



C-489-502

Administrative Review

POR: 01/01/2018 – 12/31/2018

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March 27, 2020

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

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

SUBJECT: Decision Memorandum for the Preliminary Results of
Countervailing Duty Administrative Review: Circular Welded
Carbon Steel Pipes and Tubes from the Republic of Turkey; 2018

I. Summary

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on circular welded carbon steel pipes and tubes (pipes and tubes) from the Republic of Turkey (Turkey) for the period of review (POR) January 1, 2018 through December 31, 2018. This review covers 35 producers/exporters of subject merchandise, and we selected the Borusan Companies¹ as the sole mandatory respondent. Commerce preliminarily determines that the Borusan Companies received countervailable subsidies during the POR that are *de minimis*.

If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (CBP) to assess countervailable duties on all appropriate entries of subject merchandise during the POR. Interested parties are invited to comment on these preliminary results. We intend to issue final results no later than 120 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

¹ We use “Borusan Companies” to refer to the cross-owned entity that includes the following companies: Borusan Holding A.S (also referred to as Borusan Holding), Borusan Mannesmann Yatirim Holding, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, the Borusan Companies). However, as explained in this memorandum, we note that Borusan is the only member of the Borusan Companies that reported receiving subsidies and, thus, is the only company included in our subsidy analysis.



II. Background

On March 7, 1986, Commerce published in the *Federal Register* the CVD order on pipes and tubes from Turkey.² On March 5, 2019, Commerce published the notice of opportunity to request an administrative review of the *Order* for the period January 1, 2018 through December 31, 2018.³ We received timely requests for Commerce to conduct an administrative review of 35 exporters and/or producers, including members of the Borusan Companies.⁴ On May 29, 2019, Commerce initiated a CVD review of the *Order*, covering the 35 exporters and/or producers for which a review was requested.⁵

On June 7, 2019, Tosçelik Profil ve Sac Endüstrisi A.S., Tosyalı Dis Ticaret A.S., and Toscelik Metal Ticaret A.Ş. (collectively, Tosçelik) and Cayirova Boru Sanayi ve Ticaret A.S., Yucel Boru ve Profil Endustrisi A.S., and Yucelboru Ihracat İthalat ve Pazarlama A.S. (collectively, the Yucel Companies) timely submitted no-shipment certifications.⁶ On June 11, 2019, Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) timely filed a no-shipments certification.⁷ On June 20, 2019, HDM Celik Boru Sanayi ve Ticaret A.S. (Celik) timely submitted a no-shipments certification.⁸ On June 25, 2019, Çimtaş Boru İmalatlari ve Ticaret Ltd. Şirketi (Çimtaş) timely submitted a no-shipments certification.⁹ Additionally, on June 28, 2019, the Borusan Companies timely submitted a letter to Commerce certifying that İstikbal, Borusan Birlesik Boru Fabrikalari San ve Tic. (Borusan Birlesik), Borusan Gemlik Boru Tesisleri A.S. (Borsuan Gemlik), Borusan Ihracat İthalat ve Dagitim A.S. (Borusan Ihracat), Tubeco Pipe and Steel Corporation (Tubeco), and Borusan Lojistik Dagitim Depolama Tasimacilik ve Ticaret A.S (Borsuan Lojistik) had no entries, exports, or sales of subject merchandise during the POR.¹⁰

² See *Countervailing Duty Order; Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 51 FR 7984 (March 7, 1986) (*Order*).

³ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 7877 (March 5, 2019).

⁴ See Borusan Companies' Letter, "Circular Welded Carbon Steel Pipe and Tubes from Turkey, Case No. C-489-502: Request for Administrative Review," dated April 1, 2019; Petitioners' Letter, "Circular Welded Carbon Steel Pipes and Tubes From Turkey: Request for Administrative Review," dated March 29, 2019; and Petitioners' Letter, "Circular Welded Carbon Steel Pipes and Tubes From Turkey: Clarification of Request for Administrative Review," dated May 9, 2019, in which the petitioners revised the spelling of the names of firms for which they requested a review to better reflect the firms' names as listed in CBP's Automated Commercial Environment (ACE). The petitioners include Independence Tube Corporation and Southland Tube.

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 24743, 24748 (May 29, 2019) (*Initiation Notice*).

⁶ See Tosçelik's Letter, "Circular Pipe from Turkey; Tosçelik No-Shipment Letter," dated June 7, 2019 (Toscelik Non-Shipment Claim); see also Yucel's Letter, "Circular Welded Carbon Steel Pipe and Tube from Turkey: Yucel No Shipment Letter," dated June 7, 2019 (Yucel Companies Non-Shipment Claim).

⁷ See Erbosan's Letter, "No Shipment Certification of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) in the 2018 Administrative Review of the Countervailing Duty Order Involving Certain Welded Carbon Steel Standard Pipe from Turkey," dated June 11, 2019 (Erbosan Non-Shipment Claim).

⁸ See Celik's Letter, "Circular Welded Carbon Steel Pipes and Tubes (C-489-502) Countervailing Duty Administrative Review (1/1/18 - 12/31/18)," dated June 20, 2019 (Celik Non-Shipment Claim).

⁹ See Cimtas' Letter, "Circular Welded Carbon Steel Pipes and Tubes (C-489-502) Countervailing Duty Administrative Review (1/1/18 - 12/31/18)," dated June 25, 2019 (Cimtas Non-Shipment Claim).

¹⁰ See Borusan's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey. Case No. C-489-502: No Shipment Letter," dated June 28, 2019 (Additional Borusan Companies Non-Shipment Claim).

We stated in the *Initiation Notice* that, in the event we limited the number of respondents for individual examination, we intended to base our selection of mandatory respondents on CBP entry data for the POR.¹¹ Accordingly, on June 19, 2019, we released the CBP entry data under administrative protective order (APO) and requested interested parties to comment on the CBP data for purposes of respondent selection.¹² From June 26 through July 11, 2019, the petitioners and the Yucel Companies submitted comments in response to the CBP Query Memorandum.¹³ Based on the comments received from interested parties, we performed and issued a second query of the trade database maintained by CBP, in which we expanded the parameters of the search for the firms for which a review was requested during the POR of the CVD review.¹⁴ On July 30, 2019, the Yucel Companies filed comments on the Second Query Results Memorandum.¹⁵

On August 15, 2019, we selected the Borusan Companies, which accounted for the largest volume of U.S. imports of pipes and tubes from Turkey that entered the United States during the POR, as the sole mandatory respondent.¹⁶

On August 20, 2019, we issued the CVD questionnaire to the Government of Turkey (GOT).¹⁷ In the instructions to the questionnaire, we notified the GOT of the company selected as the mandatory respondent in this review and stated that the GOT “is responsible for forwarding a copy of *Section I* and *Section II* of this questionnaire to the company subject to administrative review.”¹⁸

On September 6, 2019, the petitioners submitted a letter requesting that Commerce conduct verification of the questionnaire responses submitted by the GOT and the Borusan Companies. On September 10, 2019, we received a timely response to the “affiliated companies” section of

¹¹ See *Initiation Notice*, 84 FR at 24743.

¹² See Memorandum, “Results of Customs and Border Protection Query Results,” dated June 19, 2019 (First Query Results Memorandum).

¹³ See Petitioners’ Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey: Comments on CBP Import Data and Respondent Selection,” dated June 26, 2019 (Petitioner’s June 26 Letter); see also Yucel Companies’ Letter, “Circular Welded Carbon Steel Pipe from Turkey; Yücel reply comments re: Independence Tube’s comments on CBP data,” dated June 30, 2019 (Yucel Companies’ June 30 Letter); and Petitioners’ Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey: Response to Yucel’s June 30th Letter,” dated July 11, 2019 (Petitioners’ July 11 Letter).

¹⁴ See Memorandum “Second Customs and Border Protection (CBP) Query Results,” dated July 26, 2019 (Second Query Results Memorandum).

¹⁵ See Yucel’s Letter, “Circular Welded Carbon Steel Pipe from Turkey; Yücel comments on second CBP release,” dated July 30, 2019 (Yucel Companies’ July 30 Letter).

¹⁶ See Memorandum, “Countervailing Duty Administrative Review of Circular Welded Carbon Steel Pipe and Tube from the Republic of Turkey: Selection of Respondents for Individual Examination,” dated August 15, 2019 (Respondent Selection Memorandum).

¹⁷ See Commerce’s Letter, “Countervailing Duty Questionnaire,” dated August 20, 2019, (Initial Questionnaire). Section II of the Initial Questionnaire contained questions for the GOT, while Section III contained questions for the Borusan Companies.

¹⁸ *Id.* at 7.

the Initial Questionnaire from the Borusan Companies.¹⁹ On September 26, 2019, we issued a supplemental questionnaire to the Borusan Companies, to which they responded on October 3, 2019.²⁰ On October 15, 2019, we received the Borusan Companies' response to Section III of the Initial Questionnaire.²¹ On October 17, 2019, we received the GOT's response to the Initial Questionnaire.²² On December 13, 2019, we issued a supplemental questionnaire to the Borusan Companies, to which they responded on January 6, 2020.²³

On November 12, 2019, Commerce extended the deadline for the preliminary results of this administrative review until March 27, 2020.²⁴

On November 20, 2019, the petitioners timely submitted a new subsidy allegation (NSA), alleging that Commerce should initiate an investigation into the extent to which the GOT provided countervailable subsidies to the Borsuan Companies under the Super Incentive Scheme pursuant to Turkish Law No. 6745 and Decree 2016/9495.²⁵ On January 14, 2020, Commerce requested additional information from the petitioners regarding the NSA.²⁶ On January 30, 2020, Commerce initiated an investigation of the alleged subsidy program²⁷ and issued a NSA Questionnaire to the GOT and the Borusan Companies.²⁸

¹⁹ See Borusan Companies Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: Response to Affiliated Companies Section of Initial Questionnaire," dated September 10, 2019 (Borusan Companies Affiliation QR).

²⁰ See Borusan Companies' Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No.C-489-502: Response to Supplemental Affiliated Companies Questionnaire," dated October 3, 2019 (Borusan Companies Supplemental Affiliated Companies QR).

²¹ See Borusan Companies' Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C- 489-502: Response to Section III of Initial Questionnaire," dated October 15, 2019 (Borusan Companies IQR).

²² See the GOT's Letter, "Response of the Government of Turkey in 2018 Countervailing Duty Administrative Review on Imports of Certain Welded Carbon Steel Pipe and Tube from Turkey," dated October 17, 2019 (GOT IQR).

²³ See Borusan Companies' Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C- 489-502: BMB's First Supplemental Questionnaire Response," dated January 6, 2020 (Borusan Companies First Supplemental QR).

²⁴ See Memorandum, "Circular Welded Carbon Steel Pipes and Tubes from Turkey: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review," dated November 12, 2019.

²⁵ See Petitioners' Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey: New Subsidy Allegation," dated November 20, 2019 (NSA Submission).

²⁶ See Commerce's Letter, "Supplemental Questionnaire for November 20, 2019, New Subsidy Allegation (NSA)," dated January 14, 2020.

²⁷ See Memorandum, "Administrative Review of the Countervailing Duty Order on Circular Welded Carbon Steel Pipes and Tubes from Turkey; 2018 "New Subsidy Allegation Memorandum," dated January 30, 2020 (NSA Memorandum).

²⁸ See Commerce's Letters, "Supplemental Questionnaire for the Government of Turkey (GOT): New Subsidies Allegation (GOT NSA Questionnaire), dated January 30, 2020; and "Supplemental Questionnaire for Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret T.A.S., and the Borusan Group (collectively, Borusan): New Subsidies Allegation," dated January 30, 2020, (Borusan Companies NSA Questionnaire).

From February 3 through February 6, 2020, Commerce conducted verification of the questionnaire responses submitted by the Borusan Companies.²⁹

On February 3, 2020, the Borusan Companies timely submitted their response to the NSA Questionnaire.³⁰ On February 4, 2020, the GOT submitted a request for extension, which was one day after the specified due date of the NSA Questionnaire.³¹ In its February 4, 2020, letter, Commerce explained that the Initial Questionnaire specified that respondent parties must submit all extension requests prior to the expiration of the questionnaire deadline and that Commerce would not accept extension requests submitted after the applicable due date.³² Accordingly, because the GOT did not demonstrate the existence of extraordinary circumstances for its untimely extension request, Commerce declined to grant the GOT an extension of time to respond to the NSA Questionnaire.³³ On February 5, 2020, the GOT requested that Commerce reconsider its decision to decline the GOT's request to submit a response to the NSA Questionnaire one day after the deadline,³⁴ which Commerce declined.³⁵ However, we note that Commerce verified that the Borusan Companies did not use this program during the POR.³⁶

On February 26, 2020, the petitioners submitted new factual information (NFI).³⁷ On March 9, 2020, the Borusan Companies filed a rebuttal to the petitioners' NFI.³⁸ On March 10, 2020, we issued the Borusan Companies' Verification Report.³⁹

²⁹ See Memorandum, "Verification of Information submitted by Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, the Borusan Companies)," dated March 10, 2020 (Borusan Companies' Verification Report).

³⁰ See Borusan Companies' Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: New Subsidy Allegation Questionnaire Response," dated February 3, 2020.

³¹ See GOT's Letter, "Request for Late Filing for the New Subsidies Allegation in 2018 Countervailing Duty Administrative Review on Imports of Certain Welded Carbon Steel Pipe and Tube from Turkey," dated February 4, 2020.

³² See Commerce's Letter, "Request of the Government of Turkey (GOT) to Respond to New Subsidy Allegation (NSA) Questionnaire One Day Late," dated February 4, 2020; *see also* Commerce's Letter, "Issuance of Initial Questionnaire," dated August 20, 2019 (Initial Questionnaire) at 8 and 15.

³³ See Commerce's Letter, "Request of the Government of Turkey (GOT) to Respond to New Subsidy Allegation (NSA) Questionnaire One Day Late," dated February 4, 2020.

³⁴ See GOT's Letter, "Request for Reconsideration of the Denial of the Government of Turkey's Request for Late Filing for the New Subsidy Allegation in 2018 Countervailing Administrative Review on Imports of Certain Welded Carbon Steel Pipe and Tube from Turkey," dated February 5, 2020.

³⁵ See Commerce's Letter, "Request of the Government of Turkey (GOT) for the Department of Commerce (Commerce) to Reconsider its Decision to Deny the GOT's Request to Respond to New Subsidy Allegation (NSA) Questionnaire After the Established Deadline," dated February 11, 2020.

³⁶ See Borusan Companies' Verification Report at 14-15.

³⁷ See Petitioners' Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey: Submission of Other Factual Information and Benchmark Pricing Information," dated February 26, 2020.

³⁸ See Borusan Companies' Letter "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: BMB's Rebuttal to Petitioner's Submission of Factual Information," dated March 9, 2020.

³⁹ See Borusan Companies' Verification Report.

III. Non-Shipment Claims and Partial Rescission

As noted above, Toscelik, Celik, and Cintas submitted claims of non-shipment.⁴⁰ Additionally, as noted above, the Borusan Companies submitted a letter to Commerce timely certifying that Istikbal, Borusan Birlesik, Borsuan Gemlik, Borusan Ihracat, Tubeco, and Borsuan Lojistik had no entries, exports, or sales of subject merchandise during the POR.⁴¹ Based on the CBP shipment information reflected in the Second Query Results Memorandum, and with no other evidence on the record contradicting the relevant certifications,⁴² we have determined to rescind the administrative review with regard to Toscelik, Celik, Cintas, Borusan Birlesik, Borsuan Gemlik, Borusan Ihracat, Tubeco, and Borsuan Lojistik in accordance with 19 CFR 351.213(d)(3). However, we are not rescinding the review for Istikbal, which we preliminarily determine to be part of the cross-owned entity, the Borusan Companies, the mandatory respondent in this review.

As noted above, the Yucel Companies and Erbosan also submitted claims of non-shipment.⁴³ However, the CBP information reflected in the Second Query Results Memorandum indicated that shipments of subject merchandise produced and/or exported by the Yucel Companies and Erbosan entered the United States during the POR.⁴⁴ In comments filed on the record, the Yucel Companies argued that Commerce should not conclude that it had reviewable entries of subject merchandise during the POR.⁴⁵ In response to the Yucel Companies' comments, we explained that "Commerce's practice in CVD proceedings is to conduct reviews based on merchandise that is 'produced and/or exported' to the United States" and Commerce need not consider "whether the Yucel Companies had knowledge of the shipments or whether the merchandise was shipped directly from Turkey."⁴⁶ Thus, consistent with the Respondent Selection Memorandum, we preliminarily determine that subject merchandise produced and/or exported by the Yucel Companies entered the United States during the POR and, therefore, we are not rescinding the review with regard to the Yucel Companies. Similarly, because Erbosan did not contest the results of the queries we performed on CBP's trade database, we preliminarily determine that subject merchandise produced and/or exported by Erbosan entered the United States during the POR and, therefore, we are not rescinding the review with regard to Erbosan.

⁴⁰ See Toscelik Non-Shipment Claim; Celik Non-Shipment Claim, and Cintas Non-Shipment Claim.

⁴¹ See Additional Borusan Companies Non-Shipment Claim.

⁴² See Memorandum, "Placement of No-Shipment Inquiries and Customs of Border Protection Confirmation of No-Shipments for Borusan Birlesik Boru Fabrikalari San ve Tic., Borusan Gemlik Boru Tesisleri A.S., Borusan Ihracat Ithalat ve Dagitim A.S., Tubeco Pipe and Steel Corporation, and Borusan Lojistik Dagitim Depolama Tasimacilik ve Ticaret A.S., Cintas Boru Imalatlari ve Ticaret Sirketi, Toscelik Profil ve Sac Endustrisi A.S., Tasyali Dis Ticaret A.S., and Toscelik Metal Ticaret A.S., and HDM Celik Boru Sanayi ve Ticaret Ltd Sti on Record of Review," dated concurrently with this memorandum.

⁴³ See Yucel Non-Shipment Claim; *see also* Erbosan Non-shipment Claim.

⁴⁴ See Memorandum, "Results of Customs and Border Protection Query Results," dated June 19, 2019; *see also* Memorandum, "Second Customs and Border Protection (CBP) Query Results," dated July 26, 2019 (CBP Query Memorandum).

⁴⁵ See Yucel's Letters, "Yucel reply comments re: Independence Tube's comments on CBP data," dated June 30, 2019; and "Yucel comments on second CBP release," dated July 30, 2019.

⁴⁶ See Memorandum, "Selection of Respondents for Individual Examination," dated August 15, 2019 (Respondent Selection Memorandum), at 4.

IV. Period of Review

The POR is January 1, 2018 through December 31, 2018.

V. Scope of the Order

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

VI. Subsidies Valuation Information

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.⁴⁷ Commerce finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised.⁴⁸ Commerce notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding has disputed this allocation period.

Furthermore, for non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

1. Cross-Ownership

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes a subsidy to the products produced by the corporation that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provide additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent.

⁴⁷ See 19 CFR 351.524(b).

⁴⁸ See U.S. Internal Revenue Service Publication 946 (2017), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of Commerce's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The preamble to Commerce's regulations further clarifies Commerce's cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits). . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.⁴⁹

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The Court of International Trade has upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.⁵⁰

2. The Borusan Companies

Borusan Holding is the parent holding company of the Borusan Companies. Borusan is affiliated with other companies through direct and indirect ownership of Borusan Holding. Borusan and its affiliated foreign trading company, Istikbal, are cross-owned under 19 CFR 351.525(b)(vi) by common ownership.⁵¹

⁴⁹ See *Countervailing Duties: Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

⁵⁰ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (Ct. Int'l Trade 2001).

⁵¹ See Borusan Companies Affiliation QR at 5-6, and 10, and Exhibits 2 and 3. Our approach in this regard is consistent with prior segments of this proceeding. See, e.g., *Circular Welded Carbon Steel Pipe and Tube Products From Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Intent To Rescind Countervailing Duty Administrative Review, in Part*, 79 FR 22625 (April 17, 2014) (*Pipe from Turkey 2012 Preliminary Results*) and accompanying Preliminary Issues and Decision Memorandum (PDM) at 5, unchanged in *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Rescission of Countervailing Duty Administrative Review, in Part*, 79 FR 51140 (August 27, 2014) (*Pipe 2012 from Turkey Final Results*), and accompanying Issues and Decision Memorandum (IDM) at 2; see also *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) (*Pipe from Turkey 2017 Preliminary Results*) and accompanying PDM at 6-7, unchanged in *Circular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative*

Borusan produces subject merchandise for both the home and export markets, and reported that during the POR it accounted for all subject merchandise exported to the United States by the Borusan Companies.⁵² The Borusan Companies reported that Istikbal exported its subject merchandise only to non-U.S. locations during the POR.⁵³ As discussed below in the “Programs Preliminarily Determined to be Countervailable” section, we find that the only program used by Istikbal was tied to other export markets outside the United States within the meaning of 19 CFR 351.525(b)(4). Accordingly, we preliminarily determine the attribution rule under 19 CFR 351.525(c) does not apply, and, thus, we are attributing no subsidy benefits with regard to Istikbal.⁵⁴

Neither Borusan Mannesmann Yatirim Holding (BMBYH) nor Borusan Holding engaged in production or sales activities that would make them eligible for any of the alleged subsidies in this review.⁵⁵ The Borusan Companies stated BMBYH and Borusan Holding did not receive any subsidies from the programs listed in Commerce’s CVD questionnaire or any other form of government assistance.⁵⁶ Therefore, while we preliminarily find that BMBYH and Borusan Holding are cross-owned with Borusan within the meaning of 19 CFR 351.525(b)(6)(vi), we find no evidence that Borusan Holding or BMBYH received any countervailable subsidies attributable to Borusan during the POR. In accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Borusan (the only member of the Borusan Companies that reported receiving subsidies) to the sales reported by Borusan.

The Borusan Companies identified numerous additional companies with which it was affiliated during the POR based on cross-ownership with Borusan Holding.⁵⁷ However, the Borusan Companies reported that none of these affiliates were involved in the production or sale of subject merchandise.⁵⁸ Therefore, we preliminarily determine that these affiliated companies do not meet any of the conditions set forth in 19 CFR 351.525(b)(6)(ii)-(v); as a result, we have not included them in our subsidy analysis.

C. Denominators

In accordance with 19 CFR 351.525(b), when selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents’ receipt of benefits under each program. As discussed in further detail below in the “Programs Preliminarily Determined to be Countervailable” section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient’s total sales as the denominator.

Review, in Part; Calendar Year 2017, 84 FR 5617 (October 21, 2019) (*Pipe from Turkey 2017*) and accompanying IDM at Comment 1.

⁵² See Borusan Companies Affiliation QR at 3-5.

⁵³ *Id.* at 5 and 10.

⁵⁴ See, e.g., *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 82 FR 23188 (May 22, 2017) and accompanying IDM under “Attribution of Subsidies.”

⁵⁵ See Borusan Companies Affiliation QR at 10.

⁵⁶ *Id.*

⁵⁷ *Id.* at 5-9.

⁵⁸ *Id.*

Similarly, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.⁵⁹

D. Benchmark Interest Rates

We are examining export loans and non-recurring, allocable subsidies that the respondents received.⁶⁰ In the section below, we discuss the derivation of the benchmarks and discount rates for the POR and previous years.

1. Short-Term Benchmark

To determine whether government-provided loans under investigation conferred a benefit, Commerce uses, where possible, company-specific interest rates for comparable commercial loans.⁶¹ When loans are denominated in a foreign currency, 19 CFR 351.505(a)(2)(i) directs us to use a benchmark denominated in the same foreign currency as the loan. The Borusan Companies submitted weighted-average interest rates, along with the underlying data, that they paid on comparable short-term commercial loans.⁶² Consistent with 19 CFR 351.505(a)(2)(ii), we are preliminarily using the interest rates that the Borusan Companies submitted on comparable short-term loans as benchmarks.

2. Long-Term Benchmark

As discussed above, to determine whether government-provided loans under investigation conferred a benefit, Commerce uses, where possible, company-specific interest rates for comparable commercial loans.⁶³ Where such benchmark rates are unavailable, consistent with 19 CFR 351.505(a)(3)(ii), we use lending rate data from the International Monetary Fund's International Financial Statistics as our national average benchmark.⁶⁴

3. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), in instances requiring the use of a long-term discount rate, we have used the long-term interest rate calculated according to the methodology described above for the year in which the government approved non-recurring subsidies were received.

⁵⁹ See Memorandum, "Borusan Companies' Preliminary Calculation Memorandum," dated concurrently with this memorandum (Borusan Companies Calculation Memorandum).

⁶⁰ See 19 CFR 351.524(b)(1).

⁶¹ See 19 CFR 351.505(a)(2)(ii).

⁶² See Borusan Companies Initial QR at Exhibit G-3.

⁶³ See 19 CFR 351.505(a)(2)(ii).

⁶⁴ See, e.g., *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) (*Pipe from Turkey 2011*) and accompanying IDM at "Benchmarks and Interest Rates."

VII. Non-Selected Rate

The Act and Commerce's regulations do not address the establishment of a rate to be applied to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. Generally, when determining the rate for such respondents in an administrative review, Commerce looks to section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs Commerce to use the average of the individually calculated rates as the all-others rate, excluding rates which are zero, *de minimis*, or based entirely on facts available. Accordingly, Commerce's usual practice in administrative reviews for determining the rate for respondents not selected for individual examination has been to average the weighted-average net subsidy rates for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.⁶⁵ However, section 705(c)(5)(A)(ii) of the Act provides that, where all the individually calculated rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the all-others rate, including averaging the estimated weighted-average net subsidy rates determined for the exporters and producers individually investigated.

In these preliminary results, we preliminarily determine that the sole mandatory respondent in this review, the Borusan Companies, received countervailable subsidies that are *de minimis*. Therefore, in these preliminary results, we are applying the net subsidy rate calculated for the Borusan Companies to those firms subject to review that were not selected for individual examination.

VIII. Analysis of Programs

A. Programs Preliminarily Determined to be Countervailable

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

We examined the provision of HRS to the Borusan Companies during the POR. The Borusan Companies reported purchasing HRS from Ereğli Demir ve Çelik Fabrikaları T.A.S. (Erdemir) or İskenderun Demir ve Çelik A.Ş. (İsdemir) during the POR.⁶⁶

The information submitted by the GOT regarding this program remains consistent with our findings in prior segments of this proceeding, as well as other Turkish CVD proceedings, where Commerce found that this program provides countervailable subsidies.⁶⁷ The GOT provided

⁶⁵ See, e.g., *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386, 37387 (June 29, 2010) (*Pasta from Italy 2008*).

⁶⁶ See Borusan Companies IQR at 22 and Exhibit N-1.

⁶⁷ See, e.g., *Pipe from Turkey 2015* IDM at 15; see also *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*Welded Line Pipe from Turkey 2013*) and accompanying IDM at 13–17; *Welded Line Pipe from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 83 FR 1237 (January 10, 2018) (*Welded Line Pipe from Turkey Preliminary Results 2015*) and accompanying PDM at 8-12; unchanged in *Welded Line Pipe from the Republic of*

information on Erdemir and Isdemir, suppliers of HRS, as well as Ordu Yardımlaşma Kurumu (OYAK), the Turkish military pension fund that is the controlling shareholder of Erdemir and Isdemir. During the POR, OYAK owned 49.29 percent of Erdemir's shares through a wholly-owned holding company, Ataer Holding A.S.⁶⁸ Because 3.08 percent of Erdemir's shares were owned by Erdemir itself in the form of treasury shares,⁶⁹ OYAK was the controlling shareholder of Erdemir. During the POR, Erdemir in turn owned 95.07 percent of Isdemir.⁷⁰

In its initial questionnaire response, the GOT responded to the Input Producer Appendix for Erdemir, Isdemir, and OYAK.⁷¹ The law establishing OYAK (the Military Personnel Assistance and Pension Fund Law), which was enacted on January 3, 1961, states that the GOT created OYAK "as an institution related to the Ministry of National Defense."⁷² Information in the GOT's questionnaire responses indicates the GOT's significant involvement in OYAK. For example, pursuant to the pension fund law, OYAK's Representative Assembly shall be composed of not less than 50 and not more than 100 members of the Turkish Armed Forces "designated by their respective commanders or superiors."⁷³ The Representatives Assembly, in turn, elects 20 of the 40 members of OYAK's General Assembly.⁷⁴ Of the General Assembly's other 20 members, 17 are by statute government officials (e.g., Ministers of Finance and Defense). Members of the General Assembly elect the eight-person Board of Directors.⁷⁵ Also, OYAK's property has, by law, the "same rights and privileges of state property," OYAK is exempt from corporate and other taxes, and members of the armed forces must by law contribute part of their salaries to OYAK.⁷⁶

Record evidence indicates that the GOT's significant involvement in OYAK extends to Erdemir and Isdemir. For example, Erdemir's 2016 Annual Report states it "aims to meet the present and future needs of Turkish industry to the highest level by investing in the production of high value added products."⁷⁷ These policies are in line with the GOT's stated policy in its 2012-2014 Medium Term Program to improve Turkey's balance of payments.⁷⁸ Also, the GOT explained

Turkey: Final Results of Countervailing Duty Administrative Review; 2015, 83 FR 34113 (July 19, 2018) (*Welded Line Pipe from Turkey 2015*) and accompanying IDM at 3; and *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) (*LDWP from Turkey Preliminary Determination*) and accompanying PDM at 7-11, unchanged in *Large Diameter Welded Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019) (*LDWP from Turkey*) and accompanying IDM at 4 and Comments 1 and 2; and *Pipe from Turkey 2017 Preliminary Results* PDM at 11; unchanged in *Pipe from Turkey 2017* IDM at 6.

⁶⁸ See GOT IQR at 29; see also Exhibit 4-N.

⁶⁹ *Id.* at Exhibit 4 (Input Producer Appendix).

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.* at Exhibit 4-G.

⁷³ *Id.* at Exhibit 4-N (Ataer's and Oyak's Response to The Input Producer Appendix).

⁷⁴ *Id.*

⁷⁵ *Id.* Exhibit 4-N; see also Article 2 of the Law No. 205 (Exhibit 4-G).

⁷⁶ *Id.* at Exhibit 9 G2 at Articles 18, 35, and 37.

⁷⁷ *Id.* at Exhibit 4 C1 (which contains Erdemir's 2016 Annual Report).

⁷⁸ See *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) (*Pipe from Turkey 2013*) and accompanying IDM at 8-11.

that the Turkish Privatization Administration (TPA) holds veto power over any decisions related to the closedown, sale, de-merger, merger, or liquidation of both Erdemir and Isdemir.⁷⁹ Additionally, the TPA also holds veto power over decisions on the reduction in capacity of Erdemir and Isdemir's integrated steel production facilities and mining facilities.⁸⁰ Further, Erdemir's 2016 Annual Report indicates that OYAK and the TPA both have members on Erdemir's Board of Directors.⁸¹

We preliminarily determine that the record evidence cited above indicates that the GOT exercises meaningful control over Erdemir and Isdemir, such that Erdemir and Isdemir possessed, exercised, or were vested with government authority during the POR. This meaningful control is evident from both the role of OYAK as an institution through which the GOT exercises control over Erdemir and Isdemir, and the alignment of Erdemir's Annual Report with the Medium-Term Program. Therefore, consistent with prior segments of this proceeding and other Turkish CVD proceedings,⁸² as well as the Court's holding in *Borusan*,⁸³ we determine that Erdemir and Isdemir are public bodies, and hence "authorities," pursuant to section 771(5)(B) of the Act. Consequently, we find that the HRS supplied by Erdemir and Isdemir to Borusan are financial contributions in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act.

Regarding the specificity of the HRS for LTAR program, the GOT provided a list of the industries that purchased HRS in Turkey during the POR.⁸⁴ Specifically, the GOT identified the following industries as purchasers of HRS during the POR: steel pipe and profile, rerolling producers, machinery manufacturing, automotive, heavy industry, consumer products, pressure purposes (pressure vessels, steam boilers), panel radiator, white appliances, and shipbuilding.⁸⁵ Consistent with Commerce's prior determinations, we preliminarily determine that the financial contribution provided by the GOT under this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the number of industries or enterprises using HRS is limited in number.⁸⁶

⁷⁹ See GOT IQR at Exhibit 9 and Exhibit 8-A.

⁸⁰ See GOT IQR at Exhibit 4 C1 at page 71, which contains Erdemir's 2016 Annual Report.

⁸¹ *Id.* at Exhibit 4C1 (Erdemir's 2016 Annual Report) at pages 64-65.

⁸² See *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination in the Countervailing Duty Determination and Final Affirmation Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey*) and accompanying IDM at Comment 1; see also *LDWP from Turkey Preliminary Determination* PDM at 7-11, unchanged in *LDWP from Turkey* IDM at 4 and Comment 1 and 2; and *Turkey Pipe 2017 Preliminary Results* PDM at 13; unchanged in *Turkey Pipe 2017* IDM at 6.

⁸³ See *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. & Borusan Istikbal Ticaret v. United States*, 61 F. Supp. 3d 1306, 1314-24 (Ct. Int'l Trade 2015) (*Borusan*), *aff'd on other grounds*, 857 F. 3d 1353 (Fed. Cir. 2017), in which the Court upheld Commerce's finding that Erdemir and Isdemir are "authorities" within the meaning of section 771(5)(B) of the Act.

⁸⁴ See GOT IQR at 26. The existence of this program is evident from both the repeated provision of HRS by Erdemir and Isdemir and the Annual Reports of Erdemir.

⁸⁵ *Id.*

⁸⁶ See, e.g., *OCTG from Turkey* IDM at 20-26; see also *Welded Line Pipe from Turkey 2013* IDM at 11-14; and *LDWP from Turkey Preliminary Determination* PDM at 7-11, unchanged in *LDWP from Turkey* IDM at 4 and Comment 1 and 2.

Regarding benefit, Commerce identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services, in accordance with 19 CFR 351.511(a)(2). This section of Commerce's regulations specifies potential benchmarks in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports, or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided at 19 CFR 351.511(a)(2), the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.⁸⁷ This is because such prices generally reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving Turkish buyers and sellers that can be used to determine whether Erdemir and Isdemir sold HRS to Borusan for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where Commerce finds that the government owns or controls the majority or, in certain circumstances, a substantial portion of the market for the good or service, Commerce will consider such prices to be significantly distorted and not an appropriate basis of comparison for determining whether there is a benefit.⁸⁸

Consistent with Commerce's prior findings in this proceeding and other Turkish CVD proceedings,⁸⁹ we determine that the record evidence does not support a finding that the Turkish HRS market is so distorted that it cannot serve as a source for an appropriate benchmark. The record information indicates that for 2016, 2017 and 2018, the combined domestic HRS production of Erdemir and Isdemir accounted for 38.44, 36.22, and 38.00 percent of supply, respectively, while total imports of HRS accounted for 38.67, 34.15, and 27.74 percent in the same years, respectively.⁹⁰ Given the minority share of government production, the substantial levels of imports, and the lack of other record evidence indicative of distortion, such as an export tax on or export quota for the input, we preliminarily find, consistent with our prior determinations noted above, that the HRS market in Turkey was not distorted by the government's presence during this period. Therefore, we determine that Borusan's reported prices for domestic HRS (other than from Erdemir and Isdemir) and imported HRS can serve as tier-one benchmarks. Accordingly, pursuant to 19 CFR 351.511(a)(2)(i), we used Borusan's actual domestic and import prices for HRS to calculate the benefit from its purchases of HRS from Erdemir and Isdemir, where applicable, during the POR.

⁸⁷ See, *e.g.*, *Notice of Affirmative Countervailing Duty Determination and Final Negative Critical Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying IDM at "Market Based Benchmark."

⁸⁸ See *CVD Preamble*, 63 FR at 65277.

⁸⁹ See, *e.g.*, *Pipe from Turkey 2015 IDM* at 15; see also *Welded Line Pipe from Turkey 2013 IDM* at 15–16; and *LDWP from Turkey Preliminary Determination PDM* at 7–11, unchanged in *LDWP from Turkey IDM* at 4 and Comment 1 and 2.

⁹⁰ See *GOT IQR* at 23–24.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Because we are using actual domestic and import prices paid by Borusan, the benchmark includes the delivery charges, import duties (where applicable), and value added taxes (VAT) paid (where applicable).

The Borusan Companies reported that Borusan purchased HRS of grade X-70 as well as non-X-series grade HRS from private parties during the POR and that Borusan made purchases of only non-X-series grade HRS from Erdemir and Isdemir during the POR.⁹¹ Consistent with Commerce's approach in the previous review of this proceeding,⁹² we excluded Borusan's purchases of X-70 grade HRS from the HRS benchmark calculation because Borusan had no comparable purchases from Erdemir and Isdemir.⁹³ Thus, in determining whether Borusan purchased non-X-series grade HRS from Erdemir and Isdemir for LTAR, we limited our benchmark to non-X-series grade HRS that Borusan purchased from private parties.

In comparing the monthly benchmark prices to Borusan's actual purchase prices for HRS from Erdemir and/or Isdemir, we included taxes and delivery charges, as appropriate. In instances in which Borusan paid Erdemir and/or Isdemir a lower unit price than the benchmark unit price, we multiplied the difference by the quantity purchased to calculate the benefit. Under this methodology, we find that Borusan received a benefit to the extent that the prices it paid for HRS produced by Erdemir and Isdemir were for LTAR.⁹⁴

To calculate the net subsidy rate, we divided Borusan's benefit by its total sales. On this basis, we find that the Borusan Companies received a countervailable subsidy of 0.28 percent *ad valorem*.

2. Deduction from Taxable Income for Export Revenue

Addendum 4108 of Article 40 of the Income Tax Law Number 193, effective June 2, 1995, allows taxpayers engaged in export activities to claim a lump sum deduction from gross income resulting from exports, construction, maintenance, assembly, and transportation activities abroad in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings from such activities.⁹⁵ This deduction is to cover the expenditures without documentation incurred from exports, construction, maintenance, assembly, and transportation activities abroad.⁹⁶ The deduction for export earnings may either be taken as a lump sum on a company's annual income tax return or be shown within the company's marketing, selling and distribution expense account of the income statement.⁹⁷ Under this program, marketing, selling, and distribution expenses are

⁹¹ See Borusan Companies First Supplemental QR at 5-6; see also Borusan Companies IQR at Exhibit N-1.

⁹² See *Pipe from Turkey 2017* IDM at Comment 1.

⁹³ See Borusan Verification Report at 5-8 and Exhibit VE-8; see also Borusan Companies SQR at 5-7 and Exhibit N-10.

⁹⁴ See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

⁹⁵ See Borusan Companies IQR at Exhibit A-1 and Exhibit A-3.

⁹⁶ *Id.*

⁹⁷ *Id.*

deductible expenditures for tax purposes. The Borusan Companies reported that Borusan received the deduction for export earnings with respect to the tax return it filed during the POR.⁹⁸

The Borusan Companies also reported that Istikbal participated in the deduction from taxable income for export revenue program. However, since Istikbal had a loss in 2017, it did not benefit from this program with regard to the tax return filed during the POR.⁹⁹

Consistent with prior determinations, we preliminarily find that this tax deduction is a countervailable subsidy.¹⁰⁰ The income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, because it represents revenue foregone by the GOT. The deduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. It is also specific under section 771(5A)(B) of the Act because its receipt is contingent upon export earnings.

Commerce typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1). The amount of the benefit is equal to the amount of tax that would have been paid absent the program. We preliminarily find that Borusan received a benefit under this program during the POR, consistent with section 771(5)(E) of the Act and 19 CFR 351.509(b).

To calculate the net subsidy rate, we divided Borusan's tax savings by its total export sales for the POR. On this basis, we find that the Borusan Companies received a countervailable subsidy of 0.04 percent *ad valorem*.

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

The Rediscount Program is administered by the Export Credit Bank of Turkey (Turkey Eximbank).¹⁰¹ The Rediscount Program was designed to provide financing to exporters.¹⁰² This program is contingent upon an export commitment.¹⁰³ Under the Rediscount Program, there is a minimum loan amount of 50,000 U.S. dollars per small- and medium-sized company.¹⁰⁴ Loan payments shall be made within the credit period or at maturity to the Turkey Eximbank.¹⁰⁵ The loans provided by the Turkey Eximbank through intermediary commercial banks, and the commercial banks require payment of a guarantee by the borrower.¹⁰⁶

Companies can repay either in the foreign currency in which the loan was obtained or in a Turkish-lira equivalent of the principal and interest based on exchange rates determined by the

⁹⁸ See Borusan Companies IQR at 11 and Exhibit A-1.

⁹⁹ See Borusan Companies First Supplemental QR at 1 and Exhibit 19; see also Borusan Verification Report at 10.

¹⁰⁰ See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 6, 2012) (*Pipe from Turkey 2010*) and accompanying IDM at "Deduction from Taxable Income for Export Revenue"; see also *OCTG from Turkey* IDM at 13.

¹⁰¹ See Borusan Companies IQR at 1, Exhibit G-1 and Exhibit G-5.

¹⁰² *Id.* at Exhibit G-5.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 1.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 5 of Exhibit G-1.

Turkey Eximbank.¹⁰⁷ The Borusan Companies reported that Borusan had loans outstanding during the POR under the program.¹⁰⁸ Istikbal received Turkey Eximbank rediscount financing during the POR in relation to one short term loan.¹⁰⁹

We preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT under 771(5)(D)(i) of the Act. The program is specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance. Commerce's finding in this regard is consistent with its practice.¹¹⁰ A benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amount paid by the company for the loans during the POR and the amount the company would have paid on comparable commercial loans.

Concerning Istikbal, we find the loan documentation indicates that its receipt of the Turkey Eximbank loan was contingent upon its sales of merchandise to export markets that did not include the United States.¹¹¹ Thus, in accordance with 19 CFR 351.525(b)(4), we preliminarily determine that any benefits associated with this loan are tied to those other export markets outside the United States. Therefore, we have not included this loan in our benefit analysis.

In calculating the benefit pursuant to section 771(5)(E) of the Act and 19 CFR 351.505(a)(1), we applied a discounted benchmark interest rate because a borrower pays the interest due upfront when the loan is received. Further, in accordance with section 771(6)(A) of the Act, we subtracted any fees paid for guarantees required for receipt of the loans from the benefit calculation.

To calculate the countervailable subsidy rate, we divided the benefit amounts received by Borusan by its total export sales value for the POR. On this basis, we preliminarily determine the net countervailable subsidy rate for this program to be 0.05 percent *ad valorem* for the Borusan Companies.

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

1. Inward Processing Certificate Exemption Program

The Ministry of Economy is the authority responsible for granting the Inward Processing Certificate program (IPC). Under the IPC program, companies are exempt from paying customs duties and value-added taxes (VAT) on raw materials and intermediate unfinished goods that are imported and used in the production of exported goods. Companies may choose whether to be exempt from the applicable duties and taxes upon importation (*i.e.*, the Suspension System) or

¹⁰⁷ *Id.* at Exhibit G-5.

¹⁰⁸ See Borusan Companies IQR at 15 and Exhibit G-2.

¹⁰⁹ See Borusan Companies First Supplemental QR at Exhibits G-6 and G-7.

¹¹⁰ See, e.g., *Pipe from Turkey 2011* IDM at 6-7; see also *OCTG from Turkey* IDM at 11-12.

¹¹¹ See Borusan Supplemental QR at Exhibits G-6 and G-7; see also Borusan Companies Verification Report at VE-25(D).

have the duties and taxes reimbursed after exportation of the finished goods (*i.e.*, the Drawback System). Under both systems, companies provide a letter of guarantee that is returned to them upon fulfillment of the export commitment.¹¹²

To participate in this program, a company must hold an IPC, which specifies the types and amounts of raw materials/intermediate unfinished goods to be imported and the amount of the resulting finished product to be exported. To obtain an IPC, an exporter must submit an application, which provides information about the goods to be produced and the raw materials to be imported. There are two types of IPCs: (1) D-1 certificates for imported raw materials or intermediate unfinished goods used in the production of exported goods; and (2) D-3 certificates for imported raw materials or intermediate unfinished goods used in the production of goods sold in the domestic market. D-1 certificates provide for exemption or drawback of both import duties and VAT, while D-3 certificates only provide for exemption of import duties (*i.e.*, for D-3 the VAT is payable).¹¹³

Concerning the duty drawback under the D-1 certificates, pursuant to 19 CFR 351.519(a)(1)(ii), a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input. Regarding the VAT exemption granted under the same certificates, pursuant to 19 CFR 351.517(a), a benefit exists to the extent that Commerce determines that the amount exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.¹¹⁴

In prior reviews, Commerce found with regard to the duty drawback that, in accordance with 19 CFR 351.519(a)(4)(i), the GOT has a system in place to confirm which inputs, and in what amounts, are consumed in the production of the exported product, and that the system is reasonable for the purposes intended.¹¹⁵ Commerce also found that the VAT exemption granted on certain methods of payments used in purchasing imported raw materials under this program does not constitute a subsidy pursuant to 19 CFR 351.517(a), because the tax exempted upon export does not exceed the amount of tax levied on like products when sold for domestic consumption.¹¹⁶ We have no new information on the record of this proceeding to warrant a reconsideration of Commerce's earlier findings.

During the POR, Borusan used D-1 certificates to receive duty and VAT exemptions on certain imported inputs used in the production of exported pipes and tubes.¹¹⁷ Consistent with Commerce's prior findings and based on our review of the information supplied by Borusan regarding this program in this administrative review, we preliminarily find no evidence on the

¹¹² See the GOT's IQR at 5, which states that there have been no changes to this program during the POR from what Commerce found countervailable in the previous review.

¹¹³ *Id.* at 5. The GOT provided a listing of all the Inward Processing Certificates used by the Borusan Companies.

¹¹⁴ See *Pipe from Turkey 2015* IDM at 7.

¹¹⁵ See, e.g., *Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey*, 71 FR 43111 (July 31, 2006) (*Pipe from Turkey 2004*) and accompanying IDM at 12-19.

¹¹⁶ See *Pipe from Turkey 2004* IDM at 12-19; see also *Turkey Pipe 2013* IDM at 7-8.

¹¹⁷ See Borusan Companies IQR at 14-15 and Exhibit E-3; see also GOT Initial QR at 5.

record of this proceeding indicating that the amounts of VAT and duty exemptions on inputs Borusan imported under the program were excessive or that Borusan used the imported inputs for any other product besides those exported, respectively.¹¹⁸

During the POR, Borusan did not hold D-3 certificates for duty-free imports of raw materials for use in the production of carbon steel pipe and tube sold domestically.¹¹⁹ The D-3 certificates are associated with imports of raw materials for use in products sold domestically.¹²⁰

At verification we reviewed the total amount of Inward Processing Certificates that Borusan used during the POR, queried the system to confirm the universe of licenses and confirmed that during the POR only D-1 licenses were used and none of them were D-3.¹²¹

Therefore, consistent with past cases, we preliminarily determine that the duty exemptions received by Borusan on imported inputs under D-1 certificates of the IPC program did not confer countervailable benefits as the exemptions were applied only to the imported inputs consumed in the production of the exported product, making normal allowance for waste. We further preliminarily find that the VAT exemption did not confer countervailable benefits to Borusan because the exemptions do not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption. Further, because Borusan did not import any goods under a D-3 certificate during the POR, we preliminarily determine that this aspect of the IPC program was not used by the Borusan Companies.

2. Various Programs

The Borusan Companies reported receiving benefits under various programs, some of which were specifically alleged, and some were self-reported. Based on the record evidence, we preliminarily determine that the benefits from certain programs: (1) were fully expensed prior and thus not allocable to the POR; or (2) if allocable to the POR, are less than 0.005 percent *ad valorem* in the POR when attributed to the respondent's applicable sales as discussed above in the "Attribution of Subsidies" section above. Consistent with Commerce's practice,¹²² we have not included these programs in our preliminary subsidy rate calculations for the Borusan Companies.¹²³

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

C. Programs Preliminarily Determined Not To Be Used

¹¹⁸ See *Turkey Pipe 2013 IDM* at 12-13; see also *Welded Line Pipe from Turkey 2013 IDM* at 13-17.

¹¹⁹ See Borusan Companies IQR at Exhibit E-3.

¹²⁰ See Borusan Companies IQR at 14 and Exhibit E-3.

¹²¹ See Borusan Verification Report at 12.

¹²² See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) and accompanying IDM at 32, footnote 144.

¹²³ See the Borusan Companies Preliminary Calculation Memorandum.

We examined, verified, and preliminarily determine that the Borusan Companies did not apply for or receive benefits under these programs during the POR:

- Investment Encouragement Program: Customs Duty Exemptions
- Post-Shipment Export Loans
- Pre-Export Credit Programs
- Pre-Shipment Export Credits
- Pre-Shipment Rediscount Loans
- Export Credit Bank of Turkey Buyer Credits
- Foreign Trade Companies Short Term Export Credits
- Exemption from Property Tax
- Exemption from Stamp Duties and Fees in Free Zones
- Investment Incentive Program
- Comprehensive Investment Incentives Program
- Law 5084: Withholding of Income Tax on Wages and Salaries
- Law 5084: Incentives for Employers' Share in Insurance Premiums
- Law 5084: Allocation of Free Land and Purchase of Land for LTAR
- Law 5084: Energy Support
- Subsidized Turkish Lira Credit Facilities
- Subsidized Credit for Proportion of Fixed Expenditures
- Subsidized Credit in Foreign Currency
- Super Incentive Scheme pursuant to Turkish Law No. 6745 and Decree 2016/9495
- Regional Subsidies
- VAT Support System (Incentive Premium on Domestically Obtained Goods)
- Investment Encouragement Program (IEP): Reductions in Corporate Taxes
- IEP: Customs Duty Exemptions
- IEP: Interest Support
- IEP: Social Security Premium Support
- IEP: Land Allocation
- IEP: Reductions in Corporate Taxes
- IEP: Value Added Exemptions (VAT)
- National Restructuring Program
- Provision of Land for LTAR
- Regional Incentive Scheme (RIS): Reduced Corporate Tax Rates
- RIS: Social Security Premium Contribution for Employees
- RIS: Allocation of State Land
- RIS: Interest Support
- OIZ: Waste-Water Charges
- OIZ: Exemptions from Customs Duties, VAT, and Payments for Public Housing Fund, for Investments for which an Income Certificate is Received
- OIZ: Credits for Research and Development Investments, Environmental Investments, Certain Technology Investments, Certain "Regional Development" Investments, and Investments Moved from Developed regions to "Regions of Special Purpose"
- OIZ: Exemption from Building and Construction Charges

- OIZ: Exemption for Property Tax
- OIZ: Exemption from Amalgamation and Allotment Transaction Charges
- Corporate Income Tax Exemption under the Free Zones Law
- Stamp Duties and Fees Exemptions under the Free Zones Law
- Support for Energy Payments
- Customs Duty Exemptions Under the Free Zones Law
- Value Added Tax Exemptions Under the Free Zones Law
- Provision of Building and Land Use Rights for Less than Adequate Remuneration under the Free Zones Law
- Housing Fund, for Investments for which an Income Certificate is Received
- OIA: Exemption from Amalgamation and Allotment Transaction Charges

IX. Recommendation

We recommend that you approve the preliminary findings described above.



Agree

Disagree

3/27/2020

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance