purposes was not at issue in the *OCTG from Turkey Investigation*, and the facts of that investigation are different from the instant review.⁶³
- Since the *OCTG from Turkey Investigation*, Commerce has, in five separate reviews (including the *Preliminary Results* of the instant review) and one investigation, differentiated X-series HRS for purposes of calculating the benchmark used to measure whether Turkish "authorities"

⁵⁸ *Id.* at 9.

⁵⁹ *Id.* at 11.

⁶⁰ *Id.* at 15-16 (citing *Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923, (May 6, 2009) (*HRS from India*) and accompanying IDM at Comment 12).

⁶¹ See Borusan Companies Rebuttal Brief at 2.

⁶² *Id.* at 2-4 (citing Borusan Companies' Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: Borusan's Response to Section III of Initial Questionnaire," dated July 13, 2019 (Borusan Companies Initial QR) at 24-25; see also Borusan Companies' Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: Borusan's First Supplemental Questionnaire Response," dated September 5, 2018 (Borusan Companies Supplemental QR1) at 6-7 and Ex. N-10).

⁶³ *Id.* at 4.

sold HRS for LTAR.⁶⁴ In its case brief, the petitioners have failed to address Commerce’s practice in this regard.

The Tosçelik Companies’ Rebuttal Arguments

- The Court has held that Commerce must make an “apples-to-apples” LTAR benefit comparison.⁶⁵
- The Court of International Trade (CIT) held that it is appropriate to exclude X-series HRS from an HRS LTAR analysis when the record supports such an exclusion.⁶⁶
- Thus, Commerce should continue to differentiate between X-series and non-X-series HRS when conducting the HRS for LTAR benefit analysis.

Commerce’s Position: In the *Preliminary Results*, Commerce determined there was no evidence to support a finding that the provision of X-series grade HRS to the Tosçelik Companies by Turkish “authorities” was, at the point of bestowal, tied to non-subject merchandise.⁶⁷ Consequently, we included the Tosçelik Companies’ purchases of X-series HRS grades from authorities in the subsidy benefit calculation. We find that no evidence or argument from interested parties warrants reconsideration of our approach in the *Preliminary Results*. In particular, the respondents have provided no evidence indicating that the Government of Turkey (GOT) authorities’ provision of HRS was contingent upon production of specified pipe products. Thus, we have included all respondents’ purchases of HRS from Turkish authorities, regardless of grade, in our subsidy analysis.

Further, Commerce must consider factors affecting comparability, such as product quality and similarity, in determining the appropriate benchmark to measure the adequacy of remuneration for the HRS provided by Turkish authorities.⁶⁸ In the *Preliminary Results*, we found that X-series and non-X-series grade HRS are not comparable according to the evidence on the record of this review. The respondents have clearly segregated their HRS purchases into X-series and non-X-series grade HRS.⁶⁹ The respondents have also provided product catalogues and invoices, which demonstrate that X-series grade and non-X-series grade HRS each possess distinct

⁶⁴ *Id.* (citing *Preliminary Results* and accompanying PDM at 15; see also *Large Diameter Welded Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019); *Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 11504 (March 27, 2019) (*OCTG from Turkey 2016*); *Welded Line Pipe from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34113 (July 19, 2018); *Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review, 2015*, 83 FR 6511 (February 14, 2018); *Turkey Pipe 2015*; and *Tosçelik Profil ve Sac Endüstrisi A.Ş. v. United States*, 358 F. Supp. 3d 1370, 1375 (CIT 2019) (*Tosçelik Profil*)).

⁶⁵ See *Tosçelik Companies Rebuttal Brief at 2* (citing *Torrington Co. v. United States*, 68 F. 3d 1347, 1352 (CAFC 1995)).

⁶⁶ *Id.* (citing *Tosçelik Profil*, 358 F. Supp. 3d at 1375).

⁶⁷ See PDM at 16.

⁶⁸ See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(2)(i).

⁶⁹ See *Tosçelik Companies’ Letter*, “Welded Carbon Steel Standard Pipe and Tube from Turkey: Tosçelik Questionnaire Response,” dated July 25, 2018 (*Tosçelik Companies Initial QR*) at Exhibit 25; see also *Tosçelik Companies’ Letter*, “Welded Carbon Steel Standard Pipe and Tube from Turkey: Tosçelik Companies Supplemental Questionnaire Response,” dated December 20, 2018 (*Tosçelik Companies Supplemental QR1*) at Exhibit 22; and *Borusan Companies’ Letter*, “Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: Borusan’s Second Supplemental Questionnaire Response,” dated March 1, 2019 (*Borusan Companies Supplemental QR2*) at Exhibit N-11.

physical characteristics and, thus, the two HRS grades are not comparable.⁷⁰ Although we are examining whether HRS was provided for LTAR during the POR, regardless of grade, the subsidy benefit analysis should take into account our finding that X-series and non-X-series grade HRS are not comparable grades of HRS. Accordingly, we have differentiated the HRS benchmark by comparing the X-series grade HRS purchased from Turkish authorities to X-series grade HRS purchased from private suppliers, and the non-X-series grade HRS purchased from Turkish authorities to non-X-series grade HRS from private suppliers. Our approach in this regard is consistent with Commerce's practice in prior Turkish CVD proceedings. For example, in *OCTG from Turkey 2016 Review*, Commerce excluded the Borusan Companies' purchases of X-series HRS from private parties from the HRS benchmark calculation because Borusan had no comparable purchases of X-series HRS from Turkish authorities.⁷¹

We disagree that Commerce's approach in *Kitchen Racks from China* and the *OCTG from Turkey Investigation* should lead us to use an HRS benchmark that does not delineate by grade. In those cases, Commerce was addressing the input acquired from authorities that should be included in the LTAR benefit analysis and was not addressing the make-up of the benchmark used to determine whether those purchases conferred a benefit.⁷²

We also find that *Steel Cylinders from China* is not on point. In that case, the tier-two benchmarks under consideration were comprised of datasets from U.N. Comtrade and Metal Expert. For benchmark purposes, Commerce found the former "somewhat broad" and the latter "somewhat narrow and incomplete."⁷³ As a result, Commerce simple-averaged the datasets. Notably, there is no discussion in *Steel Cylinders from China* that Commerce had benchmark data available that delineated by grade or any other information on the record indicating that the datasets consisted of merchandise that was incomparable to the government-provided good.⁷⁴ Thus, the facts of *Steel Cylinders from China* are distinct from the instant review, where the respondents reported grade-specific, tier-one purchases from private parties for purposes of the tier-one benchmark calculation.

In *Turkey Pipe 2015*, Commerce did not differentiate between X-series and non-X-series grades of HRS when conducting its benefit calculations under the HRS from LTAR program. However, in that review, the respondents did not delineate their government or private purchases of HRS by X-series and non-X-series grades, which prevented Commerce from conducting a grade-specific benefit calculation.⁷⁵ Unlike *Turkey Pipe 2015*, in the instant review the respondents

⁷⁰ See Tosçelik Companies Initial QR at 25-27; see also Tosçelik Companies Affiliation QR at Exhibits 1-6.

⁷¹ See Memorandum, "Placement of Public Version of the Borusan Companies Calculation Memorandum from OCTG from Turkey 2016 on Record of Instant Review," dated May 8, 2019 (OCTG from Turkey 2016 Calculation Memorandum), at 4. This memorandum contains the public version of the calculation memorandum for the Borusan Companies that Commerce issued in connection with *Oil Country Tubular Goods from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2016*, 83 FR 51440 (October 11, 2018) (*OCTG from Turkey 2016 Review*) and accompanying PDM. Commerce made no changes to the Borusan Companies' subsidy calculations in the final results of that review.

⁷² See *Kitchen Racks from China* IDM at Comment 6; see also *OCTG from Turkey Investigation* IDM at Comment 3.

⁷³ See *Steel Cylinders from China* IDM at Comment 3.

⁷⁴ *Id.*

⁷⁵ See *Turkey Pipe 2015* IDM at Comment 4, where Commerce discusses how the respondent in that case couched its argument upon the purported grade of the manufactured pipe to argue that the HRS from which the pipe was

have segregated their HRS purchases into X-series and non-X-series grades. As explained above, the respondents have also provided product catalogues and invoices generated in the ordinary course of business that differentiate between X-series and non-X-series grades. We find this information indicates that the HRS market distinguishes between these two grades, which in turn supports our finding that X-series and non-X-series grades require separate benchmarks. As a result, we have the means and the factual basis to differentiate HRS by grade for purposes of determining whether Turkish authorities sold HRS to the respondent firms for LTAR during the POR.

We also disagree with the petitioners' argument that our specificity analysis should inform how we perform the price comparisons under our LTAR benefit analysis. The analysis we utilize to determine whether the provision of a good is specific under section 771(5A) of the Act (*e.g.*, whether a subsidy, by law or in fact, is limited to an enterprise or industry, or groups thereof) is distinct from the analysis utilized to measure the adequacy of remuneration for a government-provided good and determine the appropriate price comparison under section 771(5)(E)(iv) of the Act. This distinction is evident in the language contained in 19 CFR 351.511, which governs subsidies involving the provision of goods. When Commerce is calculating a tier-one benchmark, such as the X-series and non-X-series HRS the respondents purchased from private parties during the POR, 19 CFR 351.511(a)(2)(i) instructs Commerce to "consider product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability." Product grade, which in this case manifests itself in the form of X-series and non-X-series HRS, affects comparability, as evidenced by the product catalogue and invoice information the respondents submitted on the record.⁷⁶ Further, in describing the manner in which Commerce should conduct its LTAR benefit analysis, 19 CFR 351.511(a) makes no reference to Commerce's specificity analysis under section 771(5A) of the Act.

We also disagree with the petitioners' claim that our decision to delineate by X-series and non-X-series HRS when conducting the LTAR benefit analysis: (1) runs counter to Commerce's practice of using broad averages to calculate benchmarks; and (2) conflicts with Commerce's finding in *HRS from India* that private and world market goods need not be identical to the goods sold by "authorities" in order to constitute viable benchmarks.⁷⁷ We agree that, generally speaking, Commerce seeks to utilize benchmarks derived from broad averages. However, as noted above, in deriving LTAR benchmarks, 19 CFR 351.511(a) directs Commerce to consider "product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability." Thus, we cannot allow the practice of using broad averages to overcome Commerce's regulatory obligation to utilize benchmarks that are comparable. For this reason, Commerce delineates by grade or product characteristic when such data are available and where

produced was also of a higher grade and, therefore, not comparable to the HRS it purchased from Turkish "authorities." The factual record of the instant review is different because, as noted above, the respondents delineated their HRS purchases from Turkish "authorities" and from private suppliers by HRS grade, and also provided production catalogue and sales documentation demonstrating that the market for HRS accounts for such differences in grade.

⁷⁶ See Tosçelik Companies' Letter, "Welded Carbon Steel Standard Pipe and Tube from Turkey; Tosçelik Affiliation Questionnaire Response," dated June 16, 2018 (Tosçelik Companies Affiliation QR) at Exhibits 1-6; *see also* Tosçelik Companies Initial QR at 25-27.

⁷⁷ See *HRS from India* IDM at Comment 12.

record information indicates that the market for the good in question accounts for such grade or product characteristics in the ordinary course of business.⁷⁸

Therefore, in accordance with 19 CFR 351.511(a)(2)(i), and consistent with our practice in prior Turkish CVD proceedings, we have continued to differentiate between X-series and non-X-series HRS when conducting the LTAR benefit analysis. We also continue to include the Tosçelik Companies' purchases of X-series HRS from Turkish authorities in the LTAR benefit calculation because there is no evidence that, at the point of bestowal, the sale of the HRS was contingent upon any particular type of steel production.

Comment 2: Whether to Apply AFA to the Borusan Companies' Receipt of Land for LTAR Under Law 5084

The Petitioner's Case Brief Arguments

- The Borusan Companies' answers to Commerce's questions regarding this program are evasive and leave open the possibility that they purchased land from Turkish authorities during the AUL period.⁷⁹
- Thus, because the Borusan Companies failed on two occasions to respond adequately to Commerce's questions concerning this program and because other parts of the Borusan Companies' questionnaire response indicate that it, in fact, bought and sold land during the AUL period, Commerce should apply AFA with regard to this program.⁸⁰

The Borusan Companies' Rebuttal Arguments

- There is no basis to apply AFA for this program.⁸¹
- The Borusan Companies clearly indicated their non-use of this program during the POR and the AUL period.⁸²
- Further, in its supplemental questionnaire response, the Borusan Companies provided the verification exhibits Commerce collected as part of the *LDWP from Turkey Investigation*, a proceeding with a period of investigation that also covered calendar year 2017. These documents demonstrate that the Borusan Companies did not use the land for LTAR during the AUL period.⁸³

⁷⁸ See, e.g., *Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009) (*Austenitic Pressure Pipe from China*) and accompanying IDM at 21, where Commerce delineated by steel grade in the LTAR benefit calculation; see also *Certain Softwood Lumber Products From Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 19657 (April 28, 2017) (*Lumber V from Canada Preliminary Determination*) and accompanying PDM at 54-56 (where Commerce delineated by coniferous species in the LTAR benefit calculation), and *Lumber V from Canada Final Determination* IDM at Comment 13.

⁷⁹ See Petitioners Case Brief at 18-19.

⁸⁰ *Id.* at 19-20.

⁸¹ See Borusan Companies Rebuttal Brief at 5-6.

⁸² *Id.*

⁸³ *Id.* at 6 (citing Borusan Companies' Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: Borusan's First Supplemental Questionnaire Response," dated September 5, 2018 (Borusan Companies Supplemental QR1) at 9 and Exhibit K-1; see also *Large Diameter Welded Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019) (*LDWP from Turkey Investigation*) and accompanying IDM).

Commerce’s Position: We determine that the application of AFA is not appropriate because the Borusan Companies cooperated to the best of their ability when indicating their non-use of the land for LTAR program.

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall 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 in the form and manner requested by Commerce, subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified. Section 776(b) of the Act provides that Commerce may apply an adverse inference when selecting from among the facts otherwise available if an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

The petitioners’ arguments concerning the Borusan Companies’ reporting for the land for LTAR program do not meet the criteria for facts otherwise available, as provided in section 776(a) of the Act, much less demonstrate that the Borusan Companies have failed to act to the best of their ability, as provided in section 776(b) of the Act. As explained below, we find that the Borusan Companies acted to the best of their ability and provided complete responses to our requests for information. Thus, the use of AFA is not warranted.

In its initial questionnaire response, the Borusan Companies stated that they did not use the program during the POR.⁸⁴ Because land purchases from authorities may be treated as non-recurring benefits, in a supplemental questionnaire, we inquired whether the Borusan Companies’ purchased land from Turkish authorities during the AUL period, to which they stated that they did not receive free land or purchase land for LTAR under the Law 5084 program at any point during the AUL period.⁸⁵ Additionally, the Borusan Companies placed on the record of the instant review copies of the verification exhibits Commerce collected as part of the *LDWP from Turkey Investigation*, a proceeding with a period of investigation that also covered calendar year 2017.⁸⁶ Commerce previously collected this verification exhibit in the *LDWP from Turkey Investigation* as part of its verification of non-use of various programs, which included the alleged provision of land for LTAR under the Law 5084 program.⁸⁷ The Borusan Companies placed the verification exhibit from the *LDWP from Turkey Investigation* on the record of this review to demonstrate non-use of the provision of land for LTAR under the Law 5084 program during the POR. This record evidence indicates that the location of the Borusan Companies’ facilities makes it ineligible to participate in the Law 5084 program.⁸⁸ We find that, according to the record evidence and consistent with the *LDWP from Turkey*

⁸⁴ See Borusan Companies’ Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: Borusan’s Response to Section III of Initial Questionnaire,” dated July 13, 2019 (Borusan Companies Initial QR) at 18-19.

⁸⁵ See Borusan Companies’ Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: Borusan’s First Supplemental Questionnaire Response,” dated September 5, 2018 (Borusan Companies Supplemental QR1) at 9.

⁸⁶ See Borusan Companies Supplemental QR1 at 4 and Exhibit K-1.

⁸⁷ *Id.*

⁸⁸ *Id.*

Investigation,⁸⁹ the Borusan Companies did not use the Law 5084 program during the POR or the AUL period.

Comment 3: How to Attribute Subsidies Received by the Borusan Companies on a D-3 Certificate Under the Inward Processing Program

The Borusan Companies' Case Brief Arguments

- In the *Preliminary Results*, Commerce determined that the duty exemption Borusan received in connection with a D-3 certificate under the Inward Processing Program was countervailable.⁹⁰
- Commerce's regulations state that if "a subsidy is tied to the production or sale of a particular product," Commerce "will attribute the subsidy only to that product."⁹¹
- Commerce's approach as it regards Borusan's use of the D-3 certificate did not adhere to standard set forth under 19 CFR 351.525(b)(5).⁹²
- In the *Preliminary Results*, Commerce found that Borusan "used D-3 certificates for duty-free imports of raw materials for use in the production of carbon steel pipe and tube sold domestically."⁹³ However, record evidence indicates that Borusan did not use D-3 certificates for importing raw materials for use in the production of subject merchandise.⁹⁴
- Rather, the summary page of the D-3 certificate in question indicates that Borusan only used the D-3 certificate to import raw materials for the production of non-subject merchandise.⁹⁵ Further, the D-3 export list that accompanied the D-3 certificate states that Borusan was to use the imported items to produce non-subject merchandise, and the corresponding activity list for the D-3 certificate demonstrates that Borusan, in fact, used the imported item to produce non-subject merchandise.⁹⁶
- Accordingly, as this D-3 certificate was used only for the production of non-subject merchandise, Commerce should find that any duty exemptions associated with the D-3 certificate was tied to non-subject merchandise.⁹⁷

The Petitioners' Rebuttal Arguments

- If a subsidized input could be used in the production of subject merchandise – regardless of whether the input is actually used – then Commerce attributes the benefit from those subsidies to subject merchandise and does not try to trace the subsidy through the manufacturing process to particular products.⁹⁸
- In the *Preliminary Results*, Commerce found that Borusan used D-3 certificates under the Inward Processing Program to import duty-free raw materials for use in the production of subject merchandise.⁹⁹

⁸⁹ See *LDWP from Turkey Investigation* IDM at 6.

⁹⁰ See Borusan Companies Case Brief at 1-2 (citing PDM at 18-21).

⁹¹ *Id.* at 1 (quoting 19 CFR 351.525(b)(5)).

⁹² *Id.* at 2-3.

⁹³ *Id.* at 2 (quoting PDM at 20).

⁹⁴ *Id.*

⁹⁵ *Id.* (citing Borusan Companies Initial QR at Exhibit E-3).

⁹⁶ *Id.* (citing Borusan Companies Initial QR at Exhibits E-3 and E-4).

⁹⁷ *Id.* at 3.

⁹⁸ See Petitioners Rebuttal Brief at 2.

⁹⁹ *Id.* (citing PDM at 20).

- The record does not support finding that Borusan’s use of D-3 Certificates was tied to the production of non-subject merchandise.¹⁰⁰
- In their case brief, the Borusan Companies mistakenly emphasize the attribution element under 19 CFR 351.525(b)(5), while incorrectly assuming that the subsidy at issue “is tied to the production or sale of a particular product.”¹⁰¹
- Commerce’s practice and the facts of the instant review demonstrate that the duty exemptions Borusan received in connection with the D-3 certificate were not tied to non-subject merchandise.
- In *Kitchen Racks from China*, Commerce rejected the respondent’s argument that it did not consume steel strip in the production of subject merchandise and thus, its kitchen racks (*i.e.*, subject merchandise) could not have benefited from the provision of steel strip for LTAR program. Specifically, Commerce found “no evidence that steel strip could not be used to produce subject merchandise” and, thus, did “not find that the benefits conferred by the steel strip for LTAR program” were tied to non-subject merchandise.¹⁰²
- Commerce encountered a similar situation in *Turkey Pipe 2010* when it considered whether it correctly attributed subsidies that benefited a respondent in the Osmaniye Organized Industrial Zone (OIZ) to subject merchandise. Commerce determined that “there is nothing on the record that demonstrates that OIZ programs are precluded from benefitting subject merchandise.”¹⁰³
- Like the aforementioned cases, there is no evidence in the instant review indicating that the materials Borusan imported using its D-3 certificate under the Inward Processing Program could not be used to produce subject merchandise.¹⁰⁴
- The Borusan Companies make no argument that the imported items at issue could not be used to produce subject merchandise, nor does the record contain any evidence that would support such a conclusion.¹⁰⁵
- In fact, the imported item at issue is a primary input in the production of subject merchandise.¹⁰⁶
- It is telling that the Borusan Companies do not even argue that the imported materials at issue could not be used to produce subject merchandise, but instead argue that they simply were not used to produce subject merchandise.¹⁰⁷
- Further, there is no evidence on the record indicating that the products produced from the imported items at issue are, in fact, outside the scope of the order.¹⁰⁸

Commerce’s Position: At issue is the analysis Commerce uses to determine whether benefits received under a subsidy program are tied to a particular product or market under 19 CFR 351.525(b). On this point, the Borusan Companies argue that, because they used the imported item at issue to produce non-subject merchandise, Commerce must determine that the duty

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 2-3.

¹⁰² *Id.* at 3 (citing *Kitchen Racks from China* IDM at Comment 6).

¹⁰³ *Id.* at 3-4 (citing *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 6, 2012) (*Turkey Pipe 2010*) and accompanying IDM at Comment 5).

¹⁰⁴ *Id.* at 4 (citing Borusan Companies IQR at Exhibits E-3 and E-4).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* (citing PDM at 8, 11-16).

¹⁰⁷ *Id.* at 4-5.

¹⁰⁸ *Id.* at 5.

exemptions received on the imported item are tied to non-subject merchandise, and, thus, are not countervailable. In contrast, the petitioners argue that, because the Borusan Companies did not demonstrate that the imported item was incompatible with the production of subject merchandise, Commerce should continue to find the import duty exemptions received in connection with the D-3 certificate to be a countervailable subsidy that is attributable to the Borusan Companies' total export sales. Both the Borusan Companies and the petitioners do not accurately describe Commerce's tying methodology.

Section 351.525(b)(5)(i) of Commerce's regulations states that, generally, "[i]f a subsidy is tied to the production or sale of a particular product, {Commerce} will attribute the subsidy only to that product." When determining whether a subsidy is tied to particular product or market under 19 CFR 351.525(b), Commerce's practice is to examine the contingencies the administering authority imposes upon the recipient firm at the time of the bestowal of the benefit.¹⁰⁹ As the preamble to Commerce's regulations makes clear, our analysis of whether a subsidy is tied to particular products focuses on the "stated purpose of the subsidy or the purpose we evince from the record evidence at the time of bestowal."¹¹⁰ Furthermore, under this approach Commerce does not further examine how the recipient firm uses the subsidy for purposes of the tying analysis.¹¹¹ A subsidy is tied to a particular product when the intended use is known to the provider of the subsidy and so acknowledged prior to, or concurrent with, the bestowal of the subsidy.¹¹² This analysis has been previously upheld by the CIT.¹¹³

Borusan received the duty exemption at issue by means of a D-3 certificate issued under the Inward Processing Certificate program. Under this program the GOT exempts companies from paying customs duties and VAT on raw materials and intermediate unfinished goods that are imported and used in the production of exported goods.¹¹⁴ There are two types of inward processing certificates: D-1 certificates for imported raw materials or intermediate unfinished goods used in the production of exported goods and D-3 certificates for imported raw materials or intermediate unfinished goods used in the production of goods sold in the domestic market.¹¹⁵ D-1 certificates provide for exemption or drawback of both import duties and VAT, while D-3 certificates only provide for exemption of import duties (*i.e.*, for D-3 the VAT is payable) and may be used for domestically produced goods, as opposed to exported goods.¹¹⁶ Commerce has found that both D-1 and D-3 certificates specify the inputs to be imported as well as the merchandise to be produced using those inputs.¹¹⁷ Thus, based on this information, we find that, at the point of bestowal (*e.g.*, the time at which the GOT issues the D-1 or D-3 inward processing certificate to the recipient), the receipt of the duty exemption under the Inward Processing Certificate program is contingent upon the production of designated products, as specified on the

¹⁰⁹ See, *e.g.*, *Lumber V from Canada Final Determination* IDM at Comment 53.

¹¹⁰ See *Countervailing Duties: Final Rule*, 63 FR 65348, 65403 (November 25, 1998).

¹¹¹ See *Lumber V from Canada Final Determination* IDM at Comment 53.

¹¹² *Id.*

¹¹³ See *Changzhou Trina Solar Energy Co. v. United States*, 352 F. Supp. 3d 1316, 1344 (CIT 2018) ("...Commerce need only look at the purpose of the subsidy at the time it is bestowed and not exactly how it is used by companies.").

¹¹⁴ See PDM 13-14.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

certificate. Therefore, consistent with Commerce's tying methodology, we find the duty exemption Borusan received in connection with the D-3 certificate at issue is tied to the production of the product specified on the D-3 certificate.

Having made this determination, the remaining issue is whether the product specified on the D-3 certificate at issue constitutes subject merchandise. Commerce determined in a prior segment of this proceeding that the product listed on the D-3 certificate at issue is outside the scope of the order.¹¹⁸ Thus, consistent with Commerce's prior determination, we find that the duty exemption Borusan received on the D-3 certificate at issue was contingent upon the production of non-subject merchandise. Accordingly, we find the duty exemptions are tied to non-subject merchandise, and, therefore, we have not included benefits the Borusan Companies received in connection with these duty exemptions in our subsidy analysis.

X. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of the review in the *Federal Register*.

☒

Agree

☐

Disagree

10/11/2019

X 

Signed by: CHRISTIAN MARSH

Christian Marsh

Deputy Assistant Secretary
for Enforcement and Compliance

¹¹⁸ The product listed on the D-3 certificate at issue is proprietary and cannot be discussed in this decision memorandum. Therefore, see Memorandum, "Supporting Information for Comment 3 of the Issues and Decision Memorandum," dated concurrently with this memorandum.