C-489-830
Administrative Review
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March 13, 2020

MEMORANDUM TO: Jeffrey I. Kessler
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 the Countervailing Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey; 2017

I. SUMMARY

The Department of Commerce (Commerce) has analyzed case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty (CVD) order on steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey).[1] As a result of this analysis, we have made certain changes to the *Preliminary Results*.[2] We recommend that you approve the positions described in the "Discussion of Comments" section of this memorandum. Below is the complete list of the issues in this administrative review for which we received comments from interested parties:

Comment 1: Benchmark for Provision of Natural Gas for Less Than Adequate Remuneration (LTAR)
Comment 2: Social Security Premium Support Programs

II. BACKGROUND

A. Case History

On September 16, 2018, we published the *Preliminary Results* of this administrative review. The sole mandatory respondent is Habas Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.Ş. (Habas).

[1] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Countervailing Duty Order*, 79 FR 65926 (November 6, 2014) (*Order*).
[2] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2017*, 84 FR 48583 (September 16, 2019) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

On October 29, 2019, we issued a supplemental questionnaire to the Government of Turkey (GOT) regarding certain programs that provided no measurable benefit during the POI, but for which we lacked information from the GOT regarding financial contribution and specificity.[3] The GOT timely filed its response on November 22, 2019.[4] On December 6, 2019, we received a timely case brief from Habas.[5] The petitioner submitted a timely rebuttal brief on December 18, 2019.[6] Although Habas and the Rebar Trade Action Coalition (RTAC or the petitioner) each requested a hearing in this case,[7] those requests were subsequently withdrawn.[8]

On December 2, 2019, we extended the deadline for these final results from January 14, 2020 to March 13, 2020.[9]

B. Period of Review

The period of review (POR) is March 1, 2017 through December 31, 2017.

III. SCOPE OF THE *ORDER*

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

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

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

At the time of the filing of the petition, there was an existing countervailing duty order on steel reinforcing bar from the Republic of Turkey. *Steel Concrete Reinforcing Bar from the Republic*

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[3] *See* Commerce's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Supplemental Countervailing Duty Questionnaire," dated October 29, 2019.
[4] *See* GOT's Letter, "First Administrative Review of Countervailing Duty Order on Steel Concrete Reinforcing Bar from Turkey: Second Supplemental Questionnaire Response of the Government of Turkey," dated November 22, 2019 (GOT SQR2).
[5] *See* Habas' Letter, "Steel Concrete Reinforcing Bar from Turkey; Habas case brief," dated December 6, 2019 (Habas Case Brief).
[6] *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: RTAC's Rebuttal Brief," dated December 18, 2019 (Petitioner Rebuttal Brief).
[7] *See* Habas' Letter, "Request for hearing," dated October 16, 2019; and Letter from the petitioner, "Steel Concrete Reinforcing Bar from Turkey: Request for Hearing," dated October 16, 2019.
[8] *See* Habas' Letter, "Withdrawal of Request for hearing," dated February 15, 2020; and Letter from the petitioner, "Steel Concrete Reinforcing Bar from Turkey: Withdrawal of Request for Hearing," dated February 18, 2020.
[9] *See* Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Extension of Deadline for Final Results in 2017 Countervailing Duty Administrative Review," dated December 2, 2019.

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

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

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

IV. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

We made no changes to the allocation period (AUL) or to the allocation methodology used in the *Preliminary Results*. No issues were raised by interested parties in briefs regarding this topic. For a description of the AUL and the methodology used for the final analysis, *see* the *Preliminary Results*.[10]

B. Attribution of Subsidies

We made no changes to our attribution analysis as discussed in the *Preliminary Results*. No issues were raised by interested parties in briefs regarding this topic. For a description of the methodology applicable to these final results, *see* the *Preliminary Results*.[11]

C. Denominators

We made no changes to the sales denominators for these final results. No issues were raised by interested parties in briefs regarding this topic. For a full discussion of the sales denominators used, see the *Preliminary Results*.[12]

[10] *See* PDM at 4-5.
[11] *Id.* at 5-7.
[12] *Id.* at 7.

D. Loan Benchmarks and Discount Rates

We made no changes to our loan benchmarks or discount rates used in the *Preliminary Results*. No issues were raised by interested parties in briefs regarding this topic. For a description of the methodology applicable to these final results, *see* the *Preliminary Results*.[13]

V. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Provision of Natural Gas for LTAR

Interested parties submitted comments regarding the benchmarks used to measure the benefit for this program, which are addressed below. As discussed under Commerce's position in Comment 1, Commerce determines that it is appropriate to make a change to the benchmark calculation for this program for these final results. Specifically, although we continue to source benchmark information from the International Energy Agency (IEA) report, we made an adjustment to the percentage of the Russian share of the natural gas market in Europe, which was used in the calculation.[14] The final program rate is as follows:

Habas: 3.30 percent *ad valorem*

2. Deductions from Taxable Income for Export Revenue

No issues were raised by the interested parties regarding this program. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.[15] The final program rate remains unchanged as follows:

Habas: 0.07 percent *ad valorem*

B. Programs Determined Not to Be Countervailable

1. Provision of LNG for LTAR

We received no comments from interested parties regarding this program. Commerce has made no changes in the analysis of the program from the *Preliminary Results*.[16]

[13] *Id.* at 7-8.
[14] *See* Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Analysis and Calculations for the Final Countervailing Duty 2017 Administrative Review," dated concurrently with this IDM (Final Calculation Memorandum).
[15] *Id.* at 16.
[16] *Id.* at 16-17.

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

We received no comments from interested parties regarding this program. Commerce has made no changes in the analysis of the program from the *Preliminary Results*.[17]

3. Minimum Wage Support

We received no comments from interested parties regarding this program. Commerce has made no changes in the analysis of the program from the *Preliminary Results*.[18]

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

For purposes of the *Preliminary Results*, because we found that this program did not provide measurable benefits during the POR, we determined that it was unnecessary to make a determination as to its countervailability.[19] Habas submitted comments regarding this program, which are addressed below. As discussed under Commerce's position in Comment 2, Commerce previously found this program to be not countervailable. Therefore, for these final results, we are now finding this program to be not countervailable.

5. Social Security Premium Support (Under Law 4857)

For purposes of the *Preliminary Results*, because we found that this program did not provide measurable benefits during the POR, we determined that it was unnecessary to make a determination as to its countervailability. Habas submitted comments regarding this program, which are addressed below.[20] As discussed under Commerce's position in Comment 2, Commerce previously found this program to be countervailable. Therefore, for these final results, we are now finding this program to be not countervailable.

C. Programs Determined to Not Confer Countervailable Benefits

1. Inward Processing Regime (IPR)[21]

D. Programs Determined Not to Provide Measurable Benefits During the POR

Consistent with the *Preliminary Results*, we find that the benefits from certain programs were fully expensed prior to the POR, or are less than 0.005 percent *ad valorem* when allocated to the respondent's POR sales as discussed in the "Attribution of Subsidies" in the *Preliminary Results*.[22] Accordingly, we have not included these programs in our subsidy rate calculations for

[17] *Id*. at 17-18
[18] *Id*. at 18.
[19] *Id*. at 20.
[20] *Id*.
[21] *Id*. at 18-20.
[22] *Id*. at 5-7.

the respondents, consistent with our established practice.[23] We also determine that it is unnecessary for Commerce to make a determination as to the countervailability of those programs.

1. Assistance to Offset Costs Related to Antidumping Duty/CVD Investigations
2. Research and Development Income Tax Deduction
3. Social Security Premium Support (Under Law 6486)
4. Rediscount Program
5. Investment Encouragement Program

E. Programs Determined to Not Be Used

No issues were raised by the interested parties regarding the following programs. *See* the *Preliminary Results*.[24]

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

[23] *See, e.g., Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016) and accompanying Issues and Decision Memorandum (IDM) at 31-32.
[24] *See* PDM at 21.

VI. DISCUSSION OF THE ISSUES

Comment 1: Benchmark for Provision of Natural Gas for Less Than Adequate Remuneration

Habas Case Brief[25]

- Commerce should have calculated the benchmark from the COMTRADE European Union (EU) import statistics in Habas' benchmark submission rather than the IEA information provided by the petitioner.

IEA Information

- The IEA figures used in the *Preliminary Results* are fatally flawed. The IEA's information-collection practices are so methodologically unsound as to render the IEA information unsuitable for use in this proceeding of record. IEA's information comes from an assembly of surveys conducted by many different utility companies in different countries operating under different systems. The IEA report does not give a glimmer of the methodology underlying any of the information collection (*e.g.*, how the information is collected, in what units it is collected, the conversions and currencies involved, etc.). Presenting information in the form of a published report does not give IEA price information reliability.
- To make matters worse, in some countries average unit values do not exist, so the IEA report uses selected tariff rates, which approximate an average value per MWh. Tariffs are published list prices and may not represent the actual prices paid by actual users nor may they be transparently broken down between classes of uses. Even if the tariffs are broken down among classes, the IEA report does not explain what the classes are (*e.g.*, the definition of industrial user may vary from tariff to tariff). While the use of tariffs as a surrogate for actual market prices may be good enough for IEA purposes, it should not be good enough Commerce's calculation purposes. For instance, it is not clear for which countries the IEA relies on tariffs rather than surveys. It is also not clear why the IEA thinks weight-averaging tariffs will give a good measure of actual natural gas for industrial users versus power-generation users. It is also not clear why the IEA thinks the weighted average of the tariffs approximates an average value per MWh.
- In submitting the IEA data, the petitioner explains that in several countries, industrial consumers can purchase natural gas and electricity through private contracts instead of via the regulated market, with variable and confidential pricing arrangements, which makes the calculation of average end-use pricing for industrial consumers particularly challenging. Commerce should not rely on information the collection of which is particularly challenging (*i.e.*, fundamentally speculative).
- While the petitioner touted the methodological reliability of the IEA report, the petitioner omits from its exhibit a critical component of the report itself. Specifically, the petitioner omitted the entire section on conversion factors. Thus, we have no idea what conversion factors enter the reported IEA figures, nor do we have any information concerning the units in which local surveys are undertaken, the units in the various tariffs are expressed,

[25] *See* Habas Case Brief at 1-33.

nor the units in which the "particularly challenging" (*i.e.*, guesswork) is estimated. This does not add to the creditability of the figures.

- As a snapshot of particular actual natural gas prices in the marketplace at any given time, the IEA report is undermined by its lack of precision and vague methodology. Together with the petitioner's omission of key conversion tables on which the IEA figures are based, this makes the IEA amounts completely unreliable for benchmarking purposes.
- Furthermore, Commerce's use of U.S. dollar currency units in its preliminary calculation, which the IEA report cautions would interject an element of exchange rate variability into the unit values that masks actual market costs. The IEA report states that in general, country differentials between national end-use prices expressed in USD are heavily influenced by exchange rate differentials. Thus, Commerce calculations are measuring currency fluctuation and not natural gas prices. Based on the Exchange Rate sheet in Commerce's calculation worksheet exchange rate fluctuations in 2017 changed by 13.8 percent up to 20.5 percent for other currencies.
- In addition, the petitioner manipulated the data in the IEA tables to give it the appearance of orderliness. For instance, the petitioner filled in gaps with the natural gas index data or prices from later or other quarters. One of the computational tricks used by petitioner was to use the retail price index to backfill missing quarterly figures for industrial natural gas prices. However, the retail and industrial figures do not move in tandem.[26] This renders the petitioner's methodology invalid. Moreover, the methodology has a huge impact on the benchmark calculation because Commerce used the values provided by the petitioner for "industrial users" in 20 European countries, but the petitioner only provided information for electricity generation users for seven of those countries. The petitioner omitted data from Italy, Bulgaria, Croatia, Cyprus, Greece, Lithuania, and Malta. The omission of Italy is significant because it is connected to Algeria and Libya by pipeline, and Algeria and Libya are among the largest suppliers of gas to the European Union. This suggests that natural gas prices in Italy would be substantially lower than the countries selected by the petitioner. This would reduce the benchmark. Moreover, since Italy imports natural gas from Algeria and Libya, it is not a customer of Russian natural gas, and so its pricing would not have been diluted by Commerce' attempt to remove the impact of Russian natural gas pricing from IEA figures. This selectivity further reduces the reliability of the submitted benchmark.
- If you consider the figures in Commerce's "NG Benchmark" worksheet in conjunction with the petitioner's source file, the lack of reliability is even more pronounced. For instance, Commerce has an amount for Austria for electricity generation. The IEA report has no figure at all for natural gas values for power generation. However, the IEA began to report natural gas prices for Austria's power generator in mid-2017 which the IEA backfilled to the first quarter of that year (the 2018 IEA report notes that the IEA's methodology for collecting Austrian natural gas prices changed completely from previous years). The IEA report explains that until the second quarter of 2017, the Austria prices were collected biannually and adjusted on a quarterly basis by the wholesale price index. Starting in the third quarter 2017, the IEA continued to rely on Austrian data captured every two years for value and every year for quantity, with quarterly figures backfilled with wholesale price indexes. There is no information on the relationship between WPI

[26] *See* Habas Case Brief at 7 (citing Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: RTAC's Benchmark Submission," dated August 7, 2019 (Petitioner Benchmark Submission), Exhibit 1 at 49-50 and 60).

and the price of natural gas, and they could move in opposite directions. To make matters worse, the petitioner filled in the first quarter unit value by indexing the second quarter figure by the change in the retail price of natural gas, which is an inappropriate indexing measure. Thus, the figures used by Commerce come from biannual survey, coupled with annual survey, adjusted to quarterly by the wholesale price index except for one quarter which is adjusted using a retail price index.

- For Finland, the reported prices are derived entirely from tariffs (price lists), and the division by end-use class is weighted according to fixed consumption ratios. Thus, the Austria and Finland examples show how useless the IEA data are for benchmarking purposes, as measures of actual market price. While these data may be useful for national governments' macroeconomic analyses, they lack the reliability necessary for benchmarking purposes.
- While the PDM cites the U.S. Court of International Trade (CIT) decision upholding Commerce's use of IEA data in another case, the reliability of the IEA report was not at issue in that case, and the CIT did not address the flaws that Habas is now pointing out in the IEA methodologies.[27] In addition, the data has been compromised by the petitioner's selectivity.
- Furthermore, Commerce's decision to average IEA's industrial-user prices with IEA's power-generator prices distorts the benchmark. There is a 10 percent price difference between these two classes of users. The LTAR analysis in the present case involves alleged preferential pricing in the power-generation sector, so the benchmark should be aligned with that specificity analysis. Commerce's averaging inflates the benchmark above the power-generator price. This has a huge impact such that almost all of the benefit comes from Commerce's use of the industrial-use price in the benchmark.
- Habas also disputes Commerce's adjustment of the IEA figures by the removal of the Russian import unit value. Commerce overstated Russian's actual share of the EU market, which led to an inflated benchmark. Commerce based Russia's share of the EU market on the Eurostat report, which defined natural gas as the aggregation of liquified and gaseous natural gas.[28] Commerce has repeatedly rejected the use of natural gas figure that might be distorted by the inclusion of liquid natural gas, and it should do so here.[29] Russia's actual share of the EU market is on the record.[30]
- The entire exercise of inflating the benchmark, by purging the influence of Russian pricing from its calculation, is misguided. Commerce decided that Russian pricing is political, yet it used a political document as the starting point for its Russian-pricing adjustment factor (*i.e.*, Gazprom's annual report). If Commerce continues to use the IEA report for its benchmark analysis, it should make no adjustment for Russian pricing because Habas has shown Russia's pricing to the EU market is fully consistent with the pricing of other major suppliers and, as such, is market-driven and not political.

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[27] *See* Habas Case Brief at 11 (citing *Rebar Trade Action Coalition v. United States*, 389 F. Supp. 3d 1371, 1383 (CIT May 31, 2019) (*RTAC CIT*).
[28] *See* Habas Case Brief at 12 (citing Petitioner Benchmark Submission, Exhibit 1 at 2 and 11).
[29] *See Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 83 FR 13239 (March 28, 2018) and accompanying IDM at 13.
[30] *See* Habas Case Brief at 13 (citing Habas' Letter, "Steel Concrete Reinforcing Bar from Turkey; Habas natural gas benchmark submission," dated August 7, 2019 (Habas Benchmark Submission), Exhibit 2 at 6).

- It is noteworthy that the unit values from the COMTRADE data that Habas submitted are virtually identical to the Eurostat unit values from the petitioner's pre-preliminary comments.[31] Thus, the petitioner's Eurostat figures support Habas' COMTRADE analysis and support the proposition that Russian pricing to the EU is market driven. Thus, there is no reason to adjust the IEA prices to remove the impact of Russian pricing. This conclusion is buttressed by the fact that the figures by which Commerce makes this adjustment include Russia's pricing to Turkey. Since Commerce has concluded that the Turkish market is dominated by Boru Hatlari Ile Petrol Tasima A.S. (BOTAS), such that tier-one prices are not usable, Commerce should likewise not use a Gazprom figure that is tainted by the inclusion of export price into Turkey.
- In conclusion, the IEA report is so plagued with methodological uncertainties as to be useless for purposes of this proceeding. Regardless of its usefulness for public policy planners and macroeconomists, it does not constitute substantial evidence of actual market-determined prices or of prices determined by market principles as required by 19 CFR 351.511.

COMTRADE / Eurostat Import Statistics

- The COMTRADE/Eurostat AUVs are the best benchmark. Habas proposed that the benchmark should be EU imports of natural gas from Russia, as a tier-two benchmark. Alternatively, as a tier-three benchmark, Habas provided trade statistics on EU imports of natural gas from Norway, Algeria, Libya, and Ukraine, as a benchmark (these countries are the top four suppliers of natural gas to the European Union aside from Russia). These top-four data could readily be combined with the EU imports from Russia should Commerce determine that the EU average unit value from Russia was market-based.
- The petitioner also provided tier-two benchmark data, namely EU imports from Russia. The same data corroborate the COMTRADE data provided by Habas because they show the same AUVs as the Habas COMTRADE data.[32] Habas also showed that the monthly AUVs from Russia were well within the bounds of the other major suppliers and, therefore, were clearly market driven.[33] The annual AUVs from the past five years similarly show the market driven nature of Russian prices in the European Union.[34]
- Habas makes no claims about whether Russian prices to all partner countries were equally market-driven; Habas' point is that the statistical evidence is clear that Russian prices to the European Union are market driven. If COMTRADE statistics are credible, then no amount of trade-journal or think-tank bloviating about Russian energy export policies can controvert the statistical proof that Russia's price to the European Union are market derived.
- The credibility of COMTRADE data is a central issue. The petitioner claims the COMTRADE data are not adequately explained. It complained that while UN COMTRADE reports are in kilograms, it is unknown how these data are originally reported and how they were converted to kilograms. Habas notes that Commerce has used COMTRADE data in countless investigations and reviews, recognizing that these

[31] *See* Habas Case Brief at 14 (citing Habas Benchmark Submission, and Letter from Habas, "Habas reply to RTAC pre-preliminary comments," dated August 30, 2019, at 5).
[32] *See* Habas Case Brief at 16.
[33] *Id.* at 17 (citing Habas Benchmark Submission at Exhibit 2).
[34] *Id.*

data reflect the official trade statistics of the individual reporting countries as provided by such countries to the United Nations.

- In the case of EU trade data, it is critical to distinguish between extra-EU and intra-EU statistics. For extra-EU trade, the partner country to the EU country is the country of origin of the goods. For intra-EU trade, in the case of imports, the partner country is the EU Member State from which the goods were sent to the reporting Member State. The distinction is critical when comparing the national import statistics of the individual EU Member States to the EU-wide trade statistics. In the national statistics, an importation of natural gas from Russia into Germany would appear as an import into Germany from Russia. But if the gas transited Germany and entered France, it would show as a German export, and from France's point of view, an import of German natural gas into France. However, if we consider a German import from Russia that subsequently went to France from the EU-wide perspective (EU-28 statistics), the movement would show an import by Germany from Russia but not the subsequent intra-EU transfer from Germany to France. Because of this difference, it is inappropriate to compare national trade statistics to EU-28 statistics unless intra-EU movements are stripped out of the former.
- As far as the reporting units, the Eurostat natural gas trade figures are reported and maintained in kilograms.[35] Because UN COMTRADE is nothing more than a compilation of official statistics from the supplying governments, there is no issue as to conversions. Eurostat maintains natural gas trade statistics in kilograms and COMTRADE accordingly takes the data in kilograms. The petitioner asserts that COMTRADE natural gas EU-28 trade statistics do not correspond to Eurostat figures, and that the COMTRADE data are therefore unreliable. However, the petitioner's attempts to compare the COMTRADE data with Eurostat data is flawed and has no probative value. Habas provided COMTRADE data for EU-28, which does not include intra-EU movements. The petitioner on the other hand compares the statistics between Eurostat and COMTRADE for individual countries without disclosing the basis on which the data were presented.
- Habas compared the COMTRADE EU-28 statistics with the total Eurostat statistics provided by the petitioner. The comparison was made between total EU-28 imports from Russia in the two datasets, month-by-month, using quantity as the comparison. This is because what is important is not individual country's imports from Russia, but overall EU-28 imports from Russia. The difference between the two data sources is 0.4 percent for 12 months, and the correlation coefficient between the two datasets is very high at 0.998.[36] This is the appropriate analysis because it considers the entirety of EU trade in both databases and eliminates any issues regarding intra-EU trade. Habas did the same analysis on a value basis, and results are similarly striking. COMTRADE data was reported in U.S. dollars while Eurostat is in Euros. Habas converted the Eurostat values to dollars using the exchange rates in Commerce's preliminary calculations. The variance by value is smaller than by quantity, and the correlation is slightly stronger.[37]
- EU-28 statistics are reliable because they are statistics gathered at the point at which goods cross international borders and are based on customs declarations. By contrast, in the case of intra-EU trade, when going from one EU member state to another, goods need

[35] *See* Habas Case Brief at 20 (citing Petitioner Benchmark Submission at 11).
[36] *See* Habas Case Brief at 21.
[37] *Id*. at 21-22.

not pass through customs and no customs declaration is required. Therefore, intra-EU figures do not carry the intrinsic reliability of extra-EU *(i.e.*, EU-28) trade figures.

- Even looking solely at the national figures for European imports of natural gas from Russia in the COMTRADE and Eurostat datasets, the two sources show nearly identical AUVs.[38] This further corroborates the reliability of the COMTRADE data.
- While Commerce explained that EU import data from Eurostat had a different import quantity from Russia for ten of the eleven countries included in the COMTRADE data. As explained above, the correct approach is to compare COMTRADE EU-28 data with Eurostat EU-28 data, not individual country data. In addition, while Commerce complained that it cannot analyze how the COMTRADE import data were collected (particularly how quantity was collected and converted) because there was no underlying report, Commerce ignores the explanation for Eurostat data already on the record and fails to acknowledge that it has used COMTRADE in countless cases, recognizing that the COMTRADE data are intrinsically reliable because they rely on official national or supranational statistics. Regarding the conversion of units, the record reflects that the countries of the European Union, and the European Union itself, collect their natural gas import statistics in kilograms, and that these quantities are directly conveyed to COMTRADE, which has the same units.
- Commerce addressed the credibility of Habas' reported kilogram conversions (the reported ratios for converting kilograms to cubic meters ranged from 0.73 to 0.75, while two of the sources submitted by the petitioner report a conversion ratio that ranged from 0.7 to 0.9). The fact that Habas' conversions are within a narrow band supports the reliability of Habas' conversion data, which are taken from actual physical measurement in the gas delivery system. Furthermore, these figures fall in the range of figures in the petitioner's opinion, which further supports Habas' conversions. There can be no serious attack on EU statistics (both COMTRADE and Eurostat) because both are in native kilograms. Moreover, the narrow band of Habas' kilogram conversion data reflects the consistency of BOTAS's feed quality.
- Commerce opined that the discrepancies in the import data and the variable conversion rates on the record render the COMTRADE data unreliable for purposes of this proceeding, and this finding is consistent with the underlying investigation in which Commerce rejected the use of natural gas export prices sourced from Global Trade Information Services due to inconsistent conversion factors. First, as noted above, the discrepancies are illusory, as they are based on country-specific data while Habas' benchmark concerns EU-28 data. Second, Commerce's citation of a prior decision as support for a factual finding in this segment violates the rule that each segment of each proceeding must stand on its own.[39] Third, Commerce oversimplifies the rationale by which the Global Trade Information Service (GTIS) data were deemed unreliable in the investigation. Commerce rejected the GTIS data not on generalized inconsistent conversion factors, but because the conversions between TJ, T, M3, TM3, kg, and l (all of which were in the GTIS data) were inconsistent. In the present case, there can be no inconsistency of conversion factors because all COMTRADE and Eurostat data are reported in native kgs, while Habas' kg report is based on verifiable, physical observation (*i.e.*, gas chromatograph in Habas' incoming gas flow). Furthermore, in the investigation,

[38] *Id.* at 23.
[39] *See Hyundai Steel Co. v. United States*, 319 82F. Supp. 3d 1327, 1342 n. 13 (CIT 2012).

Commerce further cited possible imports of compressed natural gas in the data, an assertion lacking in the present segment. There is no evidence on the instant record that any EU country imports Russian natural gas in cannisters (*i.e.*, in compressed form).

- While Commerce expressed its preference for IEA figures over COMTRADE data in the *Preliminary Results*, each assertion of Commerce's conclusion is controverted by the record. While Commerce may have previously found the IEA figures to be "thoroughly analyzed and annotated," the IEA's own explanations of its information collection methodologies demonstrate a lack of consistency and objectivity in the IEA's information-collection practices. To the extent that IEA's subjectivity and lack of rigor is consistent year-on-year, the IEA figures may indeed be useful for energy policy purposes but not for establishing a benchmark in this case. The fact that the CIT may have upheld the benchmark in an appeal adds nothing to the analysis; on the present factual record, given the present actual scrutiny of the sources and methodologies underlying the IEA's information-collection process, the CIT's earlier acceptance of IEA figures on a different record is unavailing. Plus, Commerce's assertion that the COMTRADE data are unreliable is without factual support, given the near-perfect concordance between the COMTRADE EU-28 data and the Eurostat EU-28 data.
- Commerce concluded that the natural gas pricing data from the IEA report were the best available information for construction of a natural gas benchmark under our tier three analysis, given there are no conflicting data on the record and no conversion calculation is required. Commerce's conclusion is marred by its faulty analysis throughout. It is not true that there is no data conflict with the IEA figures because the COMTRADE data are inconsistent with the IEA figures. It is also not true that the IEA figures have no conversion problems. The IEA's own statement of its methodology not only exposes a grossly subjective approach but the IEA says nothing about the native units in which the survey data, tariffs, and guesswork of various kind capture quantity or about the ways in which IEA may convert these disparate units to a common measure. The petitioner could have provided a more complete version of the IEA report, including more detailed explanations of its methodologies – as it did for the Eurostat approach, but it chose not to share this information. IEA's figures are far from the best information available. The COMTRADE data are a clearly better measure of price than the IEA annual report. COMTRADE data are monthly and Commerce has a well-documented preference for using monthly figures over annual (POR) figures.[40] In the present case, as in *Silica Fabric from China*, Commerce has collected transaction-specific data from Habas (*i.e.*, Habas' individual purchases of natural gas from BOTAS). The presence of these transaction-specific data on the record strongly supports the use of a monthly benchmark here, as it did in *Silica Fabric from China*. Furthermore, in *Silica Fabric from China*, Commerce describes its use of monthly benchmarks as Commerce's practice. As such, to support any deviation from that practice, Commerce must at least acknowledge the change and show that there are good reasons for the new policy. Regardless of whether

[40] *See* Habas Brief at 31 (citing *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2014*, 82 FR 32678 (July 17, 2017) (*Solar Cells from China*) and accompanying IDM at Comment 4; and *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China*, 82 FR 8405 (January 25, 2017) (*Silica Fabric from China*) and accompanying IDM at Comment 7).

Commerce has a practice of using monthly statistics, it does have a historical preference for doing so and there is no adequate reason to depart from that historical preference here.

Petitioner Rebuttal Brief[41]

- The petitioner asserts that Commerce should continue to use the IEA data and reject the data submitted by Habas for the natural gas benchmark.

IEA Information

- In multiple prior proceedings, including the investigation of this order, Commerce determined that the IEA data provided an accurate and reliable source of benchmark natural gas prices. In addition, the CIT sustained the use of the IEA data on appeal.[42] Habas' attempts to discredit the IEA data and methodology are unpersuasive, with some assertions being demonstrably untrue and others based on nothing but speculation.
- In the *Turkey Rebar I 2016 AR Final*, Commerce also explained that it had previously used IEA benchmark data for natural gas, finding that the IEA data is thoroughly analyzed and annotated, and published and distributed as part of a comprehensive energy report.[43] Thus, Commerce has an established practice, sustained by the CIT, of treating IEA natural gas price data as reliable for benchmarking purposes.
- Like the respondents in *Turkey Rebar I 2016 AR Final*, Habas unpersuasively attempts to discredit the IEA's reliability as a data source. While Habas claims that IEA report is fatally flawed and unsuitable for benchmarking purposes, there is another conclusion, one that Commerce has reached on multiple occasions and the CIT sustained. That conclusion is that the IEA data are good enough for national governments to use in economic policy making because they are accurate and reliable, and otherwise free of methodological uncertainty. None of the purported deficiencies that Habas raises undermines this conclusion.
- Habas claims that there is not a glimmer of methodology underlying any of the information collection in the IEA report. To the contrary, the IEA report excerpts included in the Petitioner Benchmark Submission include an entire section headed "Sources and collection methodology," which provides a detailed description of both sources and methodologies.[44] The data are not from surveys of hundreds of different utility companies, as Habas claims, but they are collected by national government authorities and reliable secondary sources. It is unclear why Habas would consider official statistics regarding domestic prices collected by national authorities and provided to the IEA to be littered with methodological vagaries.
- The IEA recognizes the complexity of gathering accurate energy price information, and it has done its due diligence to provide accurate natural gas prices (and additional fees or costs, such as taxes). The IEA report explains that natural gas and electricity pose a specific challenge as their end-use prices are often regulated through multiple tariffs which include fixed and variable components, as well as distinctions in pricing for

[41] *See* Petitioner Rebuttal Brief at 1-19.
[42] *See* Petitioner Rebuttal Brief at 1 (citing *RTAC CIT*, 389 F. Supp. 3d at 1371).
[43] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016*, 84 FR 36051 (July 26, 2019) (*Turkey Rebar I 2016 AR Final*) and accompanying IDM at Comment 1.
[44] *See* Petitioner Benchmark Submission, Exhibit 2 at page 18.

different consumption categories. After each set of country tables in the IEA reports, there is a section on data collection methodology, including a section about where the natural gas prices come from and information on energy taxes for each country.

- The IEA report also includes explanations regarding the detailed manner in which the IEA collects information to compare energy pricing across products and borders. The IEA reports that natural gas prices refer to MWh and are calculated by the data sources on a gross calorific value basis. For this reason, Commerce upheld the use of IEA information compared to information submitted by Habas in the past and should continue to do so here.[45]
- Habas poses a series of rhetorical questions, such as for which countries does the IEA rely on tariffs rather than surveys. These questions are effectively answered in IEA's report, and Habas points to nothing else on the record to suggest these issues could possibly give rise to problems with the IEA's accuracy.[46] The challenges that the IEA recognizes and addresses in its methodologies arise from the very superiority of the data, *i.e.*, the fact that its prices are actual prices to end-use consumers, rather than prices for imports that will generally change before sale to the ultimate consumer.[47]
- While Habas claims that the petitioner left out a critical component of the IEA report involving conversion factors, the pages to which Habas refers discuss converting prices per unit of energy to prices per volume of natural gas and per ton of oil equivalent, which is irrelevant to benchmarking prices of natural gas in this case. The IEA report explains that it uses certain density and calorific values to convert from prices and tax tables in national currencies per unit prices in national currency per ton of oil equivalent, on a net calorific basis.[48]
- While Habas also takes issue with quarterly indexing of certain prices, Commerce's benchmark comparison is purposefully not on a quarterly price basis.[49] The petitioner included quarterly IEA pricing data for completeness and to supplement the record. Habas attempts to mischaracterize the Petitioner Benchmark Submission. For instance, Habas accused the petitioner of using price indices to find quarterly prices. The petitioner did use country specific price indices in order to find industrial gas prices in the following countries and quarters: Estonia Q1 2017, Greece Q3 and Q4 2017, Germany Q3 and Q4 2017, and Luxembourg Q1 2017. For example, for Luxembourg, the calculation methodology was Luxembourg Natural Gas Index Q1 2017 multiplied by Luxembourg Total Price Q2 in Euros/MwH, then divided by the Luxembourg Natural Gas Index Q2 2017, to derive Luxembourg Total Price Q1 2017 in Euros per MwH. The petitioner then averaged the four quarters to derive the annual price in Euros per MwH, which is converted to U.S. dollars using the exchange rates provided in the Petitioner Benchmark Submission. All of these calculations are readily available in the Petitioner

[45] *See* Petitioner Case Brief at 6-7 (citing *RTAC CIT*, 389 F. Supp. 3d at 1371).
[46] *See* Petitioner Case Brief at 7 (citing Petitioner Benchmark Submission at, *e.g.*, Exhibit 2 at page 57).
[47] *See* Petitioner Benchmark Submission, Exhibit 2 at page 18.
[48] *See* Petitioner Benchmark Submission, Exhibit 2.
[49] *See* Petitioner Case Brief at 8-9 (citing Habas' April 15, 2019, Initial Questionnaire Response at Exhibit 8, and to *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 82 FR 23188 (May 22, 2017) (*Rebar II Inv*) and accompanying IDM at Comment 4).

Benchmark Submission, and the claim that the petitioner was trying to skew or manipulate the data is baseless.[50]

- If the petitioner had not included the data points that use the natural gas price indices, average quarterly prices across European Union countries would have increased slightly.[51] This demonstrates that the petitioner has not manipulated the data for its benefit but provided all of the information necessary to obtain an accurate and robust benchmark price in this review.
- Habas mischaracterized the petitioner's benchmark data by stating that the petitioner prepared a computational trick because the retail and the industrial prices indices move in opposite directions. Habas named Estonia and Greece as examples. Because the petitioner used the index for Estonia's first quarter, Estonia's indices for the second to fourth quarters are irrelevant. For Greece, the natural gas indices are not the same in the Petitioner Benchmark Submission as they are in Habas' Case Brief.[52] Even so, if Greece were removed altogether from the price data, average prices would have increased which is an odd way for petitioner to manipulate the benchmark.[53]
- Habas takes issue with the petitioner's and Commerce's exchange rates and conversion from home market currencies to U.S. dollars. Habas complains that the exchange rate movements are so significant that they may well mask or exacerbate actual market values of natural gas, but Habas does not provide information to show buyers of natural gas would be protected from exchange rate fluctuations for an entire quarter or any particular span of time. Indeed, natural gas, like all other internationally traded products, is subject exchange fluctuations. Habas' own data is provided in U.S. dollars, and, thus, for comparison purposes, the values of all benchmark prices must be converted from home country currencies to U.S. dollars.
- Habas claims that the petitioner omitted seven European Union countries. Of these countries, the petitioner actually did report Greece IEA data.[54] Italy did not have natural gas prices in the IEA report, and Bulgaria, Croatia, Cyprus, Lithuania, and Malta are not in the IEA report at all. Indeed, the tables at the end of Exhibit 2 of the Petitioner Benchmark Submission show yearly price data for all countries for which IEA collects data. Thus, the petitioner was not attempting to exercise selectivity. In *Turkey Rebar I 2016 AR Final*, Commerce found that the absence of Norwegian prices in the IEA report was irrelevant for a tier-three analysis because the aim is not to estimate the price of natural gas in Europe, but to determine a market value for natural gas as consumed in Turkey, relying on what data are available on the record.[55] Commerce should, similarly, rely on the IEA data in this case.

COMTRADE EU Import Statistics

- Commerce should continue to find that the customs-sourced data (*i.e.*, UN COMTRADE) is unusable for benchmarking purposes as it did in the *Preliminary Results*.

[50] *See* Petitioner Case Brief at 9-10 (citing Petitioner Benchmark Submission).
[51] *See* Petitioner Case Brief at 10.
[52] *Id.* at 12.
[53] *Id.*
[54] *See* Petitioner Benchmark Submission at Exhibit 1.
[55] *See Turkey Rebar I 2016 AR Final* and accompanying IDM at Comment 1.

- In the original investigation of this case, Habas supplied information from GTIS, which Commerce found not reliable because it was unclear what units of measure were used for collection and how the data were then converted to kilograms. UN COMTRADE data, like GTIS data are collected from customs services, and are unreliable for similar reasons. The IEA report is the only source on the record that reports consistent units of measure.
- It is unclear how COMTRADE data are collected by customs services and converted to kilograms. Habas has not provided any information that shows how natural gas units were converted from units of energy or volume to mass by the customs agencies, nor has Habas specified what set of assumptions it used regarding density, pressure, and temperature. The GTIS data is collected from the same customs services that Habas now cites, and the GTIS data was reported in a wide variety of units of measure depending on the country.
- Habas asserts that the information is collected by customs services in native kilograms as reported on customs declarations, but it has not provided any citations for this assertion. As evidenced in Habas' own reports from its benchmark submission, units of natural gas are not typically expressed in weight. Because the density of gas depends on conditions including pressure and temperature, that density may range between 0.7 kg/m3 and 0.9 kg/m3. Depending on what conversion factor is used, the quantity of natural gas would vary greatly, and the average unit values calculated from the customs data could be skewed.
- Eurostat and COMTRADE are inconsistent regarding the quantities in kilograms of natural gas imported by European countries, which Commerce appropriately noted in the *Preliminary Results*. In its case brief, Habas mischaracterizes what the petitioner placed on the record and why it compared Eurostat data with COMTRADE data. First, the petitioner did not compare EU-28 COMTRADE statistics with Eurostat national figures. The petitioner provided a comparison of Eurostat and COMTRADE import data for countries that imported from any of the top five suppliers for Europe identified by Habas. In addition, Habas stated that it would not object if Commerce were to use aggregated COMTRADE data for the top five countries supplying the European Union (*i.e.*, Russia, Norway, Algeria, Libya, and Ukraine). The petitioner analyzed whether Eurostat and COMTRADE would have similar quantities in kilograms for imports from these countries and found the quantities varied dramatically.
- While Habas attempts to persuade Commerce to ignore this discrepancy, it misstates what the petitioner presented. The petitioner submitted import statistics for the commodity 271121 for 2017, the same commodity code Habas used for its benchmark submission.[56] From this data, the petitioner found which European Union countries imported natural gas from each top supplying country identified by Habas, then summed the imports by country.[57] For all of the top five suppliers, the petitioner found that the two databases were consistent regarding which European country was the importer, with the exception of a very small volume from Norway that went to either the Czech Republic (per COMTRADE) or elsewhere (per Eurostat).[58] Because COMTRADE and Eurostat are nearly identical regarding the importing country within the European Union,

[56] *See* Habas Benchmark Submission at Exhibits 2-3 and Petitioner Benchmark Submission at Exhibit 1.
[57] *See* Petitioner Benchmark Submission at Exhibit 1.
[58] *See* Petitioner Case Brief at 18.

it appears as though the discrepancies in quantities between the two databases are not entirely due to intra-European Union movements. Thus, the problems with import data from national statistics arise for other reasons.

- It seems more likely the natural gas quantities were not consolidated in the same manner. In other words, it appears as though the customs services collected trade data reported on different bases and attempted to consolidate all of these data points into kilograms. The conversions may not have been executed using the same assumptions universally, leading to two different converted quantities for natural gas. The AUVs taken from the two databases would be different as a result. Natural gas is not a commodity that is commonly measured in units of mass, regardless of country and data source. As a result, the import statistics are unreliable, and the IEA report is the most appropriate source for benchmarking data.
- With regard to Russian prices, the record evidence is clear. The European Parliament's Committee on Foreign Affairs found that Russia's energy policy is not entirely dictated by geopolitical motives, but Gazprom's policies are influenced by Russia's foreign policy objectives.[59] Russia exerted political pressure by manipulating the pricing policy of energy supplies to third countries; controlling energy assets, such as pipelines and gas operators in key countries; cutting or disrupting gas supplies; agreeing to restrictive supply contracts; and developing alternative supply routes to divert gas flows.[60] Commerce should continue to find that Russian prices are not market oriented and, therefore, cannot be used under tier three as a basis for determining whether prices are consistent with market principles.

Commerce's Position: As explained in the *Preliminary Results*, Commerce's regulations establish the basis for identifying the appropriate market-determined benchmark for measuring the adequacy of remuneration for government-provided goods and services.[61] After concluding that there were no viable tier-one or tier-two benchmarks on the record for natural gas in Turkey, we preliminarily decided to use EU natural gas prices provided in the IEA report, as a basis for a tier-three benchmark analysis to determine whether the natural gas that Habas purchased from BOTAS was provided at LTAR.[62] As discussed in the *Preliminary Results*, we preliminarily found that the IEA data on the record were distorted by the large presence of Russian exports during the POR, and for which we made an adjustment.[63] This is the same methodology used to calculate a natural gas benchmark in *Turkey Rebar I 2016 AR Final*.[64] For these final results, we are continuing to rely on the IEA report to calculate a tier-three benchmark. We are also continuing to adjust the IEA data to remove the Russian price component, although we are changing one component of our calculation, as discussed further below.

[59] *See* Petitioner Benchmark Submission at Exhibit 3.
[60] *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: RTAC's Rebuttal Benchmark Submission," dated August 19, 2019 (Petitioner Rebuttal Benchmark Submission), dated August 19, 2019, at Exhibit 3.
[61] *See* 19 CFR 351.511(a)(2); *see also Preliminary Results* and accompanying PDM at 9-15.
[62] *See Preliminary Results* and accompanying PDM at 9-15.
[63] *Id.* at 15.
[64] *See Turkey Rebar I 2016 AR Final* and accompanying IDM at Comment 1.

We are not persuaded by Habas' arguments regarding the unreliability of EU natural gas prices provided in the IEA report. Commerce has previously found that the IEA benchmark data for natural gas are "thoroughly analyzed and annotated, and published and distributed as part of a comprehensive energy price report."[65] Furthermore, Commerce's use of IEA data for the natural gas benchmark in the underlying investigation of this review has been upheld by the CIT.[66] Commerce now has a precedent for using IEA data to construct a natural gas benchmark in Turkey.[67]

Habas argues that the information-collection practices of IEA are methodologically unsound, and the IEA report does not give a glimmer of the methodology underlying any of the information collection. We disagree. The IEA reports submitted by the petitioner contain a robust explanation of the overall collection methodology, as well as an explanation of the source and methodology of data collection for each of the countries in the report.[68] The IEA recognizes the volatility of energy prices, as well as the importance of representativeness in data collection.[69] With regard to natural gas, the IEA reports prices in MwH, the unit in which gas is typically sold in national markets, including Turkey,[70] which makes the IEA report easier to use as it does not require conversions in the units of measure for the price comparison. In addition, the IEA reports gas by consumer category, which can make a difference in the price.[71] The IEA report states that in general, large consumers included in the highest consumption bands correspond to the industry category.[72] In addition, electricity generation refers to prices paid by power generation companies to purchase fuels for electricity production for sale.[73] Habas complains that the definition of industrial user can vary from country. We are not persuaded that this possible variance causes the IEA data to be unusable. Indeed, the IEA report at least accounts for the existence of consumer categories, whereas COMTRADE does not.[74]

Habas also asserts that the IEA data is fundamentally speculative because the IEA reports that variable and confidential pricing arrangements make the calculation of average end-use pricing for industrial consumers particularly challenging. We disagree that just because the calculation is challenging, means that it is speculative and unusable. The fact that the IEA talks about this challenge means that it is something that it acknowledges and considers. Habas is correct that the petitioner omitted certain conversion factors from its benchmark submission. However, the beginning of the section omitted states that "the following density and calorific values are used to convert prices and taxes tables in national currencies per unit to prices in national currency per

[65] *See Rebar II Inv* and accompanying IDM at Comment 4.
[66] *See RTAC CIT*.
[67] *Id.; see also Turkey Rebar I 2016 AR Final* and accompanying IDM at Comment 1.
[68] *See, e.g.*, Petitioner Benchmark Submission at Exhibit 2, pages 34-39, 42, 44, 46, 48, 51, 53, 55, 58, 61, 63, 65, 67, 70, 72, 74, 76, 78, 80, 82, 84, 86, and 88.
[69] *Id.* at 34.
[70] *Id*. at 35.
[71] *Id.* at 36 and 40.
[72] *Id*., *e.g.*, at 18.
[73] *Id*.
[74] *Id*.

ton of oil equivalent, on a net calorific value basis."[75] This means that this section relates to oil and not natural gas.

Habas further complains that Commerce used U.S. dollar currency units in its preliminary calculation, which the IEA report cautions interject exchange rate variability. We agree with the petitioner that Habas does not provide information to demonstrate buyers of natural gas would be protected from exchange rate fluctuations for any particular span of time, and that, natural gas, like all other internationally traded products, is subject to exchange fluctuations. In converting original currency to U.S. dollars, we used exchange rate data from the International Monetary Fund (IMF) in accordance with our practice whenever exchange rate conversions are need.[76] Moreover, Habas provided COMTRADE data in *U.S. dollars*;[77] indicating that the data was similarly converted by COMTRADE from its initial currency to U.S. dollars. Accordingly, the data would need to be converted to Turkish Lira for comparison to Habas' purchases. Indeed, exchange rate conversions are necessary whether we use the IEA report or COMTRADE data. On this basis, Habas' concerns do not rule out use of the IEA report.

Additionally, Habas argues that the petitioner manipulated the data in the IEA tables to give the appearance of orderliness. In reporting quarterly prices, the petitioner did fill in certain quarters that were missing – adjusting the prices of other quarters using a country specific natural gas index.[78] However, in calculating the benchmark, we used price figures for 2017 *directly from the IEA report*, and not the petitioner's quarterly price adjustments.[79] Relatedly, Habas complains that the petitioner only provided information on electricity generation users for seven of the 20 EU countries, for which the petitioner provided industrial user information. In reviewing the record information, we observe that Italy did not have natural gas prices for 2017 in the IEA report, and Bulgaria, Croatia, Cyprus, Lithuania, and Malta are not in the IEA report at all.[80] Thus, contrary to Habas' claim, the petitioner did not omit any data; it cannot report data that does not exist. Moreover, as we noted in the *Preliminary Results*, to ensure that the small number of prices for electricity generation do not disproportionately skew the EU AUV, we averaged the annual industry use and electricity generation prices from the 21 EU countries during the POR, before averaging the two prices.

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[75] *Id*. at 17.

[76] *See, e.g., Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Final Affirmative Countervailing Duty Determination*, 75 FR 59209 (September 27, 2010) and accompanying IDM at 4; *see also Usinor Sacilor v. United States*, 893 F. Supp. 1112, 1135 (CIT 1995) (rejecting plaintiff's claim that IMF lending rates are not long-term rates because plaintiffs' reliance on a passage indicating that the lending rates reflect costs of short-term and medium-term financing was not probative of whether the IMF rates apply to loans that are long-term, as defined by Commerce).

[77] *See, e.g.*, Habas Benchmark Submission, at 3.

[78] *See, e.g.*, Petitioner Benchmark Submission, at Exhibit 1.

[79] *See* Memorandum to Mark Hoadley, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Analysis and Calculations for the Preliminary Countervailing Duty 2017 Administrative Review," dated September 6, 2019 (Preliminary Calculation Memorandum), at Attachment I, NG Benchmark worksheet; *see also* Petitioner Benchmark Submission at Exhibit 2.

[80] *See, e.g.*, Petitioner Benchmark Submission, at Exhibit 2, page 341.

Habas also claims that the IEA report does not have a figure for natural gas power generation. Habas is wrong. As the IEA Report for the 2nd Quarter 2018 show,[81] there is a figure for natural gas for electricity generation for 2017.[82]

Habas further asserts that Finland's reported prices are derived entirely from price lists and division by end-use class is weighted according to fixed consumption ratios. For Finland, the IEA report states:

> Ex-tax prices are based on tariffs charged by major natural gas distribution companies, which are weighted by market shares to produce an average ex-tax price. End-use prices are calculated by adding the applicable tax components to the ex-tax price.[83]

Tariffs do not necessarily mean price lists, and even if Habas is correct, it does not mean that the gas companies do not charge what is on their price lists. Indeed, as Habas, itself, explained, BOTAS charges based on tariffs.[84] Accordingly, the presence of tariffs in the IEA reports does not disqualify use of these reports.

Habas also asserts that even though the CIT decision upheld use of IEA data in another case, the CIT did not address the flaws with the IEA data, and the reliability of the report was not an issue in that case. Although the CIT decision did not address the flaws Habas asserts here, the same data source was used in that case. Moreover, we are addressing Habas' concerns with the IEA report in this proceeding.

Next, Habas complains that Commerce averaged IEA industrial-user prices with power-generator prices. According to Habas, LTAR analysis involves a preferential pricing in the power-generation sector, so the benchmark should be aligned with that specificity analysis. We disagree. For our natural gas for LTAR analysis, we need a benchmark to compare to the price that BOTAS charges Habas.[85] As Habas explained, the company is *both* a power generator and an industrial user.[86] Indeed, record information reflects that Habas generated electricity primarily for industrial use.[87] Thus, it is reasonable to use both the IEA industrial-user prices and the power-generator prices. In general, where there is more than one commercially available market price to construct a benchmark price, Commerce's practice is to average the prices.[88]

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[81] *See* Petitioner Benchmark Submission at Exhibit 2, page 40.
[82] *Id.*
[83] *Id.* at Exhibit 2, page 53.
[84] *See* Habas Initial Questionnaire Response at 11 ("BOTAS announces the natural gas tariff on its web page, and sells the natural gas to Habas based on this tariff").
[85] *See* 19 CFR 351.511(a)(2).
[86] *Id.* at 6 and 10 (Habas "owns and operates three power plants … One of the power plants… sells electricity to the extent the plant produces more than is required for internal consumption, while the other plants were only operated for testing and maintenance purposes in the POR/RP… Habas reports all of its purchases of natural gas from BOTAS, regardless of whether that use was in the steel mill.").
[87] *Id.* Habas only sells electricity to the extent the power plant produces more than is required for internal consumption.
[88] *See Turkey Rebar I 2016 AR Final* and accompanying IDM at Comment 1.

We, therefore, averaged the natural gas prices for industrial users and electricity generator prices, to arrive at the most accurate benchmark price.[89]

Habas also argues that Commerce overstated Russia's actual share of EU gas market in that the share included an aggregation of liquified natural gas and gaseous natural gas. In addition, Habas asserts that Commerce has repeatedly rejected the use of natural gas that might be distorted by the inclusion of liquid natural gas. We agree with Habas that the calculation of Russia's share of the EU gas market used for purposes of the *Preliminary Results* appears to be based on a gas market that included both liquid and gaseous natural gas.[90] The record indicates that liquified natural gas imports into Europe are about 16 percent of gaseous natural gas imports into Europe.[91] In the source that we used to derive Russia's share of the EU gas market, however, there is no information on the source of liquified natural gas or gaseous natural gas EU imports on a stand-alone basis.[92] Regardless, the record reflects that Russia supplies the European market through three major gas pipelines.[93] The record further shows that European companies are working on LNG import terminals to reduce their independence on Russian gas.[94] Finally, regarding oil and gas regulation in the Russian Federation, the record indicates:

> The only currently operating liquefied natural gas (LNG) producer {in Russia} is Sakhalin Energy, which operates the Sakhalin II project…As for existing LN exports, in 2017 the aggregate volumes reached almost 24.5 million cubic meters, which is 9.5% more than in 2016, 65.5% of the liquefied gas produced by Sakhalin II went to Japan, 17% went to South Korea, 12% went to Taiwan and small amounts went to China.[95]

Based on this record evidence, we find that none of the LNG being imported into the European Union is from Russia. Therefore, we adjusted Russia's share of European natural gas to be only its share of European gaseous natural gas imports.[96] The revised percentage is 47.57 percent.[97] Although Habas prefers that Commerce use its figure (*i.e.*, the percentage calculated from COMTRADE data),[98] we find it is not appropriate in this instance. As we explained in the *Preliminary Results*, we are not convinced by Habas' purported evidence suggesting that Russian natural gas exports are market driven.[99] Indeed, we find that the COMTRADE data and, by extension, Habas' statistical analysis using this data, are unreliable and, thus, unusable for purposes of this review. We also continue to find Gazprom's policy report, submitted by Habas, not to be a reliable and unbiased source in this matter.[100] As the record shows:

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[89] *See* Final Calculation Memorandum.
[90] *See* Petitioner Benchmark Submission at Exhibit 6, page 4; *see also* PDM, at 15.
[91] *See* Petitioner Benchmark Submission at Exhibit 6, page 4; *see also* Final Calculation Memorandum.
[92] *See* Petitioner Benchmark Submission at Exhibit 6 (*EU import of energy products – recent developments*, published by the Eurostat).
[93] *See* Petitioner Rebuttal Benchmark Submission at Exhibit 3, page 25.
[94] *Id.* at Exhibit 3, page 33
[95] *Id.* at Exhibit 6, page 3.
[96] *See* Final Calculation Memorandum.
[97] *Id.*
[98] *See* Habas Case Brief, at n.34.
[99] *See* PDM, at 12.
[100] *Id*.

> Though Russia will never admit when its energy policy decisions are driven by geopolitics, and Gazprom…will always put forward a commercial justification for a policy, when considering a number of instances of supply disruption or pricing disputes, a geopolitical pattern emerges. Simply put, the country has shown a willingness to abuse its dominant market position in support of foreign policy goals.[101]

Regarding the European Commission's antitrust settlement with Gazprom (as submitted by Habas), which "imposes binding obligations on Gazprom to enable free flow of gas at competitive prices in Central and Eastern European gas markets,"[102] this settlement was not put into effect until after the POR (*i.e.*, it was not implemented until May 24, 2018), and, therefore, has no bearing on this proceeding.[103] Similarly, the Oxford Institute of Energy Studies (OIES) report acknowledges that, as of March 2018 (*i.e.*, the date of theories publication), although "Gazprom has been encouraged to use more competitive pricing by the European Commission… a final resolution has been delayed by on-going negotiations over the finer details."[104] Furthermore, information on the record continues to support the fact that Russia can, and does, distort the natural gas market for its own geopolitical purposes.[105] We, therefore, continue to find that, due to the Government of Russia's (GOR's) practice of distorting the natural gas market for its own geopolitical purposes, Russian export prices are unsuitable for use in constructing the natural gas benchmark during the POR. This finding is consistent with Commerce practice.[106]

Despite Habas' objection that we should not use a Gazprom figure tainted by the inclusion of prices into Turkey, we must rely on this information as the *starting point* for purposes of an adjustment for Russian prices.

Next, we turn to the suitability of COMTRADE and Eurostat data. Habas provided monthly EU natural gas imports from Russia from COMTRADE for use as an appropriate benchmark.[107] Habas also provided factors to convert Habas' natural gas purchases, which were reported in cubic meters and kilowatt hours (KwH), into kilograms, which is the reported unit used in the COMTRADE data.[108] In its benchmark rebuttal, the petitioner submitted additional EU import

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[101] *See* Petitioner Rebuttal Benchmark Submission at Exhibit 3, page 13.
[102] *See* Habas Benchmark Submission at Exhibit 4B.
[103] *Id.*
[104] *Id.* at Exhibit 4C, page 4.
[105] *See, e.g.*, Petitioner Rebuttal Benchmark Submission at Exhibit 3, page 4 (stating "Gazprom's policies are shaped by both commercial considerations as well as Russia's foreign policy objectives…{including} manipulating the pricing policy of energy supplies to their countries; controlling energy assets, such as pipelines and gas operators in key countries; cutting, or disrupting gas supplies; agreeing restrictive supply contracts; {and} developing alternative supply routes to divert gas flows.").
[106] *See, e.g., Steel Concrete Reinforcing Bar From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review in Part; 2016*, 83 FR 63472 (December 10, 2018) (*Turkey Rebar I 2016 AR Prelim*) and accompanying PDM at 22, unchanged in *Turkey Rebar I 2016 AR Final*, and accompanying IDM.
[107] *See* Habas Benchmark Submission at 3 and Exhibit 2. Habas also notes n.2 ("Alternatively, Habas would not object if {Commerce} were to use the aggregated COMTRADE data for the top five countries supplying {natural gas to} the EU, namely, Russia, Norway, Algeria, Libya, and Ukraine."). *Id.*
[108] *Id.* at Exhibit 1.

data from Eurostat, which reported a different import quantity from Russia for ten of the eleven European countries included in the COMTRADE data.[109] As we stated in the *Preliminary Results*, because there is no underlying report to accompany the COMTRADE import data (as there is for the IEA data), Commerce cannot analyze how the import data were collected; specifically, it is unknown how the natural gas imports were originally reported and how COMTRADE converted the original reported quantities into kilograms.[110] As the petitioner notes, this information is particularly important for a good such as natural gas, where conversion rates can vary based on factors such as pressure and temperature.[111] The petitioner also submitted additional information regarding the conversion of natural gas measurements from kilograms to cubic meters, which is necessary to convert the COMTRADE data (reported in kg) to construct a natural gas benchmark (which needs to be in the unit of measure in which Habas purchases natural gas, *i.e.*, cubic meters).[112] While Habas' reported ratios for converting kilograms to cubic meters range from 0.73 to 0.75,[113] two of the sources submitted by the petitioner report a conversion ratio that ranges from 0.7 to 0.9.[114] As we stated in the *Preliminary Results*, the variable conversion rates on the record, that are necessary to use COMTRADE in the first place, render the COMTRADE data unreliable for purposes of this proceeding.[115] This finding is consistent with the underlying investigation, where Commerce rejected the use of natural gas export prices sourced from GTIS due to inconsistent conversion factors.[116]

Habas claims that COMTRADE and Eurostat are both in native kilograms (*i.e.*, not only are the COMTRADE and Eurostat data in kilograms but also the underlying sources keep records in kilograms) but fails to cite record evidence to support its assertion. Although Habas placed COMTRADE data on the record, that data consist of the quantity and value of EU-28 imports of commodity code 271121 (natural gas in gaseous state).[117] Unlike the IEA report, there is no explanation of the methodology used to calculate the COMTRADE data or the methodology the original sources (*i.e.*, each country) used to collect the data.[118] Although Habas is correct that Commerce has previously used COMTRADE data to calculate benchmarks,[119] those cases are for commodity products where either the units of measure are standardized, or the conversion of the units is standardized and not affected by factors such as density and temperature. Additionally, Habas points out that unlike the GTIS data used in the investigation, the COMTRADE and Eurostat data are more consistent because the quantity of the data is all reported in kilograms. However, as the petitioner notes, the IEA reports natural gas prices on a price per unit of energy basis (*i.e.*, calories/megawatt hour), which is more comparable for the

[109] *See* Petitioner Rebuttal Benchmark Submission at Exhibit 1.
[110] *See* PDM at 13.
[111] *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: RTAC's Pre-Preliminary Determination Comments," dated August 27, 2019 (Petitioner Pre-Preliminary Comments) at 10.
[112] *See* Petitioner Rebuttal Benchmark Submission at Exhibit 2.
[113] *See* Habas Benchmark Submission at Exhibit 1.
[114] *See* Petitioner Rebuttal Benchmark Submission at Exhibit 2.
[115] *See* PDM at 13.
[116] *See Rebar II Inv* and accompanying IDM at 9-10.
[117] *See* Habas Benchmark Submission at Exhibit 2.
[118] *Id.*
[119] *See* Habas Case Brief at 18 and 25, citing, *e.g.*, *Solar Cells from China a*nd accompanying IDM at Comment 4 and *Silica Fabric from China* and accompanying IDM at Comment 7.

purposes of the benchmark.[120] Having a benchmark denominated on the same basis, therefore, eliminates the risk of varying conversion amounts (*e.g.*, varying due to temperature and density factors, not just the weight basis). Indeed, in the litigation resulting from the initial investigation of this case, the CIT found Commerce's selection of IEA data reasonable. It stated that Commerce was presented with the choice of two competing data sets on the record (*i.e.*, the IEA and GTIS data), and that after considering the pros and cons of each data set, Commerce concluded that the IEA data provided a more accurate gauge of natural gas prices in the POI that were reported in a unit comparable to the unit in which Habas was invoiced.[121] The CIT's rationale holds true in this instance; compared to other sources on the record of this proceeding, the IEA data provide a more accurate gauge of natural gas prices in the POR that were reported in a unit comparable to the unit in which Habas was invoiced.

While Habas provided tier-two data in the form of EU imports of natural gas from Russia, we continue to find that the Russian export prices are distorted and therefore unsuitable for constructing a natural gas benchmark during the POR. Commerce has previously found that Russia's domestic natural gas market is distorted by the GOR's monopoly over the sales and distribution of natural gas through Gazprom, a state-owned entity, and, thus, unusable for benchmark purposes.[122] Commerce has also previously found that the GOR's control over domestic natural gas prices extends to Russian export pricing due to the GOR's position as a dominant supplier in the international market, which enables it to leverage natural gas prices and supplies for geopolitical purposes.[123]

Despite this precedent, Habas argues that Russian natural gas export prices to the EU are market-driven, not political, and are, therefore, suitable for use in constructing a natural gas benchmark.[124] Habas submitted evidence on the record of this proceeding to support its argument regarding Russian natural gas prices, including: (1) a statistical analysis comparing Russian prices with other, market-oriented natural gas exporters, using COMTRADE pricing data;[125] (2) a Gazprom policy report concerning its approach to the EU market;[126] (3) a 2018 press release from the European Commission regarding an antitrust settlement made with Gazprom;[127] and (4) an analysis of Gazprom's activity in the EU from the OIES.[128] In response, the petitioner submitted rebuttal factual information from several sources supporting Commerce's previous finding that Russian natural gas prices are, in fact, distorted due to the GOR's ability to leverage prices for geopolitical purposes.[129] As explained above, we continue to find that, due to the GOR's practice of distorting the natural gas market for its own geopolitical purposes, Russian export prices are unsuitable for use in constructing the natural gas

[120] *See* Petitioner Case Brief, at 6.
[121] *See RTAC CIT*, 389 F. Supp. 3d at 1371.
[122] *See Turkey Rebar I 2016 AR Prelim* and accompanying PDM at 22, unchanged in *Turkey Rebar I 2016 AR Final*; *see also Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016) (*Russia Cold-Rolled Steel*) and accompanying IDM at Comment 5.
[123] *See Turkey Rebar I 2016 AR Prelim* and accompanying PDM at 22, unchanged in *Turkey Rebar I 2016 AR Final.*
[124] *See* Habas Case Brief, at 12-13.
[125] *Id.* at 3-5 and Exhibits 2 and 3.
[126] *Id.* at Exhibit 4A.
[127] *Id.* at Exhibit 4B.
[128] *Id.* at Exhibit 4C
[129] *See* Petitioner Rebuttal Benchmark Submission at Exhibits 3-10.

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

Habas claims EU imports from Russia, as well as Eurostat data, corroborate COMTRADE data and show that AUVs from Russia are well within the bounds of other major suppliers and, therefore, clearly market driven. We disagree. For the reasons explained above, we do not find Russian prices to be market driven. In addition, because of the conversion issues unique to natural gas, we do not find the COMTRADE data to be a reliable source of prices for natural gas. Assuming, *arguendo*, that Habas is correct (*i.e.*, that the differences between COMTRADE and Eurostat data are due to comparing data on two different bases), because the COMTRADE data suffer from conversion issues, we find them to be unreliable. The IEA data, however, are a reliable source of benchmark data because they do not need to be converted.

Lastly, although Habas is correct that we have a preference for using monthly data in calculating benchmarks, that preference is superseded by the need to select the best available information on the record for purposes of determining a benchmark.[130] Here, as in the underlying investigation, the best available information is the IEA report, even if it not in monthly form. While there is monthly data on the record, in the form of the COMTRADE data, we find that it is not reliable in this case due to the conversions necessary and lack of explanations regarding the underlying data. As in the underlying investigation, Commerce here is selecting the reliable IEA annual data rather than the unreliable monthly data.[131]

Comment 2: Social Security Premium Support Programs

Habas Case Brief[132]

- Commerce preliminarily found no measurable benefits during the POR for the following programs: Social Security Premium Support for Hiring New Employees Who Were Previously Unemployed (Under Government Decree 687) and Social Security Premium Support (Under Law 4857).
- However, Commerce previously found that these programs were not countervailable.[133] In the absence of any new factual information concerning these programs, Commerce should expressly affirm their non-countervailability.

[130] *See Rebar II Inv* and accompanying IDM at Comment 4.
[131] *Id.*
[132] *See* Habas Case Brief at 33.
[133] *See* Habas Case Brief at 33(citing the following cases for each law: Law 687: *Large Diameter Welded Pipe from Turkey: Preliminary Affirmative Countervailing Duty Determination*, 83 FR 30697 (June 29, 2018) and accompanying PDM at 22, unchanged in final, *Large Diameter Welded Pipe from Turkey: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019) and accompanying IDM at 6 (collectively, *Large Diameter Pipe*); Law 4857: *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013) and accompanying IDM at 19-20).

The petitioner did not comment on this issue.

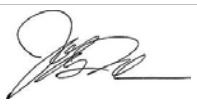
Commerce's Position: We agree with Habas. Commerce has previously found both programs to be not countervailable.[134] There is no information on the record of this proceeding to warrant a change to these findings, and, thus, we continue to find these programs to be not countervailable for purposes of this administrative review.

VII. RECOMMENDATION

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

☒	☐
Agree	Disagree

3/13/2020

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[134] Commerce found "Social Security Premium Support for Hiring New Employees Who Were Previously Unemployed (Under Government Decree 687)" not countervailable in *Large Diameter Pipe*. Likewise, Commerce found "Social Security Premium Support (Under Law 4857)" not countervailable in *Certain Welded Carbon Steel Standard Pipe From Turkey: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 16439, 16442 (April 1, 2010), unchanged in *Certain Welded Carbon Steel Standard Pipe from Turkey: Final Results of Countervailing Duty Administrative Review*, 75 FR 44766 (July 29, 2010).