



C-489-817
Administrative Review
POR: 1/1/2017 - 12/31/2017
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December 9, 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 of Oil Country
Tubular Goods from the Republic of Turkey; 2017

I. Summary

The Department of Commerce (Commerce) has completed its administrative review of the countervailing duty (CVD) order of oil country tubular goods (OCTG) from the Republic of Turkey (Turkey) for the period of review (POR) January 1, 2017 through December 31, 2017. The mandatory respondent is Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret T.A. S., Borusan Mannesmann Boru Yatirim Holding A.S., and Borusan Holding A.S., (collectively, Borusan). After analyzing the issues raised by U.S. Steel Corporation, TMK IPSCO, Vallourec Star, L.P., and Welded Tube USA (collectively, the petitioners) and Borusan, we determine that Borusan received a net countervailable subsidy rate of 0.90 percent *ad valorem* during the POR.¹ Below is the complete list of issues in this review for which we received comments from interested parties:

- Comment 1: How to Attribute Subsidies Received by Borusan on a D-3 Certificate Under the Inward Processing Certificate Program
- Comment 2: Whether Commerce Should Use a Tier Two Benchmark in the Provision for Less Than Adequate Remuneration (LTAR) Program Because Commerce Found That a Particular Market Situation (PMS) Distorts the Turkish Market
- Comment 3: How to Treat the Customs Duty and Value Added Tax (VAT) Exemptions Received by Borusan Under the Investment Encouragement Program (IEP)

¹ See Memorandum: Preliminary Results Calculations for Borusan Mannesmann Boru Sanayi ve Ticaret A.S., and Borusan Istikbal Ticaret A.S., (collectively, Borusan), dated August 5, 2019 (Borusan's Preliminary Calculation Memorandum). The only change to the calculations for these final results is the removal of the rate for the Inward Processing Certificate Program, as discussed in Comment 1.



Background

On August 12, 2019, Commerce published the *Preliminary Results* for this administrative review.² Subsequently, in September 2019, Commerce received case and rebuttal briefs from interested parties.³ On November 9, 2019, Commerce held a public hearing at the request of interested parties.⁴

II. Scope of the Order

The merchandise covered by the order is oil country tubular goods, 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.

² See *Oil Country Tubular Goods from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review*; 2017, 84 FR 39797 (August 12, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

³ See the Petitioners' letter, "Certain Oil Country Tubular Goods from the Republic of Turkey: Petitioners' Case Brief," dated September 11, 2019 (the Petitioners' Case Brief); Borusan's letter, "Certain Oil Country Tubular Goods from the Republic of Turkey, Case No. C-489-817: Case Brief," dated September 11, 2019 (Borusan's Case Brief); the Petitioners' letter, "Certain Oil Country Tubular Goods from the Republic of Turkey: Petitioners' Rebuttal Brief," dated September 18, 2019 (the Petitioners' Rebuttal Brief); Borusan's letter, "Certain Oil Country Tubular Goods from the Republic of Turkey, Case no. C-489-817: Rebuttal Brief," dated September 18, 2019 (Borusan's Rebuttal Brief).

⁴ See U.S. Steel's letter, "Certain Oil Country Tubular Goods from the Republic of Turkey: U.S. Steel's Hearing Request, dated September 11, 2019; Borusan's letter, "Certain Oil Country Tubular Goods from the Republic of Turkey, Case No. C-489-817: Request to Participate in Hearing," dated September 11, 2019.

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.

III. Subsidies Valuation Information

A. Period of Review

The period for which we are measuring countervailable subsidies, *i.e.*, POR, is January 1, 2017 through December 31, 2017.

B. Allocation Period

Commerce 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*.⁵

C. Attribution of Subsidies

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the methodology for the attribution of subsidies used in the *Preliminary Results*. For a description of the attribution of subsidies and the methodology used for these final results, *see the Preliminary Results*.⁶

D. Denominators

Commerce made no changes to, and interested parties raised no issues in the case briefs regarding, the denominators for total sales and export sales used in the *Preliminary Results*. For a description of the denominators and the methodology used for these final results, *see the Preliminary Results*.⁷

⁵ See PDM at 4.

⁶ *Id.*

⁷ *Id.* at 6.

IV. BENCHMARK INTEREST RATES

Commerce made no changes to, and interested parties raised no issues in the case briefs regarding, the benchmark interest rates used to measure the benefits from export loans used in the *Preliminary Results*. For a description of the short-term interest rate benchmark used in these final results, *see* the *Preliminary Results*.⁸

V. Analysis of Programs

A. Programs Determined to be Countervailable

1. Deductions from Taxable Income for Export Revenue

Interested parties raised no issues regarding this program and we made no changes to the *Preliminary Results*. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.⁹ For these final results of review, we find the rate for Borusan to be 0.07 percent *ad valorem*.¹⁰

2. Inward Processing Certificate

In the *Preliminary Results*, we found the net countervailable subsidy rate for Borusan to be 0.10 percent *ad valorem* for import duty exemptions it received in connection with its use of a D-3 certificate under the Inward Processing Certificate Program.¹¹ Borusan submitted comments in its case brief regarding this program; no interested party submitted rebuttal comments. As a result of considering these comments, we find that the duty exemptions Borusan received under this program during the POR are tied to non-subject merchandise and, thus, we have not included these duty exemptions in our subsidy analysis in these final results. For more information, *see* Comment 1 below.

3. Export Financing -- Rediscount Program (Short-Term Pre-Shipment Rediscount Program)

Interested parties raised no issues regarding this program and we made no changes to the *Preliminary Results*. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.¹² For these final results of review, we find the rate for Borusan to be 0.32 percent *ad valorem*.¹³

⁸ *See* PDM at 6.

⁹ *Id.* at 7-8.

¹⁰ *See* Memorandum: Preliminary Results Calculations for Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret (collectively, Borusan), dated October 3, 2018 (Borusan's Preliminary Calculation Memorandum).

¹¹ *See* PDM at 11.

¹² *Id.* at 11-12.

¹³ *See* Borusan's Preliminary Calculation Memorandum.

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

Interested parties raised an issue regarding this program. For a discussion of our consideration of the parties' arguments regarding the selection of benchmarks, *see* Comment 2 below. We made no changes to the *Preliminary Results*. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.¹⁴ For these final results of review, we find the rate for Borusan to be 0.42 percent *ad valorem*.¹⁵

5. *Investment Encouragement Program: Customs Duty and VAT Exemptions*

Interested parties raised an issue regarding this program. For a discussion of our consideration of the parties' arguments regarding the treatment of this program, *see* Comment 3 below. We made no changes to the *Preliminary Results*. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.¹⁶ For these final results of review, we find the rate for Borusan to be 0.09 percent *ad valorem*.¹⁷

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

Interested parties raised no issues regarding these programs and we made no changes to the *Preliminary Results*. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.¹⁸ For these final results of review, we continue to find that the programs below did not confer a benefit during the POR.¹⁹

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

C. Program Found Not to Be Countervailable

1. *Law 687: Social Security Premium Support Program*

Interested parties raised no issues regarding this program and we made no changes to the *Preliminary Results*. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.²⁰ For these final results of review, we continue to find this program to be not countervailable.

¹⁴ *See* PDM at 12-17.

¹⁵ *See* Borusan's Preliminary Calculation Memorandum.

¹⁶ *See* PDM at 17-19.

¹⁷ *See* Borusan's Preliminary Calculation Memorandum.

¹⁸ *See* PDM at 19.

¹⁹ *See* Borusan's Preliminary Calculation Memorandum.

²⁰ *See* PDM at 19-20.

D. Programs Determined to Be Not Used During the POR

We determine that Borusan did not apply for, or receive, benefits under these programs during the POR:

- Strategic Investment Incentives
 - Tax Reductions
 - Income Tax Withholding
 - Social Security and Interest Support
 - Land Allocation
- Large Scale Investment Incentives
 - VAT and Customs Duty Exemptions
 - Tax Reductions
 - Income Tax Withholdings
 - Social Security and Interest Support
 - Land Allocation
- Export Insurance Provided by Turk Eximbank
- Preferential Tax Benefits for Turkish OCTG Producers Located in Free Zones
- Incentives for Research and Development Activities
 - Product Development R&D Support-UFT
 - Tax Breaks
- Provision of Steam Coal for LTAR
- Provision of Electricity for LTAR/Law 5084: Energy Support
- Provision of Land for LTAR
- Law 5084: Withholding of Income Tax on Wage and Salaries
- Exemption from Property Tax
- Law 5084: Incentive for Employers' Share in Insurance Premiums
- Law 6486: Regional Program for Employer's Share of Social Security Withholding
- Eximbank Working Capital Loan
- Export Financing: Pre-Export Credit Program

VI. Analysis of Comments

Comment 1: How to Attribute Subsidies Received by Borusan on a D-3 Certificate Under the Inward Processing Certificate Program

Borusan's Arguments:

- In the *Preliminary Results*, Commerce determined that the duty exemption Borusan received in connection with a D-3 certificate under the Inward Processing Certificate Program was countervailable.²¹
- 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."²²

²¹ See Borusan's Case Brief at 1 (citing PDM at 10-11).

²² *Id.* at 1 (citing 19 CFR 351.525(b)(5)).

- Commerce’s approach with respect to Borusan’s use of the D-3 certificate did not adhere to the standard set forth under 19 CFR 351.525(b)(5).²³
- In the *Preliminary Results*, Commerce found that Borusan “received duty exemptions on imported inputs under D-3 certificates of the IPC program.”²⁴ However, record evidence indicates that Borusan did not use D-3 certificates for importing raw materials for use in the production of subject merchandise.²⁵ Rather, the summary page of the D-3 certificate in question indicates that Borusan used the D-3 certificate only to import raw materials for the production of non-subject merchandise.²⁶
- Further, the D-3 export list that accompanied the D-3 certificate demonstrates 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 items to produce non-subject merchandise.²⁷
- Commerce should find that any duty exemptions associated with the D-3 certificate were tied to non-subject merchandise because the raw materials imported duty-free with this D-3 certificate were used only for the production of non-subject merchandise.²⁸

The petitioners did not rebut this argument.

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). Commerce’s regulations state 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.”²⁹ When determining whether a subsidy is tied to a particular product or market under 19 CFR 351.525(b), Commerce’s practice is to examine the contingencies imposed by the administering authority upon the recipient firm at the time of the bestowal of the benefit.³⁰ As the *Preamble* 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.”³¹ Furthermore, under this approach Commerce does not further examine how the recipient firm uses the subsidy for purposes of the tying analysis.³² A subsidy is tied to a particular product when the intended use is known to the provider of the subsidy and so

²³ *Id.* at 1-2.

²⁴ *Id.* (citing PDM at 10).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 2 (citing Borusan’s Letter, “Certain Oil Country Tubular Goods from the Republic of Turkey, Case No. C-489-817: Response to Section III of Initial Questionnaire,” dated March 4, 2019 (Borusan’s March 4, 2019 IQR) at Exhibit C-3 and Exhibit C-4)).

²⁸ *Id.* at 3.

²⁹ See 19 CFR 351.525(b)(5)(i).

³⁰ See, e.g., *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) (*Softwood Lumber from Canada CVD Determination*), and accompanying Issues and Decision Memorandum (IDM) at Comment 53.

³¹ See *Countervailing Duties: Final Rule*, 63 FR 65348, 65403 (November 25, 1998) (*Preamble*).

³² See *Softwood Lumber from Canada CVD Determination* IDM at Comment 53.

acknowledged prior to, or concurrent with, the bestowal of the subsidy.³³ Commerce's analysis, in this regard, has been upheld by the Court of International Trade (CIT).³⁴

Borusan received the duty exemption in question by means of a D-3 certificate issued under the Inward Processing Certificate program.³⁵ Under this program, the government of Turkey (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.³⁶ 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.³⁷ D-1 certificates provide for exemption or drawback of both import duties and VAT, while D-3 certificates provide only for exemption of import duties (*i.e.*, for D-3 the VAT is payable) and the goods imported under D-3 certificates may be used only for the production of goods sold in the domestic market.³⁸

The administrative record in this proceeding demonstrates 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.³⁹ On this basis, 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 certificate. Therefore, consistent with 19 CFR 351.525(b), for these final results of review, we find that 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.

Consistent with this finding, we examined whether the product specified on the D-3 certificate at issue is subject merchandise. The D-3 certificate identifies the product listed as a product other than OCTG.⁴⁰ As a result, we find that the duty exemptions provided by the D-3 certificates are tied to non-subject merchandise and do not provide a benefit for the production of subject merchandise. Consequently, we have not included in the net countervailable subsidy rate the duty exemption that Borusan received under these D-3 certificates. We note that Commerce conducted the same analysis in the 2017 administrative review of the CVD order on circular

³³ *Id.*

³⁴ See *Changzhou Trina Solar Energy Co., Ltd. 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.”).

³⁵ See PDM at 10.

³⁶ *Id.* at 8-10.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See Borusan's March 4, 2019 IQR at Exhibit C-3 and Exhibit C-4; see also Borusan's letter, “Certain Oil Country Tubular Goods from the Republic of Turkey, Case No. C-489-817: First Supplemental Questionnaire Response,” dated May 1, 2019 at Exhibit C-13.

welded carbon steel pipe and tube from Turkey and found that the benefits provided to Borusan under the D-3 certificate used during the POR were tied to non-subject merchandise.⁴¹

Comment 2: Whether Commerce Should Use a Tier Two Benchmark in the Provision for Less Than Adequate Remuneration Program Because Commerce Found That a Particular Market Situation Distorts the Turkish Market

The Petitioners' Arguments:

- The Turkish hot-rolled steel (HRS) market is significantly distorted and Commerce should use a tier two benchmark (*i.e.*, world market prices) for measuring the adequacy of remuneration of Borusan's HRS purchases from Eriğli Demir ve Çelik Fabrikaları T.A.S. (Erdemir) and İskenderun Demir ve Çelik A.Ş. (Isdemir).
- Commerce's *Preliminary Results* improperly examined government involvement in the Turkish HRS market exclusive to other factors establishing distorted HRS prices.⁴²
- Commerce's rejection of the PMS finding as relevant evidence in the *Preliminary Results* applies the regulation, 19 CFR 351.511, and the *Preamble* too narrowly by focusing only on distortion caused by the government's presence in the market and not distortion, generally, which affects price comparability for measuring the adequacy of remuneration.⁴³
- There is significant overlap in the purposes of a PMS analysis and the selection of a benchmark for measuring the adequacy of remuneration making the evidence that is relevant to a PMS also relevant for the purposes of selecting a benchmark.
- It is unreasonable for Commerce to refuse to address the irreconcilable inconsistency of using tier one import prices as a benchmark when such HRS imports were the cause of a distortive PMS in the antidumping duty investigation concerning *LDWP from Turkey LTFV*.⁴⁴
- Commerce should find the Turkish HRS Market distorted because Erdemir and Isdemir account for a substantial portion of the domestic HRS market and HRS import prices are otherwise distorted.⁴⁵
- The *Preamble* envisions "certain circumstances" where tier one benchmark prices are unusable because a market is distorted by the government's "substantial share of a market" and other distortive factors render the government's substantial share meaningful.⁴⁶ In prior cases, Commerce found that a government's share of the market is substantial above 30 percent.⁴⁷ During the POR, Erdemir and Isdemir accounted for 36.22 percent of the HRS

⁴¹ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part; Calendar Year 2017*, 84 FR 56173, (October 21, 2019), and accompanying IDM at Comment 3.

⁴² See the Petitioners' Case Brief at 1 (citing *Preliminary Results*).

⁴³ *Id.* at 2.

⁴⁴ *Id.* at 2 (citing *Large Diameter Welded Pipe from Turkey: Final Determination of Sales at Less Than Fair Value*, 84 FR 6362 (February 27, 2019) (*LDWP from Turkey LTFV*), and accompanying IDM).

⁴⁵ *Id.* at 8.

⁴⁶ *Id.* at 9 (citing the *CVD Preamble* at 63 FR 65377).

⁴⁷ *Id.* (citing *Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 16055 (April 13, 2018) (*OTR Tires from China AR 2015*), and accompanying IDM at Comment 1; and *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75

supply in Turkey and therefore they constitute a substantial portion of the Turkish HRS market under Commerce's established practice.⁴⁸

- Commerce should have concluded that the Russian-origin HRS imports, which were the cause of distortion of the market in *LDWP from Turkey LTFV*, in combination with Erdemir's and Isdemir's substantial presence in the market, together as factors cause distortion in the HRS market, as Commerce found contributed to a PMS.⁴⁹
- Because of the combination of Erdemir's and Isdemir's substantial presence in the HRS market and the significant amount of low-priced Russian HRS imports the Turkish HRS market in 2017 is distorted. As a result, it is unreasonable to conclude that tier one market-determined prices are available as a benchmark for measuring the adequacy of remuneration.
- In *Softwood Lumber from Canada CVD Determination*, Commerce stated that it will "consider any evidence on the record of other relevant factors or measures that may distort a market."⁵⁰ Given the facts of this record, the level of Russian HRS imports should have resulted in a finding of a distorted HRS in-country market rendering tier one benchmark prices unavailable.

Borusan's Rebuttal Arguments:

- Commerce's PMS determination in the *LDWP from Turkey LTFV* does not alter its consistent practice. In that case, Commerce emphasized that the PMS finding was based on "the collective impact" of multiple factors affecting the market, and Commerce never determined that the hot-rolled steel market in Turkey was distorted due to the presence of the government.⁵¹ Accordingly, in the absence of such a finding, there is no legal basis for disregarding actual Turkish market prices for purposes of establishing an appropriate benchmark in this review.
- Further, the PMS finding in the *LDWP from Turkey LTFV* was both legally and factually incorrect and it is currently on appeal before CIT.⁵²
- The petitioners ignore Commerce's longstanding findings in this CVD proceeding and others that the Turkish steel market is not distorted and reflects market-determined prices and Commerce has therefore used such prices as a tier one benchmark to measure the adequacy

FR 59212 (September 27, 2010) (*Coated Paper from China Determination*), and accompanying IDM at Comment 14).

⁴⁸ *Id.* at 9 (citing the GOT's letter, "Response of the Government of Turkey in 2017 Countervailing Duty Administrative Review on Imports of Certain Oil Country Tubular Goods from the Republic of Turkey," dated January 9, 2019, (GOT IQR) at 34).

⁴⁹ *Id.* at 10 (citing *LDWP from Turkey LTFV* IDM at Comment 1).

⁵⁰ *Id.* (citing *Softwood Lumber from Canada CVD Determination* IDM at Comment 28).

⁵¹ See Borusan's Rebuttal Brief at 2 (citing *LDWP from Turkey LTFV* IDM at Comment 1).

⁵² *Id.* (citing *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, Consol. Ct. No. 19-00056).

of remuneration.⁵³ Those determinations have been upheld by both the CIT and the Court of Appeals for the Federal Circuit (CAFC).⁵⁴

- Commerce has consistently found that Erdemir and Isdemir account for less than 50 percent of the HRS market in Turkey.⁵⁵ The remainder of the HRS market consists of imports and private domestic suppliers.⁵⁶ These data do not support a finding of market distortion in the Turkish HRS market, and Commerce has never pointed to any other evidence of distortion in the HRS market. Therefore, Commerce must use a tier 1 benchmark.⁵⁷
- Further, Commerce recently examined the HRS market in Turkey during the antidumping duty administrative review of *Hot-Rolled Steel from Turkey 16-17 AR* and Commerce calculated *de minimis* margins for the Turkish producers investigated, making no finding of market distortion in a review entirely focused on the HRS market in Turkey.⁵⁸
- There is no evidence that Russian HRS imports cause distortion in the Turkish HRS market.⁵⁹ Instead, evidence suggests that the world average import price into Turkey

⁵³ *Id.* at 4-5 (citing *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), and accompanying PDM at 14-15; *Oil Country Tubular Goods from the Republic of Turkey Final Results of Countervailing Duty Administrative Review*; 2016, 84 FR 11504 (March 27, 2019), and accompanying IDM at Comments 2 and 7. See e.g., *Large Diameter Welded Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019), and accompanying IDM at Comments; *Welded Line Pipe from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*; 2015, 83 FR 34113 (July 19, 2018), and accompanying IDM; *Oil Country Tubular Goods From the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*, 83 FR 6511 (February 14, 2018), and accompanying IDM; *Circular Welded Carbon Steel Pipes and Tubes From Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 47479 (October 12, 2017), and accompanying IDM; *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*Heavy WRWC Pipe and Tube Turkey Final Determination*), and accompanying IDM; *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review: Calendar Year 2013 and Rescission of Countervailing Duty Administrative Review, In Part*, 80 FR 61361 (October 13, 2015), and accompanying IDM (*CWCS Pipes and Tubes 2013 AR*); and *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*WLP from Turkey CVD Determination*), and accompanying IDM)).

⁵⁴ *Id.* at 4 (citing *Borusan Mannesmann Boru Sanayii ve Ticaret A.S. vs. United States*, 61 F. Supp. 3d 1306, 1329 (CIT 2015) and *Maverick Tube Corporation vs. United States*, 857 F. 3d 1353, 1362 (Fed. Cir. 2017)).

⁵⁵ *Id.* at 5-6 (citing *Large Diameter Welded Pipe From the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 30697 (June 29, 2018), and accompanying PDM at 11, *unchanged in Large Diameter Welded Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019) (*LDWP CVD Determination*), and accompanying IDM. See e.g., *Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*, 83 FR 6511 (February 14, 2018); *Circular Welded Carbon Steel Pipes and Tubes: Final Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 47479 (October 12, 2017), and accompanying IDM).

⁵⁶ *Id.*

⁵⁷ See Borusan's Rebuttal Brief at 6 (citing *Final Results of Remand Redetermination, Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. and Borusan Istikbal Ticaret v. United States; Maverick Tube Corporation v. United States*, Consol. Ct. No. 14-00229, 61 F. Supp. 3d 1306, and Slip Op. 15-59 (August 31, 2015) at 10-18).

⁵⁸ *Id.* at 7 (citing *Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016-2017*, 84 FR 30694 (June 27, 2019) (*Hot-Rolled Steel from Turkey 16-17 AR*)).

⁵⁹ *Id.* at 8 (citing Borusan's letter, "Oil Country Tubular Goods from Turkey, Case No. C-489-817: BMB's Rebuttal to Petitioner's Submission of Factual Information" dated June 20, 2019 at Attachment 3).

increased substantially between 2016 and 2017, while imports from Russia also increased. The HRS market in Turkey is an open market that reflects worldwide pricing, and that is why Commerce has consistently pointed to the large volume of imports as evidence of the lack of distortion in this market.⁶⁰

Commerce's Position: We continue to determine that the record evidence does not support a finding that the Turkish HRS market is distorted as a result of the government's involvement in the market such that prices in the Turkish market cannot serve as a benchmark under 19 CFR 351.511(a)(2)(i). Accordingly, for these final results of review, we continue to use Borusan's actual prices for purchases of HRS from non-government owned suppliers as the benchmark against which to compare its purchases of HRS from Erdemir and Isdemir during the POR.

We disagree with the petitioners that the PMS finding in *LDWP from Turkey LTFV* is a sufficient basis to find market distortion within the context of a CVD benchmark analysis in this proceeding. The analyses conducted by Commerce under section 773(e) of the Act, to examine whether a PMS exists, and under 19 CFR 351.511, to determine whether goods are being provided for LTAR, are based on different considerations and for different purposes. For purposes of determining whether there is a PMS, Commerce has looked at market factors external and internal to the market at issue.⁶¹ These factors include actions by the government with regard to the market (ownership of production, provision of subsidies, actions to restrict imports or exports) as well as circumstances outside the market (import trends).⁶² In the CVD context, the analysis of distortion focuses on whether the price of a government-provided good or service confers a subsidy, and, as highlighted in the *Preamble*, the central focus of this analysis is whether the government's involvement in the market results in distortion such that prices in that market cannot serve as benchmarks for the government price.⁶³ Commerce normally examines government involvement in the market through the ownership of production and the share of domestic apparent consumption accounted for by government production; and, whether the government has taken action that affects supply, by on the one hand, imposing export taxes, export quotas or other restraints on exports, which leads to an artificial, distortive, oversupply in the domestic market, or on the other hand, by imposing import duties or quotas which may constrain domestic supply.

We also disagree with the petitioners that our distortion analysis, here, focuses too narrowly on the presence of the government in the market. On the contrary, the level of imports is a key factor in determining market distortion. The record shows that for 2017, 2016, and 2015, the combined domestic HRS production of Erdemir and Isdemir accounted for 36.22, 38.44, and 40.27 percent of supply, respectively, while imports of HRS accounted for 34.15, 38.67, and

⁶⁰ *Id.* at 8.

⁶¹ See *LDWP from Turkey LTFV* IDM at Comment 1; see also *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 26401 (June 6, 2019), and accompanying IDM at Comment 1.

⁶² *Id.*

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

39.63 percent in the same years, respectively.⁶⁴ Moreover, the record shows no evidence of market-distortive export restraints on HRS, such as export taxes, quotas or licensing requirements, or market-distortive import restraints, such as import duties, quotas, or licensing requirements.⁶⁵ Given the minority share of government production, the substantial levels of imports, and the lack of other record evidence indicative of distortion, we continue to find, consistent with our prior determinations,⁶⁶ that the HRS market in Turkey was not distorted by the government's presence for this period. There have been no changes in the facts underlying our prior determinations that the market is not distorted that would warrant a different finding regarding the appropriate benchmark to measure the adequacy of remuneration.

Further, we disagree with the petitioners that the prior Commerce determinations support a determination that the government's share of the HRS market in Turkey is substantial. Specifically, in *OTR Tires from China AR 2015*, Commerce found that, "while the level of government involvement in the market is not insubstantial, we noted the absence of record information indicating government policies to restrict exports of the input and the relatively high-level of imports as a portion of consumption" and therefore, consistent with our practice, continued to find that the synthetic rubber market in China was not distorted during the POR.⁶⁷ The petitioners have failed to take into account the other factors that were considered in that case, *i.e.*, the level of imports and government policies to restrict the market. Similarly, in relying on *Coated Paper from China Determination*, the petitioners err by not considering that a contributing factor to the finding that the level of State-Owned Enterprise (SOE) and collective ownership was substantial, because Commerce found in that case that the figure reported (*i.e.*, 36.68) was understated and viewed as the minimum level of the SOE and collective ownership of production.⁶⁸

Lastly, we disagree with the petitioners' contention that we did not consider other relevant factors or measures that may distort a market, as cited in *Softwood Lumber from Canada CVD Determination*. In that case, the other evidence considered were three reports prepared by the Government of New Brunswick in their ordinary course of business that indicated market distortion.⁶⁹ In this case, as discussed above, we have examined the evidence on the record and consistent with our practice, continue to find that the HRS market in Turkey is not distorted by the presence of the government, and therefore, it can serve as a source for an appropriate tier one benchmark during the POR.

⁶⁴ See GOT's letter, "Response of the Government of Turkey in 2017 Countervailing Duty Administrative Review on Imports of Certain Oil Country Tubular Goods from the Republic of Turkey," dated January 9, 2019 at 35.

⁶⁵ *Id.* at 42.

⁶⁶ See *CWCS Pipes and Tubes 2013 AR*, and accompanying IDM at 10-11; see also *WLP from Turkey CVD Determination* IDM at 11-14; and *Heavy WRWC Pipe and Tube Turkey Final Determination* IDM at 13.

⁶⁷ See *OTR Tires from China AR 2015* IDM at Comment 1 and 11.

⁶⁸ See *Coated Paper from China Determination* IDM at Comment 14, page 62.

⁶⁹ See *Softwood Lumber from Canada CVD Determination* IDM at Comment 28.

Comment 3: How to Treat the Customs Duty and Value Added Tax (VAT) Exemptions Received by Borusan Under the Investment Encouragement Program IEP

Borusan's Arguments:

- Commerce should not treat customs duty and VAT exemptions received under the IEP program as a contingent liability interest free loan.⁷⁰
- The customs and VAT exemptions received by Borusan under the IEP certificate are not a contingent liability loan because the machinery and equipment had already been imported and the certificates were closed several years before the POR. No continuing benefit can be found.⁷¹
- Commerce's decision to treat the IEP program as a contingent liability loan is based on the treatment of the Indian Export Promotion Capital Goods Scheme (EPCGS) program in various Indian CVD proceedings.⁷² However, the EPCGS program is inapposite and it should not be used as the basis for the IEP program.⁷³
- Turkey's IEP program is not similar in any way to India's EPCGS program. Under the IEP program once the material is imported and used in the applicable project there is no further obligation that Borusan must complete,⁷⁴ such as an export requirement. This is unlike the EPCGS program where once the material is imported and used in the production of applicable merchandise, the producer still has obligations to complete export sales and the final satisfaction of the export criteria is unknown at the time of importing the capital equipment.⁷⁵
- Commerce's analysis of the IEP program is purely hypothetical as Borusan has never had to repay the duty.⁷⁶ The sole evidence that the benefit is somehow contingent is a statement from a Borusan official at verification in the *Welded Line Pipe from Turkey 2015 AR*.⁷⁷ Therefore, Commerce should instead find that the benefit is received and expensed in the year when the imports are made, which were prior to the POR, thus, there is no benefit.

⁷⁰ See Borusan's Case Brief at 3.

⁷¹ *Id.*

⁷² *Id.* at 3-4 (citing *Polyethylene Terephthalate Film, Sheet and Strip from India: Final Results of Countervailing Duty Administrative Review*; 2012, 80 FR 11163 (March 2, 2015), and accompanying IDM; *Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination and Partial Final Affirmative Determination of Critical Circumstances*, 79 FR 40712 (July 14, 2014), and accompanying IDM; *Certain Frozen Warmwater Shrimp from India: Preliminary Countervailing Duty Determination*, 78 FR 33344 (June 4, 2013), and accompanying PDM, unchanged in *Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013)).

⁷³ *Id.* at 5.

⁷⁴ *Id.* (citing Borusan's March 4, 2019 IQR at 21-22).

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* at 5-6 (citing *Welded Line Pipe from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review*; 2015, 83 FR 1237 (January 10, 2018), and accompanying PDM at 15, unchanged in *Welded Line Pipe from the Republic of Turkey: Final Results of Countervailing Administrative Review*; 2015, 83 FR 34113 (July 19, 2018) (*Welded Line Pipe from Turkey 2015 AR*)).

The Petitioners' Rebuttal Arguments:

- Commerce correctly countervailed Borusan's receipt of final waiver of customs duties and VAT on imported goods under the IEP program. Accordingly, Commerce should not alter the *Preliminary Results* with respect to this program.⁷⁸
- The record establishes that Borusan received the final approval and closure of the IEP certificates during the Average Useful Life period, which establishes the date of receipt of the non-recurring benefit to Borusan.⁷⁹
- Because the GOT reserves the right to deny duty-free importation of the good until it grants the completion visa, Commerce properly found that the year of receipt of the benefit is the date of receipt of the completion visa, which makes this program countervailable in the POR.⁸⁰
- Borusan has agreed that closure of the IEP certificate is "necessary," and given Commerce's verification findings in *Welded Line Pipe from Turkey 2015 AR* that establish the ability of the GOT to assess duties, plus interest, Commerce should reject Borusan's argument and continue calculating a subsidy rate based on the full amount of the duties and VAT forgone by the GOT at the time Borusan received the final closure of the completion visa from the GOT.⁸¹

Commerce's Position: We disagree with Borusan, and we continue to find that the IEP customs duty and VAT exemption program provides benefits in two forms: as a contingent liability interest-free loan, within the meaning of 19 CFR 351.505(d), from the time of importation to the time that the completion visa is issued; and, as a grant in the amount of duties exempted at the time of the issuance of the completion visa.

Commerce's preliminary finding is consistent with the treatment of the program determined in *Welded Line Pipe from Turkey 2015 AR*.⁸² Borusan's arguments do not overcome Commerce's decision in the *Preliminary Results*, that the company remains obligated until "some future action" is taken or "some goal" achieved to satisfy requirements for a final waiver from the government.⁸³ Under this IEP program, before the company obtains the final waiver in the form of a "completion visa," it must pass an on-site audit by the government confirming, *inter alia*, that it has installed all the imported machinery and equipment, and that these machinery and equipment meet the eligibility requirements for duty- and VAT-free importation under this program.⁸⁴ That a company may have a perfect record on all prior audits, as Borusan indicates, does not, in any way, eliminate this contingency from the operation of this program, and its application to the company's future projects. Thus, although the particular mechanics may differ from EPCGS in India, there is a contingency for the granting of the final waiver of duties and VAT, and there is a process for meeting that contingency (*i.e.*, the on-site audit to confirm that the equipment has been installed and meets the requirements). That there is a process, in and of

⁷⁸ See the Petitioners' Rebuttal Brief at 2.

⁷⁹ *Id.* at 3.

⁸⁰ *Id.* at 2 (citing the PDM at 17-18).

⁸¹ *Id.* at 4 (citing Borusan's Case Brief at 6).

⁸² See *Welded Line Pipe from Turkey 2015 AR* IDM at Comment 1.

⁸³ See 19 CFR 351.505(d).

⁸⁴ See *Welded Line Pipe from Turkey 2015 AR* IDM at Comment 1.

itself, demonstrates that the GOT maintains the authority to deny the final waiver and collect the duties and VAT otherwise due, with interest. Thus, Commerce's treatment of this program, in its first stage, as a contingent liability program, under 19 CFR 351.505(d), is appropriate.⁸⁵ Accordingly, for these final results, we continue to treat the customs duty and VAT exemptions as grants received in the year in which the GOT waived the contingent liability and granted the completion visa, thus granting the final exemptions of import duties and VAT.

VII. Recommendation

Based on our analysis of the comment received, we recommend adopting all of the above positions. If this recommendation is accepted, we will publish the final results of this administrative review in the *Federal Register*.



Agree

Disagree

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

⁸⁵ See, e.g., *Countervailing Duty Investigation of Welded Stainless Pressure Pipe from India: Final Affirmative Determination*, 81 FR 66925 (September 29, 2016), and accompanying IDM at Comment 3.