



C-489-838  
Investigation  
POI: 01/01/2018 – 12/31/2018  
**Public Document**  
E&C/OIII: SB/PZ

April 27, 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 Determination in  
the Countervailing Duty Investigation of Certain Quartz Surface  
Products from Turkey

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## I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of certain quartz surface products (quartz surface products) from the Republic of Turkey (Turkey), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The petitioner is Cambria Company LLC. The mandatory respondent subject to this investigation is Belenco Diş Ticaret A.Ş. (Belenco).<sup>1</sup> The period of investigation (POI) is January 1, 2018 through December 31, 2018.

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

- Comment 1: Whether Commerce Should Apply Adverse Facts Available (AFA) to the Local Fair Support Program
- Comment 2: Whether Commerce Should Countervail the Value-Added Tax (VAT) Exemption Granted Under the Regional Investment Incentive Scheme (RIIS)

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<sup>1</sup> In the *Preliminary Determination*, we determined that Belenco was cross-owned with its parent company Peker Yüzey Tasarıları Sanayi ve Tic. A.Ş. (Peker Yüzey). No party commented on this cross-ownership determination for this final determination. See *Certain Quartz Surface Products from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 54841 (October 11, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).



## II. BACKGROUND

On October 11, 2019, Commerce published the *Preliminary Determination* in this investigation.<sup>2</sup> Between December 9 and 12, 2019, we conducted verification of the questionnaire responses submitted by Belenco.<sup>3</sup> Between December 16 and 18, 2019, we conducted verification of the questionnaire responses submitted by the Government of Turkey (GOT).<sup>4</sup> Interested parties submitted case briefs on January 30, 2020,<sup>5</sup> and rebuttal briefs on February 4, 2020.<sup>6</sup>

## III. SCOPE COMMENTS

During the course of this investigation, Commerce received scope comments from interested parties. We issued a Preliminary Scope Memorandum to address these comments and set aside a period of time for parties to address scope issues in case and rebuttal briefs.<sup>7</sup> We did not receive scope case briefs from interested parties. Thus, for this final determination, we have made no changes to the scope of this investigation, as published in the *Preliminary Determination*.

## IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are quartz surface products. For a complete description of the scope of this investigation, *see* the accompanying *Federal Register* notice at Appendix I.

## V. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES

Commerce preliminarily determined that critical circumstances exist with respect to all companies.<sup>8</sup> No parties submitted comments regarding our preliminary critical circumstances determination. Consistent with Commerce's practice, for the final determination, we have updated the base and comparison periods to account for the quantity and value data that Belenco reported following the *Preliminary Determination*.<sup>9</sup> It is Commerce's practice to base the

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<sup>2</sup> *See Preliminary Determination*.

<sup>3</sup> *See* Memorandum, "Verification of the Questionnaire Responses of Belenco Diş Ticaret A Ş.," dated January 23, 2020 (Belenco Verification Report).

<sup>4</sup> *See* Memorandum, "Verification of the Questionnaire Responses of the Republic of Turkey," dated January 23, 2020 (GOT Verification Report).

<sup>5</sup> *See* Petitioner's Letter, "Certain Quartz Surface Products from Turkey: Submission of Administrative Case Brief," dated January 30, 2020 (Petitioner's Case Brief); *see also* Belenco's Letter, "Countervailing Duty Investigation of Certain Quartz Surface Products from the Republic of Turkey: Belenco's Case Brief," dated January 30, 2020 (Belenco's Case Brief).

<sup>6</sup> *See* Petitioner's Letter, "Certain Quartz Surface Products from Turkey: Submission of Administrative Rebuttal Brief," dated February 4, 2020 (Petitioner's Rebuttal Brief); *see also* Belenco's Letter, "Countervailing Duty Investigation of Certain Quartz Surface Products from the Republic of Turkey: Belenco's Rebuttal Brief," dated February 4, 2020 (Belenco's Rebuttal Brief).

<sup>7</sup> *See* Memorandum, "Certain Quartz Surface Products from India and Turkey: Preliminary Scope Decision Memorandum," dated December 4, 2019 (Preliminary Scope Memorandum).

<sup>8</sup> *See* PDM at 5-7.

<sup>9</sup> *See, e.g., Certain Steel Wheels 12 to 16.5 Inches in Diameter from the People's Republic of China: Final*

critical circumstances analysis on all available data, and to limit the comparison period by the month that Commerce began suspension of liquidation resulting from an affirmative preliminary determination.<sup>10</sup> Accordingly, we are continuing to define base and comparison periods within the bounds of our normal practice by extending the comparison period up through the month of the *Preliminary Determination*. For this final determination, we are comparing shipments over a period beginning in May 2019 through September 2019, with the period December 2018, through April 2019.<sup>11</sup> We have not included the month of the *Preliminary Determination* (i.e., October 2019) because the *Preliminary Determination* was published in the first half of the month (i.e., on October 11, 2019). As such, including data from that month would be distortive in the critical circumstances analyses because it would reflect the impact of the preliminary cash deposits collected on shipments during the greater part of that month.<sup>12</sup>

As we explained in the *Preliminary Determination*, as part of the critical circumstances analysis under section 703(e)(1)(B) and 19 CFR 351.206(i) Commerce must determine whether there are “massive imports” over a “relatively short period.”<sup>13</sup> Commerce’s regulations provide that, generally, imports must increase by at least 15 percent during the “comparison period” to be considered “massive.”<sup>14</sup> As a result of the updates discussed above, we determine that critical circumstances do not exist for Belenco because imports during the comparison period increased less than 15 percent when compared to the base period and, therefore, are not massive.<sup>15</sup> Moreover, we continue to determine that critical circumstances continue to exist with respect to all-other companies.<sup>16</sup>

## **VI. SUBSIDIES VALUATION INFORMATION**

### **A. Allocation Period**

We made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation methodology used in the *Preliminary Determination*. For a description of the allocation period and the methodology used for this final determination, *see the Preliminary Determination*.<sup>17</sup>

### **B. Attribution of Subsidies**

We made no changes to, and interested parties raised no issues in their case briefs regarding, the

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*Affirmative Countervailing Duty Determination, and Final Affirmative Determination of Critical Circumstances*, 84 FR 32723 (July 9, 2019) and accompanying Issues and Decision Memorandum (IDM) at 6-7.

<sup>10</sup> *Id.*

<sup>11</sup> See Memorandum, “Monthly Shipment Quantity and Value Analysis for Critical Circumstances,” dated concurrently with this memorandum (Critical Circumstances Memorandum).

<sup>12</sup> See, e.g., *Circular Welded Carbon Quality Steel Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances*, 73 FR 31966 (June 5, 2008) and accompanying IDM at Comment 11.

<sup>13</sup> See PDM at 6.

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

<sup>15</sup> See Critical Circumstances Memorandum.

<sup>16</sup> *Id.*

<sup>17</sup> See PDM at 7-8.

methodology underlying our attribution of subsidies in the *Preliminary Determination*. For a description of the methodology used for this final determination, *see the Preliminary Determination*.<sup>18</sup>

### **C. Denominators**

We made no changes to, and interested parties raised no issues in their case briefs regarding the denominators used in the *Preliminary Determination*. For a description of the methodology used for this final determination, *see the Preliminary Determination*.<sup>19</sup>

### **D. Benchmarks and Interest Rates**

We made no changes to, and interested parties raised no issues in their case briefs regarding the benchmarks we used in the *Preliminary Determination*. For a description of the methodology used for this final determination, *see the Preliminary Determination*.<sup>20</sup>

## **VII. ANALYSIS OF PROGRAMS**

### **A. Programs Determined to Be Countervailable**

#### **1. Foreign Fair Support**

At the verification of the GOT's responses, we confirmed that a portion of the funds received in 2013 by Peker Yüzey that were assigned to the Foreign Fair Support program during the *Preliminary Determination* were actually disbursed under the Trademark Registry Support Program.<sup>21</sup> Accordingly, for the final determination, we reduced the amount of approval for Foreign Fair Support for 2013 and assigned the corresponding amount to the Trademark Registry Support program.<sup>22</sup> While we revised the amount of approval in the calculation for 2013, we made no changes to our methodology for calculating a subsidy rate for Peker Yüzey under this program.<sup>23</sup>

Belenco/Peker Yüzey: 0.01 percent *ad valorem*.

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<sup>18</sup> *Id.* at 8-9.

<sup>19</sup> *Id.* at 9.

<sup>20</sup> *Id.* at 9-10.

<sup>21</sup> *See* GOT Verification Report at 2-3.

<sup>22</sup> *See* Memorandum, "Analysis and Calculations for the Final Countervailing Duty Determination," dated concurrently with this memorandum (Final Calculation Memorandum).

<sup>23</sup> *See* PDM at 10-11.

2. RIIS - Social Security Support

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.<sup>24</sup>

Belenco/Peker Yüzey: 0.08 percent *ad valorem*.

3. RIIS – Tax Reduction

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.<sup>25</sup>

Belenco/Peker Yüzey: 2.27 percent *ad valorem*.

4. Regional Development Subsidies – Exemption of Property Tax

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.<sup>26</sup>

Belenco/Peker Yüzey: 0.01 percent *ad valorem*.

5. Support for Foreign Market Research

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.<sup>27</sup>

Belenco/Peker Yüzey: 0.01 percent *ad valorem*.

6. Tax Incentives for Research and Development Activities

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.<sup>28</sup>

Belenco/Peker Yüzey: 0.03 percent *ad valorem*.

7. Local Fair Support

In the *Preliminary Determination*, Commerce found that the local fair support program did not confer a measurable benefit during the POI and, therefore, it was not necessary to make a

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<sup>24</sup> *Id.* at 12-13.

<sup>25</sup> *Id.* at 13-14.

<sup>26</sup> *Id.* at 16.

<sup>27</sup> *Id.* at 16-17.

<sup>28</sup> *Id.* at 17-19.

determination on financial contribution or specificity.<sup>29</sup> Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are discussed in Comment 1.

Under the local fair support program, companies that participate in industry-specific international domestic exhibitions receive support from the Ministry of Economy.<sup>30</sup> The local fair support program is regulated by the Decree on Supporting Sectoral International Domestic Fairs (No. 2014/4) published in August 2014.<sup>31</sup> Decree No. 2014/4 indicates that the decree is based on The Government Decree on Subsidies for Export.<sup>32</sup> Support is provided for fairs that the Ministry of Economy's General Directorate of Export approves per the export strategies and economic preferences of the Directorate and meet the requirements laid out in Decree No. 2014/4.<sup>33</sup> Fifty percent of the expenses relating to participation in the Ministry approved fairs are supported up to a maximum amount of 30,000 Turkish lira per exhibition.<sup>34</sup> Belenco reported, and the GOT confirmed, that Peker Yüzey received an amount in the average useful life period (AUL). As discussed below in Comment 1, at verification, Commerce discovered an additional amount relating to this program that Peker Yüzey received in the POI.

We determine that these payments are financial contributions in the form of direct transfer of funds to Peker Yüzey under section 771(5)(D)(i) of the Act, because Peker Yüzey received a benefit under the program that is remitted to the company's account during the AUL and POI.<sup>35</sup> We find that Peker Yüzey benefitted from support from local fair support under section 771(5)(E) of the Act in the amount of the expenses for participation in the fairs that were supported by the Ministry of Economy.<sup>36</sup>

We determine that this program is export specific within the meaning of sections 771(5A)(A) and (B) of the Act because Peker Yüzey was reimbursed for expenses incurred for participation in international domestic fairs, an activity by which companies seek to expand their export sales.<sup>37</sup>

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<sup>29</sup> *Id.* at 19.

<sup>30</sup> See Belenco's Letter, "Countervailing Duty Investigation of Certain Quartz Surface Products from the Republic of Turkey: Initial Questionnaire," dated August 12, 2019 (Belenco's IQR) at 54-57 and Exhibit CVD-27.

<sup>31</sup> *Id.* at Exhibit CVD-27.

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

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 55 and Exhibit CVD-27.

<sup>35</sup> See Belenco Verification Report at 12-13 and Verification Exhibit (VE)-15 at 7.

<sup>36</sup> *Id.*

<sup>37</sup> We note that in *Olives from Spain*, we made a similar finding on a similar program. See *Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination*, 83 FR 28186 (June 18, 2018) and accompanying IDM at 14-15.

After first performing the “0.5 percent test” provided for in 19 CFR 351.524, for each year in the AUL and POI in which Peker Yüzey received a benefit, we allocated this amount to the POI, in accordance with 19 CFR 351.524(d). To calculate the net countervailable subsidy rate attributable to the respondents, we divided the total POI benefit to Peker Yüzey by the respondents’ consolidated export sales during the POI. We have calculated a rate of 0.02 percent *ad valorem* for this final determination.<sup>38</sup>

Belenco/Peker Yüzey: 0.02 percent *ad valorem*.

## **B. Programs Determined Not to Confer A Measurable Benefit**

Unless otherwise noted below, we made no changes to the *Preliminary Determination* with respect to the measurability of the following programs.

1. Environment Support
2. Insurance Premium Support for Employer’s Share Law No. 6545
3. Patent Support
4. RIIS – Interest Support
5. RIIS – VAT and Customs Duty Exemption<sup>39</sup>
6. Social Security Premium Support Act No. 4857
7. Support for Collective Memberships to E-Business/Commerce Website Program
8. Trademark Registry Support<sup>40</sup>

## **C. Programs Found to be Not Countervailable**

We did not receive comments and made no changes to the *Preliminary Determination* with respect to the non-countervailability of the programs listed below.

1. Insurance Premium Support for Employer’s Share Law No. 6111
2. Insurance Premium Support for Employer’s Share Law No 7103
3. Social Security Premium Support Act No. 5510

## **D. Programs Determined Not to Be Used**

Commerce has made no changes in the analysis of the following programs from the *Preliminary Determination*. Commerce received no comments from interested parties on these programs.

1. Credit Program for Participating to Overseas Trade Fairs
2. Deductions from Taxable Income for Export Revenue

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<sup>38</sup> See Final Calculation Memorandum.

<sup>39</sup> Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are discussed in Comment 2. As a result, we have determined that this program did not confer a measurable benefit during the POI.

<sup>40</sup> As described above, at the GOT verification, we confirmed that the GOT disbursed an amount to Peker Yüzey under this program in 2013. Accordingly, we performed our standard calculation methodology on this amount and continue to determine that the respondents did not receive a measurable benefit under this program during POI. See Final Calculation Memorandum.

3. Export Buyer's Credits
4. Export-Oriented Business Investment Loan
5. Foreign Trade Companies Short-Term Export Credits Program
6. General Investment Incentive Scheme
7. Investment Credit for Export
8. Post Shipment Rediscount Credit Program
9. Pre-Export Credit Program
10. R&D Grants
11. Rediscount Credit Program (Pre-Shipment Export Credit Program)
12. Regional Development Subsidies – Exemption of Income Tax on Wages and Salaries
13. Regional Development Subsidies – Provision of Land for LTAR
14. RIIS – Income Tax Withholding
15. RIIS – VAT Refund
16. Specific Export Credit Program

## VIII. ANALYSIS OF COMMENTS

### Comment 1: Whether Commerce Should Apply AFA to the Local Fair Support Program

#### *Petitioner's Case Brief*<sup>41</sup>

- In accordance with its practice when it discovers additional financial contributions through the verification process,<sup>42</sup> Commerce should apply AFA for this program.
- Since there is no other respondent and it does not appear that Commerce has previously countervailed this program, Commerce should use AFA and apply the highest non-*de minimis* rate for a grant program involving Turkey.

#### *Belenco's Rebuttal Brief*<sup>43</sup>

- Application of AFA is unwarranted. The reporting error found at verification was insignificant and not systemic.
  - The amount of the support discovered at verification would be *de minimis*.
  - There is no need for AFA, since the data needed to correct the error are on the record and verified.
- If Commerce were to apply AFA, it should not use the grant program suggested by the petitioner because: (1) the rate of that program is disproportionate to the nature of the error at issue; and (2) the proposed grant program is not similar to the program at issue.
  - The grant program suggested by the petitioner was a grant relating to agricultural exports.
  - Instead, if Commerce decides to apply AFA, Commerce should use a proxy grant

<sup>41</sup> See Petitioner's Case Brief at 1-4.

<sup>42</sup> See Petitioner's Case Brief at 1-4, citing to *Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*OCTG from China*) and accompanying IDM at 6; and *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 82 FR 23188 (May 22, 2017) (*Rebar from Turkey*) and accompanying IDM at Comment 5.

<sup>43</sup> See Belenco's Rebuttal Brief at 1-5.



program for reimbursement of attorney fees.

**Commerce's Position:** As an initial matter, we agree with the petitioner that an additional benefit was discovered at verification. Belenco acknowledged that a reporting error was made and that Belenco did not report the entire amount of the benefit Peker Yüzey received under the program accurately prior to verification.

However, after evaluating the record of this proceeding, we disagree with the petitioner that AFA is warranted. Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

The prerequisites for applying facts available under section 776 of the Act are not present in this case. In its questionnaire responses, Belenco reported that Peker Yüzey received benefits under the Local Fair Support program, including the amount of the benefit.<sup>44</sup> At Belenco's verification, Commerce discovered an error, one instance of an unreported receipt of funds in a relatively small amount for Peker Yüzey, in Belenco's reporting relating to the Local Fair Support program. Moreover, the amount of the funds that Peker Yüzey received, but initially did not report, is on the record.<sup>45</sup> The record contains the necessary information to assess all the benefits conferred under this program.<sup>46</sup> Accordingly, Commerce performed its standard grant calculation for this program.

In *Welded Line Pipe from Korea*, Commerce similarly determined that AFA was not warranted despite the discovery of previously unreported grants at verification because the amount of assistance was on the record and there was no lack of necessary information with which to assess the grants.<sup>47</sup> In this investigation, likewise, the amount of assistance is on the record and, as detailed below, we have all the necessary information with which to assess the grants. As a result, we have performed our standard grant calculation using the actual amount of benefit that is on the record.

The petitioner argues that it is Commerce's practice to apply AFA when it discovers additional

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<sup>44</sup> See Belenco IQR at 54-57.

<sup>45</sup> See Belenco Verification Report at 12-13 and VE-15 at 7.

<sup>46</sup> See *Welded Line Pipe from the Republic of Korea: Final Negative Countervailing Duty Determination*, 80 FR 61365 (October 13, 2015) (*Welded Line Pipe from Korea*) and accompanying IDM at Comment 2.

<sup>47</sup> See *Welded Line Pipe from Korea* IDM at Comment 2.

financial contributions through the verification process, citing to *OCTG from China*<sup>48</sup> and *Rebar from Turkey*.<sup>49</sup> We disagree. Application of AFA is a fact intensive inquiry that is specific to the facts of each proceeding. The record in this investigation differs from the records in those investigations because, in this investigation, the record contains the amount of support received under the program and the necessary information required to assess the grants. That was not the case in either *OCTG from China* or *Rebar from Turkey*. In *OCTG from China*, Commerce determined that it “did not have a full understanding of the loans provided to these companies and was unable to request further information, if necessary, to fully evaluate the loans in question.”<sup>50</sup> In contrast, the instant record contains all payments that the respondent received under this program and all necessary information required to assess the countervailability of the program. In *Rebar from Turkey*, the subsidy discovered at verification was for a previously unreported program,<sup>51</sup> while in this investigation, the support discovered at verification relates to a program which Belenco reported before verification and under which the company had attempted to provide timely responses. Based on Belenco’s responses before verification, Commerce was able to assess information about the countervailability of the program, including financial contribution and specificity, and had the opportunity to collect further information, if necessary. More importantly, the record contains all necessary information for making our determination, and Commerce was able to verify the entirety of the accounting information regarding this program. Thus, after evaluating the record of this proceeding and the totality of circumstances surrounding this program and Belenco’s reporting, application of AFA is not warranted.

## **Comment 2: Whether Commerce Should Countervail the VAT Exemption Granted Under the RIIS**

### *Belenco’s Case Brief*<sup>52</sup>

- Substantial record evidence demonstrates that the VAT exemption under the RIIS does not constitute a financial contribution or confer a benefit on Belenco. The VAT exemption is an offset of the company’s VAT payable and receivable balance.
- Verification revealed that the VAT paid for domestically purchased or imported machinery (*i.e.*, normal purchases not under the RIIS program) can be offset in the same month or in the coming months depending on the company’s VAT balance, while companies that receive a VAT exemption through the RIIS can claim an exemption when the machinery and equipment is domestically purchased or imported.
- In either scenario, the company does not pay the VAT – it is either exempted (under the RIIS) or used as an offset (purchases not made under the RIIS) and, thus, there is no financial contribution because there is no revenue forgone.
- Program participants are not better off than any other company which purchases machinery and equipment without participating under the RIIS and, therefore, the program is not specific in conferring its benefit.

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<sup>48</sup> See *OCTG from China* IDM at 6.

<sup>49</sup> See *Rebar from Turkey* IDM at Comment 5.

<sup>50</sup> See *OCTG from China* IDM at 6.

<sup>51</sup> See *Rebar from Turkey* IDM at Comment 5.

<sup>52</sup> See Belenco’s Case Brief at 2-6.

- If Commerce continues to find the RIIS VAT exemption to be countervailable, Commerce should revise its calculation by not double-counting the benefit as both an interest-free contingent loan and a grant to the extent that the liability is waived.

*Petitioner's Rebuttal Brief*<sup>53</sup>

- Commerce should continue to countervail the program and Belenco's VAT savings as it did in the *Preliminary Determination*, because the exemptions confer a benefit in the form of revenue foregone or not collected. Belenco's argument ignores that the exemptions it receives under the program reduce the company's VAT liabilities, regardless of how the company may satisfy those liabilities. Thus, the program results in a financial contribution in the form of revenue forgone or not collected because the company's overall VAT liability is decreased.
- Commerce should continue to find that benefits exist both in the amount of revenue forgone or not collected and interest-free loans during the period the period of contingent liability.
  - There is no merit to Belenco's argument that Commerce should not consider the RIIS program to confer a secondary benefit in the form of an interest-free loan during the time between the purchase and when final VAT and/or customs liability is resolved.
  - Belenco's argument ignores that the VAT or customs liability remains a contingent liability until the time at which government finally determines that the conditions precedent have been satisfied and the liability is definitively resolved. Consequently, any unpaid tax is akin to an interest-free loan during the period between the equipment purchase and final resolution of tax liability.

**Commerce's Position:** In the *Preliminary Determination*, Commerce found the RIIS – VAT and Customs Duty Exemption program to be countervailable.<sup>54</sup> In light of information obtained at verification and the parties' arguments, Commerce has determined that the VAT portion of the RIIS – VAT and Customs Duty Exemption program does not provide a benefit under 19 CFR 350.510(a). Because the respondents did not utilize the customs duty exemption portion of program during the AUL, we find that the program did not confer a measurable benefit on the respondents during the POI.

Under 19 CFR 351.510(a), for the exemption of indirect taxes, a benefit “exists to the extent that the taxes paid by a firm as a result of the program are less than the taxes the firm would have paid in the absence of the program.” As we have explained in *Shrimp from Thailand*, a VAT exemption does not provide a benefit under a normal VAT system:

Under a normal VAT system, a producer pays input VAT on its purchases from suppliers and collects output VAT on its sales to customers. The producer merely conveys the tax forward and the ultimate tax burden is borne by the final (non-producing) consumer. This is achieved through a reconciliation mechanism in which the input VAT paid is offset against the output VAT collected. Any excess output VAT is remitted by the producer to the government. Any excess input

<sup>53</sup> See Petitioner's Rebuttal Brief at 2-5.

<sup>54</sup> See PDM at 14-16.

VAT is refunded back to the producer by the government or credited to the producer to offset against future input VAT, as the case may be. Under this mechanism, the producer ultimately keeps no surplus output VAT and pays no excess input VAT. Thus, the net VAT incidence to the producer is ultimately zero, with the actual VAT burden conveyed forward to the final, non-producing consumer.

...19 CFR 351.510(a)(1) governs the identification and measurement of any benefit that might arise from an indirect tax such as a VAT, under a program other than an export program. Section 351.510(a)(1) states that a benefit exists under a remission or exemption of taxes “to the extent that the taxes or import charges paid by a firm as a result of the program are less than the taxes the firm would have paid in the absence of the program.” As indicated in the plain text of the regulation...section 351.510(a) makes no distinction between a remission of the tax and an exemption of the tax and therefore does not require the Department to apply different means by which to identify and measure benefits that arise from a VAT refund compared to a VAT exemption. Instead, section 351.510(a) directs the Department to determine a benefit by assessing whether the producer pays less under the refund or exemption program than it would normally pay without the program.

In the normal reconciliation mechanism for VAT, in which input VAT is offset against output VAT, there is no benefit within the meaning of section 351.510(a), because the net VAT incidence to the producer is ultimately zero both under the program and in the absence of the program. This holds true whether the program involves a refund as part of the reconciliation mechanism or an exemption that obviates the need for a reconciliation in the first place. In other words, section 351.510(a) recognizes no distinction between the producer getting a refund instead of an exemption and the producer getting an exemption instead of a refund.<sup>55</sup>

We verified at Belenco that, absent the VAT exemption, Belenco ultimately pays no VAT.<sup>56</sup> According to the verification report, VAT paid by Belenco for domestically purchased or imported machinery (*i.e.*, normal purchases not under the RIIS program) is offset in the same month or in the coming months.<sup>57</sup> The record evidence supports a finding that this is a normal VAT system, which under our practice does not confer a benefit. Thus, in accordance with 19 CFR 351.510(a), we determine that the VAT exemption portion of this program confers no benefit.

Notwithstanding the determinations relating to the VAT portion of the RIIS – VAT and Customs Duty Exemption program above, we have not changed our determination that the customs duty exemption non-VAT portion of this program remains countervailable. However, since the

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<sup>55</sup> See *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) (*Shrimp from Thailand*) and accompanying IDM at Comment 9.

<sup>56</sup> See Belenco Verification Report at 10 and VE-12.

<sup>57</sup> *Id.*

respondents did not receive a customs duty exemption during the AUL, we determine that the program did not confer a measurable benefit on the respondents during the POI.

As Commerce noted in the *Preliminary Determination*, the RIIS – VAT and Customs Duty Exemption program appears to be similar to another program that we previously found to be countervailable in previous proceedings involving Turkey – the Investment Encouragement Program (IEP): Customs Duty and VAT Exemption program.<sup>58</sup> Our findings in this instant investigation have no bearing on our previous determinations regarding the IEP – Customs Duty and VAT Exemption program. In the next Turkey proceeding, we will gather facts about the operations of the relevant VAT system and make appropriate determinations based on the facts of the proceeding.

## IX. RECOMMENDATION

We recommend approving all of the above positions. If these positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

4/27/2020

X  \_\_\_\_\_

Signed by: JEFFREY KESSLER

\_\_\_\_\_  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance

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<sup>58</sup> See PDM at 14-16.