C-489-819
Administrative Review
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July 6, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey; 2017

I. SUMMARY

The Department of Commerce (Commerce) has completed its administrative review of the countervailing duty (CVD) order on steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey)[1] for the period January 1, 2017, through December 31, 2017. After analyzing the comments raised by the interested parties in their case and rebuttal briefs, we have made no changes to the *Preliminary Results*.[2] Below is the complete list of the issues in this administrative review for which we received comments from interested parties:

Comment 1: Provision of Natural Gas for Less than Adequate Remuneration (LTAR) – Non-Government Suppliers
Comment 2: New Subsidy Allegation – Super Incentive Scheme
Comment 3: Renewable Energy Sources Support Mechanism (YEKDEM) Program Calculation
Comment 4: Investment Incentive Certificates Calculation
Comment 5: Non-Selected Company Rate for Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji A.S. (collectively, Colakoglu)

[1] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Countervailing Duty Order*, 79 FR 65926 (November 6, 2014) (*Order*).
[2] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review in Part; 2017*, 85 FR 3030 (January 17, 2020) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum (PDM).

II. BACKGROUND

A. Case History

On January 17, 2020, we published the *Preliminary Results* of this administrative review.[3] The mandatory respondents are: Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas), and Kaptan Demir Celik Endustrisi ve Ticaret A.S. (Kaptan Demir) and Kaptan Metal Dis Ticaret Ve Nakliyat A.S. (Kaptan Metal) (collectively, Kaptan). On February 25, 2020, we received timely case briefs from Icdas, the Rebar Trade Action Coalition (RTAC or the petitioner), and Colakoglu.[4] The petitioner, Kaptan, Icdas, and the Government of Turkey (GOT) submitted timely rebuttal briefs on March 2, 2020.[5] Colakoglu and Icdas requested a hearing,[6] but on June 23, 2020, they withdrew their requests.[7] Thus, no hearing was held.

On April 24, 2020, Commerce exercised its discretion to toll all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until July 6, 2020.[8]

B. Period of Review

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

III. SCOPE OF THE *ORDER*

The merchandise subject to this *Order* is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010.

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[3] *Id*.

[4] *See* Icdas' Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey; Icdas Case Brief," dated February 25, 2020 (Icdas Case Brief); Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey; RTAC's Case Brief," dated February 25, 2020 (Petitioner Case Brief); and Colakoglu's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey; Colakoglu Case Brief," dated February 25, 2020 (Colakoglu Case Brief).

[5] *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey; RTAC's Rebuttal Brief," dated March 2, 2020 (Petitioner Rebuttal Brief); Kaptan's Letter, "Steel Concrete Reinforcing Bar from Turkey; Kaptan rebuttal brief," dated March 2, 2020 (Kaptan Rebuttal Brief); Icdas' Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey; Icdas Rebuttal Brief," dated March 2, 2020 (Icdas Rebuttal Brief); and GOT Letter, "Countervailing Duty 2017 Administrative Review on Steel Concrete Reinforcing Bar from the Republic of Turkey: Rebuttal Brief," dated March 2, 2020 (GOT Rebuttal Brief).

[6] *See* Colakoglu Case Brief and Icdas Case Brief.

[7] *See* Colakoglu's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Colakoglu's Hearing Withdrawal Request," and Icdas' Letter "Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas' Hearing Withdrawal Request," both dated June 23, 2020.

[8] *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19," dated April 24, 2020. The final results were initially due on May 16, 2020 (120 days after publication of the *Preliminary Results*). In this case, 50 days after the original May 16, 2020, deadline falls on July 5, 2020, a Sunday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (e.g., mill mark, size, or grade) and without being subject to an elongation test. HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

IV. PARTIAL RESCISSION OF THE 2017 ADMINISTRATIVE REVIEW

A. Agir Haddecilik A.S. (Agir), Asil Celik Sanayi ve Ticaret A.S. (Asil), Ege Celik Endustrisi Sanayi ve Ticaret A.S. (Ege), Ekinciler Demir ve Celik Sanayi Anonim Sirketi (Ekinciler), and Kocaer Haddecilik Sanayi ve Ticar (Kocaer)

In the *Preliminary Results*, we stated Commerce's intention to rescind the administrative review with respect to Agir, Asil, Ege, Ekinciler, and Kocaer, because the companies timely filed no-shipments certifications, and Commerce received no information from U.S. Customs and Border Protection that contradicted these no-shipments certifications.[9] No interested party submitted comments on this matter. Because there is no evidence on the record to indicate that Agir, Asil, Ege, Ekinciler, and Kocaer had entries, exports, or sales of subject merchandise to the United States during the POR, pursuant to 19 CFR 351.213(d)(3), we are rescinding the review with respect to these companies.

B. Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas)

Entries of merchandise produced and exported by Habas are not subject to countervailing duties under the *Order* because Commerce's final determination in the investigation was negative with respect to subject merchandise produced and exported by Habas.[10] In the *Preliminary Results*, we stated Commerce's intention to rescind the administrative review of Habas, because the record indicates no entries of subject merchandise produced by another entity and exported by Habas, and no entries of merchandise produced by Habas and exported by another entity.[11] No interested party submitted comments on this matter. Because there is no evidence on the record that Habas should be subject to this administrative review, we are rescinding the review with respect to Habas, pursuant to 19 CFR 351.213(d)(3).

[9] *See Preliminary Results*, 85 FR at 3030; *see also* PDM at 4.
[10] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963, 54964 (September 15, 2014) (*Rebar I Final Determination*); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 1329, 1334 (January 11, 2018); and *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 8058, 8067 n.6 (February 23, 2018) (clarifying that entries produced and exported by Habas are not subject to the *Order*).
[11] *See Preliminary Results* PDM at 4-5.

V. NON-SELECTED RATE

In the *Preliminary Results*, we explained that in CVD proceedings, where Commerce limits the number of respondents individually examined, Commerce has determined that a "reasonable method" to determine the rate applicable to companies not individually examined, when all the rates of selected mandatory respondents are zero or *de minimis*, is to assign to the non-selected respondents the average of the most recently determined rates that are not zero, *de minimis*, or based entirely on facts available.[12] However, if a non-selected respondent has its own calculated rate that is contemporaneous with or more recent than such previous rates, Commerce has found it appropriate to apply that calculated rate to the non-selected respondent, even when that rate is zero or *de minimis*.[13] Based on this methodology, we continue to apply a net subsidy rate of 1.82 percent *ad valorem* for Colakoglu, based on its rate calculated in the *Rebar I 2016 Final Results*.[14] Interested parties submitted comments regarding selection of this rate with respect to Colakoglu. As discussed in Comment 5, Commerce has made no changes in the selection of this rate from the *Preliminary Results*.[15]

With regard to the 13 remaining non-selected companies, for which an individual rate was not calculated, we are assigning the rate of 2.29 percent *ad valorem*, which is the average of the above-*de minimis* rates calculated in the last review.[16]

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

We made no changes to the allocation period or to the allocation methodology used in the *Preliminary Results*. No issues were raised by interested parties in their briefs regarding this topic. For a description of the allocation period and the methodology used for these final results, *see* the *Preliminary Results*.[17]

B. Cross-Ownership and Attribution of Subsidies

We made no changes to our cross-ownership and attribution analysis as discussed in the *Preliminary Results*. No issues were raised by interested parties in their briefs regarding this

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[12] *See, e.g., 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) (*Welded Pipe from Turkey*); and *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 46770 (August 11, 2014) (*Plate from Korea 2012 Final*) and accompanying Issues and Decision Memorandum (IDM) at "Non-Selected Rate."

[13] *See, e.g., Welded Pipe from Turkey*, 79 FR at 51142; *see also Plate from Korea 2012 Final* IDM at "Non-Selected Rate."

[14] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016*, 84 FR 36051 (July 26, 2019) (*Rebar I 2016 Final Results*).

[15] *See Preliminary Results* PDM at 7-8.

[16] *Id.*

[17] *Id.* at 8-9.

topic. For a description of the methodology applicable to these final results, *see* the *Preliminary Results*.[18]

C. Denominators

We made no changes to the sales denominators used in the *Preliminary Results*. No issues were raised by interested parties in their briefs regarding this topic. For a full discussion of the sales denominators used in these final results, see the *Preliminary Results*.[19]

D. Loan Benchmarks and Discount Rates

We made no changes to our loan benchmarks or discount rates used in the *Preliminary Results*. No issues were raised by interested parties in their briefs regarding this topic. For a description of the methodology applicable to these final results, *see* the *Preliminary Results*.[20]

VII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Rediscount Program

We received no comments from interested parties regarding this program. Commerce has made no changes to its analysis of the program in the *Preliminary Results*.[21] The final program rates remain unchanged as follows:

Kaptan:	0.19 percent *ad valorem*
Icdas:	no measurable benefit

2. Purchase of Electricity Generated from Renewable Resources for More Than Adequate Remuneration (MTAR) – Renewable Energy Sources Support Mechanism (YEKDEM)

Interested parties submitted comments regarding the calculation of the benefit under this program with respect to Icdas. As discussed in Comment 3, Commerce has made no changes to its analysis of the program in the *Preliminary Results*.[22] The final program rates remain unchanged as follows:

Kaptan:	no benefit, program not used
Icdas:	0.22 percent *ad valorem*

[18] *Id.* at 9-11.
[19] *Id.* at 11.
[20] *Id.* at 11-12.
[21] *Id.* at 12-13.
[22] *Id*. at 13-15.

3. Investment Incentive Certificates

Interested parties submitted comments regarding the calculation of the benefit under this program with respect to Icdas. As discussed in Comment 4, Commerce has made no changes to its analysis of the program in the *Preliminary Results*.[23] The final program rates remain unchanged as follows:

Kaptan:	no benefit, program not used
Icdas:	0.19 percent *ad valorem*

B. Programs Determined Not to Be Countervailable

We received no comments from interested parties regarding the following programs. Commerce has made no changes to its analysis of these programs in the *Preliminary Results*.[24]

1. Social Security Premium Support for Hiring New Employees Who Were Previously Unemployed
2. Social Security Premium Support Under Law 4857
3. 5% Deductions From Social Security Premium Payments Under Law 5510
4. Minimum Wage Support

C. Programs Determined Not to Confer Countervailable Benefits

We received no comments from interested parties regarding the following programs. Commerce has made no changes to its analysis of these programs in the *Preliminary Results*.[25]

1. Inward Processing Regime (IPR)[26]
2. Regional Investment Incentives

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

Consistent with the *Preliminary Results*, we find that the benefits from certain programs were fully expensed prior to the POR, or are less than 0.005 percent *ad valorem* when allocated to the respondents' POR sales as discussed in the "Attribution of Subsidies" in the *Preliminary Results*.[27] Accordingly, we have not included these programs in our subsidy rate calculations for the respondents, consistent with our established practice.[28] We also determine that it is

[23] *Id*. at 15-18.
[24] *Id*. at 18-19.
[25] *Id*. at 19-21.
[26] This program is also known as Inward Processing Certificate Exemption.
[27] *See Preliminary Results* PDM at 5-7.
[28] *See, e.g., Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016) and accompanying IDM at 31-32.

unnecessary for Commerce to make a determination as to the countervailability of these programs.

1. Reduction and Exemption of Licensing Fees for Renewable Resource Power Plants[29]
2. Grants under Law on Energy Efficiency (Law 5627)[30]

E. Programs Determined Not to Be Used

Other than as noted below, no issues were raised by the interested parties regarding the following programs. *See* the *Preliminary Results*.[31]

1. Provision of Lignite for LTAR
2. Purchase of Electricity for MTAR – Sales via Build-Operate-Own, Build-Operate-Transfer, and Transfer of Operating Rights Contracts
3. Research and Development Grant Program
4. Export Credits, Loans, and Insurance from Turk Eximbank
5. Large-Scale Investment Incentives
6. Strategic Investment Incentives
7. Incentives for Research & Development Activities
8. Regional Development Subsidies
9. Comprehensive Investment Incentives (also known as Super Incentive Scheme)

Interested parties submitted comments regarding the Super Incentive Scheme, which the petitioner alleged was a new subsidy. As discussed in Comment 2, Commerce has made no changes to its analysis of the program in the *Preliminary Results*.[32]

10. Preferential Financing from the Turkish Development Bank
11. Liquefied Natural Gas for LTAR
12. Deduction from Taxable Income for Export Revenue
13. Provision of Natural Gas for LTAR

Interested parties submitted comments regarding the countervailability of the Provision of Natural Gas for LTAR program with respect to Icdas and Kaptan. As discussed in Comment 1, Commerce has made no changes to its analysis of this program in the *Preliminary Results*.[33]

14. Assistance for Participation in Trade Fairs Abroad
15. Assistance to Offset Costs Related to Antidumping/CVD Investigations

[29] *See Preliminary Results* PDM at 21.
[30] *Id.*
[31] *Id.* at 22.
[32] *Id.*
[33] *Id.*

VIII. DISCUSSION OF THE ISSUES

Comment 1: Provision of Natural Gas for LTAR – Non-Government Suppliers

Petitioner Case Brief[34]

- Commerce should countervail Icdas' and Kaptan's purchases of natural gas. Commerce previously found the provision of natural gas for LTAR to be countervailable and should continue to do so here.[35] Commerce found this program to be not used in the *Preliminary Results*, presumably because the natural gas was purchased from private entities (*i.e.*, not Boru Hatlan Ile Petrol Tasima A.S. (BOTAS), the Turkish government trading company) or, if it was purchased from the government, it was not used to produce electricity (*i.e.*, not specific).[36]
- Commerce should find that all gas purchases were a financial contribution from the GOT, whether provided directly or indirectly by the GOT. BOTAS is a government authority within the meaning of section 771(5)(D)(iii) of the Tariff Act of 1930, as amended (the Act). According to BOTAS' Articles of Association, BOTAS is a state-economic enterprise.[37]
- BOTAS holds a tight grip on the Turkish gas market and is responsible for an overwhelming amount of natural gas transactions in Turkey.[38] Therefore, Turkish power producers which do not obtain natural gas directly from BOTAS still receive an indirect financial contribution from the GOT, pursuant to section 771(5)(B)(iii) of the Act. This section of the Act states that the government entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by the government. According to the *CVD Preamble* to Commerce's regulations, indirect subsidies can encompass a broad range of meaning, and, therefore, are examined on a case-by-case basis and are enforced vigorously.[39] The Statement of Administrative Action (SAA) further elaborates that, when an indirect subsidy leads directly to discernible lowering of input costs, Commerce countervails those subsidies.[40] This ensures that subsidized foreign industries cannot avoid application of countervailing duties when the government simply channels subsidies through private entities that are entrusted or directed to provide them in a manner that would otherwise constitute a direct financial contribution.[41]
- The facts of this case demonstrate that private entities are effectively required to sell at BOTAS' subsidized price. Because BOTAS has market power (through its

[34] *See* Petitioner Case Brief at 1-9.
[35] *See* Petitioner Case Brief at 3 (citing *Rebar I Final Determination* and accompanying IDM at 8-13).
[36] *See* Petitioner Case Brief at 3 (citing Icdas' September 12, 2019 Initial Questionnaire Response (Icdas IQR) at 12-19; and Kaptan's September 12, 2019 Initial Questionnaire Response (Kaptan IQR) at 10-15).
[37] *See* Petitioner Case Brief at 3-4 (citing *Rebar I Final Determination* and accompanying IDM at 8).
[38] *See* Petitioner Case Brief at 4 (citing *Rebar I Final Determination* and accompanying IDM at 8-13).
[39] *See* Petitioner Case Brief at 4 (citing *Countervailing Duties*, 63 FR 65348, 65349 (November 25, 1998) (*CVD Preamble*)).
[40] *See* Petitioner Case Brief at 5 (citing Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) (SAA) at 926).
[41] *Id.*

overwhelming market share and control of critical distribution choke points), the few privately-owned natural gas distributors in Turkey have no choice but to sell at the BOTAS price. Therefore, private entities including importers are forced through the state's monopoly power (or entrusted and directed) to provide a financial contribution that does not differ in substance from the pricing practices followed by BOTAS. There would be no need for the indirect subsidy provision but for entities, like BOTAS, which remain in control over a market and are charged with providing inputs for LTAR.

- By statute, BOTAS was established in 1974 as a government-run monopoly charged with regulating natural gas prices in Turkey.[42] While BOTAS' *de jure* monopoly rights on natural gas import, export, distribution, sales, and pricing, were repealed, Turkey's plans to unbundle BOTAS to allow for more competition have failed.[43] BOTAS' purpose is to provide natural gas for LTAR through domination, control, and regulation of the Turkish natural gas market; otherwise, there was no reason for establishing a monopoly in the first place. For political and industrial policy reasons, it is difficult for the GOT to relinquish control of BOTAS. Indeed, BOTAS still remains in *de facto* control.[44]
- In addition to controlling nearly all imports and exports, BOTAS controls the transmission and storage of natural gas, in addition to most other trading activities. BOTAS is responsible for allocating capacity, as well as for entry and exits points. When demands for capacity exceed supply, capacity is allocated proportionally by BOTAS. When a government monopolist is in control of the domestic market, even private importers must conform to its pricing. Commerce recently explained that all natural gas consumed in Turkey, regardless of whether it is produced domestically or imported, is transported via pipelines owned and operated by BOTAS.[45] Thus, the few private entities selling gas in Turkey have no choice but to follow BOTAS when pricing natural gas in Turkey because BOTAS controls the Turkish natural gas supply. Commerce explained that the GOT, through BOTAS, maintains overwhelming dominance in the Turkish natural gas market, and private transaction prices are meaningless.[46]
- Like an export restraint, when the government acts through a private party, it leads directly to discernible lowering of input costs, and the *de facto* monopolistic control over the market by BOTAS forces private entities to provide natural gas for LTAR.[47] As a state-owned trading enterprise with *de facto* control over the Turkish natural gas market, BOTAS controls the sale of the whole supply of natural gas in Turkey and, therefore, sets the prices. Commerce has stated that prices for imports that are set by state-owned trading enterprises can be considered state-controlled prices.[48] The GOT controls the natural gas market, not to gain monopolistic profits but, rather, to promote development of strategic industries for policy reasons by providing natural gas for LTAR. As a result,

[42] *See* Petitioner Case Brief at 5 (citing GOT's September 12, 2019 Initial Questionnaire Response (GOT IQR) at 23).
[43] *See* Petitioner Case Brief at 6 (citing GOT IQR at 23; and *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2017*, 84 FR 48583 (September 16, 2019) (*Rebar II 2017 Prelim*) and accompanying PDM at 9-10).
[44] *See* Petitioner Case Brief at 6 (citing *Rebar II 2017 Prelim* and accompanying PDM at 10).
[45] *Id.*
[46] *Id.*
[47] *See* Petitioner Case Brief at 7 (citing SAA at 926).
[48] *See* Petitioner Case Brief at 7.

natural gas purchased from private entities, including private importers, is a financial contribution within the meaning of section 771(5)(B)(iii) of the Act.

- The GOT's provision of natural gas for LTAR is *de facto* specific, because the industries that use the subsidy are limited in number. The GOT reported that seven groups use this program.[49] Commerce has found that input LTAR programs in similar situations are specific.[50]
- Commerce should use the information from the petitioner's benchmark submission to measure the benefit for this program.[51] The petitioner placed on the record European pricing data sourced from the International Energy Agency,[52] the same information that the petitioner placed on the record in the concurrent *Rebar II 2017 Prelim* administrative review.[53] Commerce has determined that it cannot use a tier-one benchmark to determine the adequacy of remuneration in the Turkish natural gas market, and that the information provided by the petitioner is a reasonable tier-two benchmark. *Rebar II 2017 Prelim* addresses the same government distortion in the same market, so Commerce should rely on the same benchmark.

Icdas Rebuttal Brief[54]

- There is no basis to support a finding that natural gas purchases from private suppliers provided a financial contribution from the GOT. The petitioner fails to consider that, like in prior reviews,[55] Icdas did not purchase natural gas from BOTAS or any other GOT-owned entity during the POR.[56]
- In the investigation and subsequent reviews, Commerce has only evaluated whether the GOT provides a financial contribution through the sale of natural gas by BOTAS, not by private parties.[57] The petitioner's argument that Icdas receives an indirect benefit via purchases from private producers not owned or controlled by BOTAS is inconsistent with Commerce's findings in numerous past reviews and investigations,[58] and it ignores the commercial reality of privately negotiated international imported gas purchases by private parties.

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[49] *See* Petitioner Case Brief at 8 (citing GOT IQR at 13-14).
[50] *See* Petitioner Case Brief at 8 (citing *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 7 (citing *Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Belgium*, 58 FR 37273, 37276 (July 9, 1993))).
[51] *See* Petitioner Case Brief at 8 (citing Petitioner's Letter, "Steel Concrete Reinforcing Bars from Turkey: Petitioner's Benchmark Information and All Other Factual Information," dated December 10, 2019).
[52] *Id.*
[53] *See* Petitioner Case Brief at 9 (citing *Rebar II 2017 Prelim* and accompanying PDM at 10-15).
[54] *See* Icdas Rebuttal Brief at 1-5.
[55] *See* Icdas Rebuttal Brief at 2 (citing, *e.g.*, *Rebar I Final Determination* and accompanying IDM at 8; *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review in Part; 2016*, 83 FR 63472 (December 10, 2018) (*Rebar I 2016 Prelim*) and accompanying PDM at 19; and *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review in Part; 2015*, 82 FR 57574 (December 6, 2017) (*Rebar I 2015 Prelim*) and accompanying PDM at 13).
[56] *See* Icdas Rebuttal Brief at 2 (citing Icdas IQR at CVD-13 to CVD-15).
[57] *See* Icdas Rebuttal Brief at 3 (citing *Rebar I Final Determination* and accompanying IDM at 80).
[58] *See* Icdas Rebuttal Brief at 3 (citing *Rebar I Final Determination* and accompanying IDM at 80; *Rebar I 2016 Prelim* and accompanying PDM at 19; and *Rebar I 2015 Prelim* and accompanying PDM at 13).

- Indeed, in its Initiation Checklist for the investigation underlying this *Order*, Commerce explicitly excluded purchases from non-BOTAS entities from its provision of natural gas for LTAR analysis, based on a finding that the petitioner did not provide enough evidence indicating that the private suppliers are entrusted or directed by the GOT to sell natural gas for LTAR.[59] In the initial petition, as here, the petitioner claimed that BOTAS controls the entire natural gas market, and natural gas purchased from private entities, through its overwhelming market share and control of critical distribution choke points.[60] In making its recommendation that natural gas provided by private suppliers be excluded from the LTAR program, Commerce plainly rejected the petitioner's claims.[61]
- During the investigation, Commerce verified that Icdas did not purchase natural gas from BOTAS, but did purchase from a private supplier.[62] Because there was no information on the record of the investigation indicating that the supplier from which Icdas purchased natural gas was owned or controlled by BOTAS or the GOT, Commerce concluded that the Icdas did not use this program.[63]
- The petitioner offers no evidence in support of its bold assertions aside from BOTAS's share of the market in Turkey, which Commerce has already found to be insufficient to support the petitioner's claim of indirect subsidization of privately-owned natural gas distributors.[64]
- All of Icdas' natural gas purchases were from third country suppliers under a standard contract privately negotiated by the parties without government interference.[65] The prices charged by these suppliers are unrelated to prices charged by BOTAS and the suppliers are neither controlled nor owned by BOTAS.[66]
- The petitioner's argument amounts to a request that Commerce investigate the indirect impact of BOTAS's sales on private transactions with a consonant specificity finding regarding the same. Because Commerce has specifically declined to initiate on purchases of natural gas from private suppliers in the past,[67] the petitioner's request constitutes a new subsidy allegation and should be rejected as the deadline for filing such allegations has long passed in this review.[68]

Kaptan Rebuttal Brief[69]

- Kaptan does not produce electricity, and its purchases of natural gas were entirely for industrial use, mainly in the reheating furnaces of the rolling mills.[70] In *Rebar I 2016*

[59] *See* Icdas Rebuttal Brief at 3 (citing Countervailing Duty Investigation Initiation Checklist in Steel Concrete Reinforcing Bar from Turkey (September 24, 2013) (Initiation Checklist) at 9).
[60] *See* Icdas Rebuttal Brief at 3 (citing Initiation Checklist at 7).
[61] *See* Icdas Rebuttal Brief at 4 (citing Initiation Checklist at 7 and 9).
[62] *See* Icdas Rebuttal Brief at 4 (citing *Rebar I Final Determination* and accompanying IDM at 8).
[63] *Id.*
[64] *See* Icdas Rebuttal Brief at 4 (citing Initiation Checklist at 9; and *Rebar I Final Determination* and accompanying IDM at 8).
[65] *See* Icdas Rebuttal Brief at 4 (citing Icdas IQR at CVD-13 and Exhibit CVD-6).
[66] *See* Icdas Rebuttal Brief at 5 (citing Icdas IQR at CVD-13).
[67] *See* Icdas Rebuttal Brief at 5 (citing Initiation Checklist at 9).
[68] *See* Icdas Rebuttal Brief at 5 (citing 19 CFR 351.311 and 351.301(c)).
[69] *See* Kaptan Rebuttal Brief at 1-3.
[70] *See* Kaptan Rebuttal Brief at 1 (citing Kaptan IQR at 3-4 and 11).

Prelim, Commerce noted that Kaptan reported purchases of natural gas from BOTAS during the POR for purposes other than electricity generation.[71] Commerce applied the natural gas for LTAR program only to companies that purchased natural gas for production of electricity and did not apply the program to Kaptan.[72] Because Kaptan was not a power producer in the 2016 review, its purchases of natural gas were not subject to an LTAR analysis, and it received no LTAR benefit therefrom.[73] The decision was unchanged in *Rebar I 2016 Final Results*, and the petitioner did not even claim that Kaptan should be subject to a natural gas for LTAR analysis.[74]

- Here, the petitioner has provided no argument that companies, like Kaptan, which purchase natural gas solely for industrial use should be considered to have received benefits from the natural gas for LTAR program. The petitioner's sole argument is that natural gas from non-government suppliers is countervailable.
- Accordingly, there is no basis for Commerce to adopt an approach in the present review that is different from that in the preceding review. Thus, Commerce should find that, regardless of whether purchases from non-government entities may be at LTAR, Kaptan received no benefits under this program, because it did not buy natural gas for the purpose of electricity generation during the POR.

GOT Rebuttal Brief[75]

- The GOT does not entrust or direct any private natural gas company to make a financial contribution. Since 2007, the natural gas market in Turkey is based on free market principles. The GOT does not set the price of natural gas or entrust or direct private suppliers to sell natural gas for LTAR; every supplier of natural gas is free to set its own prices.
- The petitioner made the same allegation in its petition for initiation of this proceeding, but Commerce came to the conclusion not to initiate an investigation with regard to natural gas provided by private suppliers, because the petitioner did not provide enough evidence indicating that the private suppliers are entrusted or directed by the GOT to sell natural gas for LTAR.[76] Therefore, Commerce should dismiss the allegation in this review.
- The industries that use natural gas in Turkey are not limited in number. The petitioner argues that because the GOT reported that seven groups use this program, the provision of natural gas is *de facto* specific. The GOT reported that 35 sectors purchased natural gas in Turkey, and these sectors are grouped into seven main groups for standardization by the Energy Market Regulation Authority in Turkey in order to facilitate following up on consumption recordings.[77] One cannot conclude only seven sectors purchased natural gas, because, for instance, "mining and quarrying" and "tobacco and tobacco products" are classified under the same group, but they are different sectors. In the prior review, the GOT did not provide the number of subsectors or groups, only their names.

[71] *See* Kaptan Rebuttal Brief at 2 (citing *Rebar I 2016 Prelim* and accompanying PDM at 19).
[72] *See* Kaptan Rebuttal Brief at 2 (citing *Rebar I 2016 Prelim* and accompanying PDM at 20).
[73] *See* Kaptan Rebuttal Brief at 2 (citing *Rebar I 2016 Prelim* and accompanying PDM at 25).
[74] *See* Kaptan Rebuttal Brief at 2 (citing *Rebar I 2016 Final Results* and accompanying IDM at 8 and Comment 1).
[75] *See* GOT Rebuttal Brief at 3-4.
[76] *See* GOT Rebuttal Brief at 3 (citing Initiation Checklist at 9).
[77] *See* GOT Rebuttal Brief at 4 (citing GOT IQR at 13-14).

Commerce's Position: We disagree with the petitioner regarding recasting our specificity finding on the program, as well as expanding our financial contribution analysis to include indirect subsidies through government entrustment and direction of private entities.

In the investigation and past reviews under this *Order*, we examined whether the mandatory respondents received countervailable subsidies as a result of purchasing natural gas from BOTAS for LTAR.[78] In the investigation and past reviews, Commerce found BOTAS to be a government authority that provides a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.[79] Commerce also has consistently determined that the provision of natural gas by BOTAS was predominantly used by, and/or disproportionately benefitted, the power production sector and, thus, found the program to be *de facto* specific to the power production (or conversion) sector under sections 771(5A)(D)(iii)(II) and/or (III) of the Act.[80]

Turkey's Energy Market Regulatory Authority (EMRA) reports natural gas consumption data. EMRA's data categorizes industries into six broad "sectors" of the economy: the conversion sector (*i.e.*, power producers), the energy sector (*i.e.*, refineries and blast furnaces), the transportation sector, the industry sector, the service sector, and "Other Sectors" (*i.e.*, housing, agriculture and forestry, and livestock).[81] In the investigation, we found that power producers accounted for approximately 47.88 percent of all natural gas purchases in 2012, and that the next largest sector of the six sectors that use natural gas (the industry sector) accounted for 22.20 percent of the total.[82] Similarly, in all subsequent reviews under this *Order*, the conversion (or power production) sector has been the largest user of natural gas, followed by the industry sector.[83] In this review, the conversion (or power production) sector continues to be the largest sector (39.15 percent), followed by the housing sector (25.76 percent), and the industry sector (24.30 percent).[84] Thus, we continue to find the program to be *de facto* specific to the power production (or conversion) sector under sections 771(5A)(D)(iii)(II) and (III) of the Act.

[78] *See, e.g., Rebar I Final Determination* and accompanying IDM at 8-13.
[79] *Id.*
[80] *See, e.g., Rebar I Final Determination* and accompanying IDM at 8-13; and *Rebar I 2016 Prelim* and accompanying PDM at 20 (unchanged in *Rebar I 2016 Final Results*). *See also, e.g., Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey*) and accompanying IDM at 30-31, and *Carbon and Alloy Steel Wire Rod From the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, in Part*, 83 FR 13239 (March 28, 2018) (*Wire Rod from Turkey*) and accompanying IDM at 14-15.
[81] *See* GOT IQR at 13-14; *see also Rebar I 2016 Prelim* and accompanying PDM at 20 (unchanged in *Rebar I 2016 Final Results*).
[82] *See Rebar I Final Determination* and accompanying IDM at 9.
[83] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2014*, 82 FR 26907 (June 12, 2017) (*Rebar I 2014 Final Results*) and accompanying IDM at Comment 3; *Rebar I 2015 Prelim* and accompanying PDM at 13-14 (unchanged in *Rebar I 2015 Final Results*); and *Rebar I 2016 Prelim* and accompanying PDM at 20 (unchanged in *Rebar I 2016 Final Results*).
[84] *See* GOT IQR at 13-14; *see also* Memorandum, "Final Results Calculations," dated concurrently with this IDM.

In the 2014 review, we found that Kaptan purchased natural gas from BOTAS, as well as from private natural gas companies.[85] We also found that Kaptan did not operate as a power generator during the POR but, rather, as an industrial consumer of natural gas, and we also found that there was no evidence on the record indicating that BOTAS' provision of natural gas is *de jure* specific to any enterprise of industry within the meaning of section 771(5A)(D)(i) of the Act.[86] On this basis, we determined that BOTAS' sales of natural gas to Kaptan were not specific.[87] Similarly, in the 2016 review, we found that Kaptan Demir reported purchases of natural gas from BOTAS during the POR for purposes other than electricity generation and, thus, we found this program not used with respect to Kaptan.[88] In this review, given that Kaptan did not act as a power generator during POR[89] and that the facts have not changed with regard to specificity, we continue to find that BOTAS' sales of natural gas to Kaptan were not specific.

In the investigation, we stated:

> We initiated an investigation of whether, during the {period of investigation (POI)}, Turkish rebar producers received countervailable subsidies by purchasing natural gas from {BOTAS} for {LTAR}.
> …
> We verified that the Icdas Companies did not purchase natural gas from BOTAS during the POI, but from a private supplier. There is no information on the record indicating that the supplier from which the Icdas Companies purchased natural gas was owned or controlled by BOTAS or the GOT during the POI. Therefore, consistent with the *Preliminary Determination*, we continue to determine that the Icdas Companies did not use this program during the POI. [90]

Similarly in other reviews, we found that Icdas purchased from private suppliers and not BOTAS and, thus, we found that Icdas did not use this program during those respective periods of review.[91] In this review, Icdas reported, again, that it purchased natural gas from private suppliers and not BOTAS.[92] Thus, we find that Icdas did not use this program.

While the petitioner argues that the GOT entrusts or directs private industries to provide natural gas for LTAR, it points to no specific evidence other than government predominance in the

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[85] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review in Part; 2014*, 81 FR 89057 (December 9, 2016) (*Rebar I 2014 Prelim*) and accompanying PDM at 12-14 (unchanged in *Rebar I 2014 Final Results*).
[86] *Id.*
[87] *Id.*
[88] *See* Rebar I 2016 Prelim and accompanying PDM at 13; and Rebar I 2016 Final Results and accompanying IDM at 8.
[89] *See* Kaptan IQR at 4-5.
[90] *See Rebar I Final Determination* and accompanying IDM at 8.
[91] *See Rebar I 2014 Prelim* and accompanying PDM at 14 (unchanged in *Rebar I 2014 Final Results* and accompanying IDM at 6); *Rebar I 2015 Prelim* and accompanying PDM at 13 (unchanged in *Rebar I 2015 Final Results* and accompanying IDM at 5); and *Rebar I 2016 Prelim* and accompanying PDM at 19 (unchanged in *Rebar I 2016 Final Results* and accompanying IDM at 8).
[92] *See* Icdas IQR at CVD-13

industry, in particular BOTAS' market power leaving private distributors "no choice but to sell at the BOTAS price."

Section 771(5)(B)(iii) of the Act states that a subsidy exists when an authority "entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments."[93] The SAA provides guidance regarding circumstances in which Commerce will find that a private party has been entrusted or directed by an "authority" to make a financial contribution, within the meaning of section 771(5)(B)(iii) of the Act. According to the SAA:

> In the past, {Commerce}… has countervailed a variety of programs where the government has provided a benefit through private parties…. The specific manner which the government acted through the private party to provide the benefit varied wildly in the above cases. Commerce has found a countervailable subsidy to exist where the government took or imposed (through statutory, regulatory or administrative) a formal, enforceable measure which directly led to a discernible benefit being provided to the industry under investigation.[94]

However, where there is no "direct legislation to entrust or direct private parties to provide a financial contribution," Commerce may "rely on circumstantial information to determine that there was entrustment or direction."[95] In such a situation, following Commerce precedent, we typically employ a two-part test examining the relevant policy and practices of the foreign government.[96] Specifically, Commerce looks to: (1) whether the government has in place during the relevant period a governmental policy to support the respondent(s); and (2) whether evidence on the record establishes a pattern of practices on the part of the government to act upon that policy to entrust or direct the associated private entity decisions.[97]

To analyze whether the rebar producers have been entrusted or directed to provide a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, we must examine the pertinent GOT laws and regulations. The petitioner cites to no information on the record regarding laws or regulations showing the GOT has, in place, a policy to support rebar producers with respect to natural gas. We also find no evidence on the record, and the petitioner points to none, establishing a pattern of practices on the part of the GOT to act to entrust or direct private

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[93] *See* section 771(5)(B)(iii) of the Act. This requirement has been broadly interpreted to mean that the financial contribution entrusted or directed by the government must be "what might otherwise be a governmental subsidy function of the type listed in subparagraphs (i) to (iv) of section 771(5)(D)." *See Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) (DRAMs from Korea) and accompanying IDM at 47.

[94] *See* SAA at 926.

[95] *See Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) and accompanying IDM at 125 (citing *DRAMs from Korea* and accompanying IDM at 49).

[96] *See DRAMs from Korea* and accompanying IDM at 49. The U.S. Court of International Trade has affirmed Commerce's approach in this regard. *See Hynix Semiconductor, Inc. v. United States*, 391 F. Supp. 2d 1337 (CIT 2005), *aff'd after remand* 425 F. Supp. 2d 1287 (CIT 2006).

[97] *Id*.

entity decisions with respect to the provision of natural gas for LTAR to rebar producers (or power producers). In particular, the petitioner has not pointed to any evidence on the record of governmental practices whereby private gas suppliers in Turkey are entrusted or directed to sell natural gas *to respondents or any particular subset of gas consumers specifically*. Allowing, *arguendo*, that any private supplier in Turkey that sold to a respondent must sell the natural gas at BOTAS' prices due to BOTAS' market dominance, we find no support in the record evidence to find that the supplier's *decision to sell to the respondent*, as such, was at the behest of the government in the first place.

In *Biodiesel from Argentina*, we noted that Commerce must find "more…than mere acts of encouragement," which Commerce did in that case.[98] In *DRAMS from Korea*, we stated the "entrusts or directs" language is interpreted to mean that:

> {I}f a government affirmatively causes or gives responsibility to a private entity or group of private entities to carry out what might otherwise be a governmental subsidy function of the type listed in subparagraphs (i) to (iv) of section 771(5)(D), there would be a financial contribution. Thus, when the government executes a particular policy by operating through a private body or when a government affirmatively causes a private body to act, such that one or more of the type of functions referred to in subparagraph (iv) is carried out, there is entrustment or direction by the government. Moreover, in the case of an indirect subsidy, where the government is acting through a private party, it would make sense that the private party, and not the government itself, would fix the commercial terms. *Whether the terms are sufficiently affected by government action so as to make the provision actionable is a factual element that is relevant to the measurement of "benefit," not "financial contribution."*[99] (Emphasis added.)

As the above passage from *DRAMS from Korea* implies, the mere fact that a private supplier may sell at prices distorted by the government's market dominance does not, in itself, support a finding of entrustment or direction as alleged by the petitioner, because such a fact pertains to benefit and not *per se* to financial contribution.

In the present case, however, there is no evidence of a government policy aimed at getting private suppliers to provide natural gas to rebar producers (or to power producers). Thus, we find there is no evidence of entrustment or direction with respect to private suppliers in this case, and we continue to find this program not used in this review to the extent that respondents such as Icdas purchased natural gas from private suppliers.

Comment 2: New Subsidy Allegation – Super Incentive Scheme

Petitioner Case Brief[100]

- On October 9, 2019, the petitioner timely filed a new subsidy allegation, alleging that the GOT was providing additional countervailable subsidies to the steel industry pursuant to the

[98] *See Biodiesel from the Republic of Argentina: Final Affirmative Countervailing Duty Determination*, 82 FR 53477 (November 16, 2017) (*Biodiesel from Argentina*) and accompanying IDM at 19.
[99] *See DRAMs from Korea* and accompanying IDM at 47-48.
[100] *See* Petitioner Case Brief at 2 and 9-11.

"Super Incentive Scheme."[101] Icdas argued that Commerce should not initiate on the petitioner's allegation, because it appeared to address the same program as one that was previously alleged and initiated on, and, thus, under review in this proceeding.[102] The petitioner did not dispute that the alleged program appeared to operate pursuant to the same Turkish law as the one previously alleged and initiated, but noted that one piece of legislation could create more than one subsidy program, depending on the manner in which the government implements the provision.[103]

- Commerce asked the petitioner to confirm its position regarding the Super Incentive Scheme, and requested it to provide the law and implementing decree with English translation, and to demonstrate where in the law both programs are laid out, if it continued to believe that there are two separate programs resulting from the law.[104] In response, the petitioner explained that the two programs did appear to derive from the same legal provision.[105] Thus, it did not attempt to demonstrate where in the law both programs are laid out because it did not argue they were laid out in different places in the law.[106]
- The petitioner pointed to reasonably available information included in its new subsidy allegation, suggesting that the GOT appeared to be implementing the same legal provision in a way that resulted in a new subsidy program. For instance, information contemporaneous with the POR explained that Turkey recently introduced one of the most competitive investment incentive packages in emerging markets to foster economic growth, and that the program was declared by the Turkish president in May 2018.[107] It was, therefore, appropriate to make a new allegation based on this 2018 presidential declaration, even if it was made under authority of the same Turkish statute, to prevent respondents from asserting non-use based on a distinction related to implementation.
- The GOT is the party in possession of detailed information on these matters, and the petitioner requested that Commerce issue supplemental questionnaires to the GOT because it did not respond to the petitioner's allegation and is the only party with the ability to clarify whether the Turkish president's POR declaration in fact creates a new subsidy program.
- Commerce erred, in part, by basing its decision not to initiate on the petitioner's purported failure to provide information reasonably available, even when specifically requested by Commerce.[108] The petitioner did not intentionally refuse to provide the information Commerce requested. It did not provide the law and identify where in the law the two programs were laid out because its position was never that two separate provisions of the law established two separate programs. The petitioner's position is that the President of Turkey

[101] *See* Petitioner Case Brief at 9 (citing Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: New Subsidy Allegation," dated October 9, 2019 (NSA)).
[102] *See* Petitioner Case Brief at 9 (citing Icdas' Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Icdas's Response to RTAC NSA Submission," dated October 14, 2019 (Icdas NSA Rebuttal)).
[103] *See* Petitioner Case Brief at 9 (citing Petitioner's Letter, "Steel Concrete Reinforcing Bar from Turkey: Reply to Comments on New Subsidy Allegation," dated October 15, 2019 (Petitioner NSA Reply)).
[104] *See* Petitioner Case Brief at 10 (citing Commerce's Letter, "Countervailing Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey: New Subsidy Allegation Supplemental Questionnaire," dated December 30, 2019 (NSA Supplemental Questionnaire)).
[105] *See* Petitioner Case Brief at 10 (citing Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: New Subsidy Allegation Supplemental Questionnaire Response," dated January 6, 2020 (NSA SQR) at 2).
[106] *See* Petitioner Case Brief at 10 (citing NSA SQR at 2-3).
[107] *See* Petitioner Case Brief at 10 (citing NSA SQR at 3).
[108] *See* Petitioner Case Brief at 11 (citing *Preliminary Results* and accompanying PDM at 6).

declared a new set of subsidies in May 2018, apparently under the same provision of the same law, in a manner that appeared to warrant further review. Providing the same legal provision would have been redundant and unresponsive to Commerce's question, which sought further explanation as to how the petitioner's new subsidy allegation addressed a different subsidy program from the one currently under review.

Icdas Rebuttal Brief[109]

- The Super Incentive Scheme is not a new subsidy and has already been alleged, initiated upon, and considered in the current POR.[110] Even the petitioner concedes that the so-called the Super Incentive Scheme and Comprehensive Investment Incentive programs actually derive from the same legal provisions and are not laid out in different places of the law. Indeed, both programs are encapsulated under the same law and the same implementing decree.[111] Although similar programs can be supported by the same general legislation, the petitioner's new subsidy allegation contains information that points to the same article in the same law, the same implementing decree, and the same incentive types, for both programs. This indicates that these two programs are one and the same.[112]
- The petitioner's hypothetical claims, that the GOT could be implementing the same legal provision in a way that results in a new subsidy program, is not enough. As the CIT has explained, Commerce is not obligated to initiate an investigation based on speculative allegations unsupported by the statute.[113] The statute and Commerce's practice require that the petitioner offer support to sufficiently allege that the program functions as a countervailable subsidy.[114] Given the petitioner's admission that its position was never that two separate provisions of the law established two separate programs, the basis for the petitioner's new subsidy allegation remains unclear at best.
- The same provision of the same law has been investigated and verified by Commerce as "Comprehensive Investment Incentives," in the previous administrative review.[115] It was included in the questionnaire for the current review as well.[116] The petitioner's attempt to rebrand this pre-existing program with a new name does not create a new subsidy. Regardless of what it is called, Icdas did not participate in or benefit from this program during the POR.

GOT Rebuttal Brief[117]

- The Comprehensive Incentive Scheme and the Super Incentive Scheme are the same program and, in fact, this program is officially called "Project Based Investment Incentive System." This program is based on Law No. 6745, which has been in force

[109] *See* Icdas Rebuttal Brief at 1 and 6-8.
[110] *See* Icdas Rebuttal Brief at 6 (citing *Preliminary Results* and accompanying PDM at 3).
[111] *See* Icdas Rebuttal Brief at 6 (citing *Preliminary Results* and accompanying PDM at 6).
[112] *See* Icdas Rebuttal Brief at 7 (citing *Preliminary Results* and accompanying PDM at 6).
[113] *See* Icdas Rebuttal Brief at 7 (citing *TMK IPSCO v. United States*, 179 F. Supp. 3d 1328, 1341 (CIT 2016)).
[114] *Id*.
[115] *See* Icdas Rebuttal Brief at 7 (citing *Preliminary Results* and accompanying PDM at 6).
[116] *See* Icdas Rebuttal Brief at 8 (citing Icdas IQR at CVD-56 and Icdas' November 12, 2019 Supplemental Affiliation Response at S-35).
[117] *See* GOT Rebuttal Brief at 4.

since September 7, 2016. On April 9, 2018, during the press conference for the introduction of the program, the title of the program was announced as Super Incentive Scheme by the president of Turkey. Thus, Commerce should continue to find that these two programs are the same.

Commerce's Position: We disagree with the petitioner. In the *Preliminary Results*, we did not initiate on the allegation as described in the NSA because we were already investigating a program under the name "Comprehensive Investment Incentives," which we assessed to be the same as the newly alleged program, based on the evidence provided.[118] According to the documentation that the petitioner provided, the Super Incentive Scheme operates under the same law (Law 6745) and the same implementing decree (Council of Ministers Decree No. 2016/9495) as the Comprehensive Investment Incentives on which we initiated an investigation in the last administrative review.[119] In the Petitioner NSA Reply, the petitioner stated that two similar programs could result from the same legislation.[120] While it is possible for two similar programs to result from the same legislation, the supporting documentation submitted last year and this year with regard to these programs both point to *the same Article in the same law* (Article 80), the *same implementing decree*, as well as *the same incentive types*. It is less likely for two similar programs to result from the same Article of the same law and the same implementing decree.[121]

We asked the petitioner to submit the law *and* the decree (the petitioner had provided only an internet link to these documents) to demonstrate that there are two similar programs resulting from this law rather than just one program.[122] The petitioner submitted neither the law nor the decree as requested, but continued to insist that there could be two different programs.[123] The petitioner asserted that it could only rely on the information reasonably available to it in the public domain. However, the law and the implementing decree were reasonably available to the petitioner. The petitioner failed to provide reasonably available information specifically requested by Commerce. The petitioner now asserts that it did not provide the law in the NSA Supplemental Questionnaire because its position was never that two separate provisions of the law established two separate programs.[124] However, we explicitly asked the petitioner to provide both the law and the implementing decree, and to explain the distinctions between the Comprehensive Investment Incentive and the newly alleged program, if it continued to believe that there are two separate programs resulting from this law. The petitioner did not do so.

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[118] *See Preliminary Results* and accompanying PDM at 6-7.
[119] *See* NSA at page 2 of Exhibit 1; *see also* Icdas NSA Rebuttal at Exhibit 1 (at page 2 of Exhibit 2 of last year's allegation). Exhibit 1 of Icdas' letter contains excerpts of last year's new subsidy allegation.
[120] *See* Petitioner NSA Reply at 1-2.
[121] *See* NSA at Exhibit 3 at page 1; *see also* Icdas NSA Rebuttal at Exhibit 1 (at page 1 of Exhibit 1 of last year's allegation). All documentation cites to the investment incentive program being located at Article 80 of the law. They also point to the same incentive types.
[122] *See* NSA Supplemental Questionnaire at 2.
[123] *See* NSA SQR at 2-3 (the petitioner acknowledged that the two programs "appear to derive from the same legal provisions… and… could be two different programs because of how they are applied in practice.")
[124] *See* NSA Supplemental Questionnaire at 2 ("{i}f you continue to believe that there are two separate programs resulting from this law, provide copy of the law and implementing decree, with English translations (there are links to both the law and the implementing decree in the documentation you submitted)").

Thus, based on the documentation on the record, we continue to find that the Comprehensive Investment Incentive and the Super Incentive Scheme are the same program. Going forward, we will refer to the Comprehensive Investment Incentives program as "also known as the Super Incentive Scheme." Recent documentation submitted by the petitioner shows that the incentive program resulting from Article 80 of Law 6745 is also known as the Super Incentive Scheme (and the law is referred to as the Super Incentive Act).[125] If, however, in a future segment of the proceeding new information is provided that supports a different finding and we conclude, based on that new information that there are, in fact, two distinct programs under Article 80 of Law 6745, we may revisit our analysis of this program, as needed.

Comment 3: Renewable Energy Sources Support Mechanism (YEKDEM) Program Calculation

Icdas Case Brief[126]

- The amount of benefit calculated for YEKDEM support should be reduced to reflect the amounts claimed by the electricity market operator (EPIAS) subsequent to receipt. Icdas reported that, in 2017, the Ministry of Energy concluded that the equipment used did not conform to the local equipment requirement and that the local contribution was, therefore, decreased.[127] Accordingly, the total YEKDEM price for 2017 was decreased and the level of support provided to Icdas for electricity sales made in 2017 under YEKDEM was reclaimed or reduced, as reflected in the line item "retroactive correction item" included in the notification issued by the EPIAS.[128]
- In September 2017 and September 2018, EPIAS requested that Icdas repay the principal plus interest of the local contribution amount.[129] In effect, EPIAS reclaimed benefits conferred to Icdas by invoicing Icdas for excess benefits received including accrued interest. Icdas provided the relevant correspondence received by EPIAS which shows the reclaimed support amounts and match the total invoice amounts reported for Icdas' electricity sales under YEKDEM.[130]
- Because the reclaimed support amount relates to Icdas' 2016 electricity sales, Icdas requested Commerce to offset the benefit in the 2016 administrative review to account for the payments from Icdas to YEKDEM.[131] However, Commerce declined to adjust its calculation of the POR benefit in that review because the repayments happened after the POR, and, thus, had no effect on Icdas' operations during that POR.[132] In making this decision, Commerce explicitly noted that whether the repayments constitute an offset to the calculated benefit is something to be considered in a subsequent administrative review of this program.[133]
- In this review, Commerce again declined to consider the adjustment for the portion of the

[125] *See* NSA at Exhibit 5.
[126] *See* Icdas Case Brief at 1-4.
[127] *See* Icdas Case Brief at 2 (citing Icdas IQR at CVD-24).
[128] *Id*.
[129] *Id*.
[130] *See* Icdas Case Brief at 2 (citing Icdas IQR at Exhibits CVD-10 and CVD-11).
[131] *See* Icdas Case Brief at 2 (citing Icdas IQR at CVD-24).
[132] *See* Icdas Case Brief at 2 (citing *Rebar I 2016 Fina*l *Results* and accompanying IDM at 32).
[133] *See* Icdas Case Brief at 3 (citing *Rebar I 2016 Fina*l *Results* and accompanying IDM at 32).

benefit repaid because the letters referencing additional payment were dated after the POR.[134] However, Commerce's narrow analysis does not consider that, while correspondence from EPIAS on the record was received in 2018, that documentation clearly shows that a portion of the reclaimed amount was repaid during the current review period (September 2017).[135] The repaid amount matches the total invoice amounts reported for Icdas' electricity sales under YEKDEM.[136]

- In past cases (and specifically *British Steel*), Commerce has recognized that repayment of subsidies should be recognized in a subsidy calculation.[137] Because a portion of the YEKDEM support amount was subsequently reclaimed by EPIAS and repaid by Icdas in 2017, the benefit to Icdas in 2017 should be reduced by the amount of those reclaimed funds.[138]

Petitioner Rebuttal Brief[139]

- Commerce should not reduce the calculation of benefits attributed to Icdas for the alleged repayment of subsidies after the POR. Icdas' argument rests on a citation to one case, *British Steel*, which addressed non-recurring subsidies in the context of the privatization of a company. The repayment methodology considered in *British Steel CIT* was developed to measure the amount of past non-recurring subsidies that the privatization transaction repaid.[140] Since *British Steel*, the privatization methodology has been invalidated, and Commerce does not consider repayment of subsidies in its benefit calculation. Thus, the methodology to deal with non-recurring subsidies in a privatization, that is now inapplicable in that context, has no bearing on the benefit in the instant case (*i.e.*, a benefit from recurring electricity subsidies).
- Section 771(6) of the Act is the relevant authority to guide Commerce regarding offsets to benefit calculations for recurring subsidies. This part of the Act states that deductions may be made for: application fees and deposits paid in order to qualify for or receive a subsidy; any loss in the value of the subsidy resulting from deferred receipt; and export taxes, duties, and other charges levied on export to the United States, specifically intended to offset the subsidy received. Thus, Commerce should decline to offset the benefit received by Icdas based on a retroactive adjustment (documented in 2018, after the instant POR) that was not on the list of permissible offsets authorized by the Act.
- In prior cases where respondents asked Commerce to make an adjustment to recurring electricity subsidies, Commerce declined to do so based on the list of permissible offsets authorized by this section of the statute. For example, in *Royal Thai Government*, the respondent asked for a retroactive adjustment to offset or reduce the value of the subsidized electricity rate, and Commerce refused to do so and was upheld by the

[134] *See* Icdas Case Brief at 3 (citing *Preliminary Results* and accompanying PDM at 14).
[135] *See* Icdas Case Brief at 3 (citing Icdas IQR at Exhibit CVD-11).
[136] *See* Icdas Case Brief at 3 (citing Icdas IQR at Exhibits CVD-10 and CVD-11.
[137] *See* Icdas Case Brief at 3 (citing *British Steel PLC v. United States*, 127 F. 3d 1471, 1475 (Fed. Cir. 1997) (*British Steel*).
[138] *See* Icdas Case Brief at 4 (if Commerce declines to make the adjustment in this period, it should do so in the 2018 administrative review).
[139] *See* Petitioner Rebuttal Brief at 1 and 5-6.
[140] *See* Petitioner Rebuttal Brief at 5 (citing *British Steel PLC v. United States*, 27 F. Supp. 2d 209, 214-215 (CIT 1998) (*British Steel CIT*)).

Court.[141] The Court found that it would be inappropriate to consider the retroactive adjustment because the adjustment clearly did not affect the actual rates paid during the period of review, and as such, the unadjusted calculation of the net subsidy is a more accurate reflection of the amount of benefit received.

Commerce's Position: We agree with the petitioner that the benefit Icdas receives under this program is limited to the payment it receives from EPIAS for its participation in YEKDEM, regardless of any payments it makes to EPIAS. Icdas provided no legal or factual basis for Commerce to depart from the methodology employed in the *Preliminary Results* and to reduce its benefit under the YEKDEM program. Indeed, Icdas raised similar arguments prior to the *Preliminary Results*, as well as in the last administrative review, which we found unpersuasive, and we find no new evidence or arguments on the record that would warrant a change from our preliminary calculation.[142]

In its initial questionnaire response, Icdas claimed that in 2017 and 2018, the Ministry of Energy concluded that the equipment used did not conform to the local equipment requirements, and the local contribution was, therefore, decreased.[143] Icdas asserts that this consequently led to an effective reduction to the YEKDEM price in 2017.[144] Icdas provided notifications issued by EPIAS dated after the POR, in which EPIAS requested Icdas to repay the local contribution, including principal and interest.[145] In its case brief, Icdas asserts that we declined to consider the adjustment for the portion of the benefit repaid because the letters referencing additional payment were dated after the POR, even though documentation shows that a portion of the reclaimed amount was repaid during the current review period (September 2017). We reexamined the documentation, and Icdas is correct that the documentation indicates a portion of the reclaimed amount was invoiced to Icdas during the POR. However, as explained below, this does not change our decision.

The Act defines a "net countervailable subsidy" as the gross countervailable subsidy amount less three statutorily prescribed offsets: (1) the deduction of application fees, deposits or similar payments necessary to qualify for or receive a subsidy; (2) accounting for value losses due to deferred receipt of the subsidy; and (3) the subtraction of export taxes, duties or other charges levied on the export of merchandise to the U.S. specifically intended to offset the countervailable subsidy.[146] Both Congress and the courts have indicated that Commerce is limited in the offsets it can make under the statute.[147] As noted in *Rebar I 2016 Final Results*, all fossil fuel power

[141] *See* Petitioner Rebuttal Brief at 6 (citing *Royal Thai Government v. United States*, 441 F. Supp. 2d 1350, 1363 (CIT 2006) (*Royal Thai Government*)).
[142] *See Preliminary Results* and accompanying PDM at 13-15; *see also Rebar I 2016 Final Results* and accompanying IDM at Comment 5.
[143] *See* Icdas IQR at CVD-24.
[144] *Id.*
[145] *Id.*at CVD 24 and Exhibit CVD-11.
[146] *See* section 771(6) of the Act.
[147] *See* Trade Agreements Act of 1979, U.S. Senate Report No. 96-249 (1979) at 86 ("{t}he list is narrowly drawn and is all inclusive."); *see also Kajaria Iron Castings Pvt. Ltd. v. United States*, 156 F. 3d 1163, 1174 (Fed. Cir. 1998) ("we agree that {section 771(6)} provides the exclusive list of permissible offsets ...."); and *Geneva Steel v. United States*, 914 F. Supp. 563 (CIT 1996) (explaining that section 771(6) "provides an exclusive list of offsets that may be deducted from the amount of a gross subsidy….").

producers are required to support the YEKDEM system through payments made to EPIAS; however, only YEKDEM participants receive YEKDEM support payments.[148] Thus, while Icdas, like all fossil fuel power producers in Turkey, made obligated payments to support the YEKDEM system, our benefit analysis is correctly limited to the support amounts Icdas received for its participation in the program.[149] While the statute allows for the offset of certain deductions or payments, the record does not reflect that Icdas' payments into the YEKDEM system are required to qualify for or receive the subsidy.[150] To the contrary, the verified record in the last administrative review demonstrated that the only requirement to apply for and benefit from the YEKDEM program is to sell electricity produced by renewable sources.[151] Moreover, Icdas has provided no new information on how these payments are among the permitted offsets under the statute.[152]

Icdas points to *British Steel* to support its argument that, in past cases, Commerce has recognized that the repayment of subsidies should be recognized in a subsidy calculation. However, this reliance on *British Steel* is misplaced. As the petitioner points out, the methodology at issue in *British Steel* was developed to measure what amount of past non-recurring subsidies gets repaid in a privatization, and that methodology has since evolved under our current change-in-ownership analysis, which has no bearing on the measurement of the subsidy benefit in the first instance. Thus, the situation in *British Steel* is not analogous and not applicable to the situation in the present case.

The petitioner cites to *Royal Thai Government* to support its position that we should not make an adjustment to our benefit calculation.[153] This is also not analogous because the adjustment in *Royal Thai Government* was made for accounting purposes, not to offset or reduce the value of the subsidy in any way. In the instant case, the Turkish government concluded that the equipment used did not conform to the local equipment requirement and decreased the local contribution (in turn reducing the YEKDEM).

In *Pasta from Italy*, Commerce did not make an adjustment or offset against current *sgravi* benefits (a recurring subsidy) to reflect repayment of certain *sgravi* benefits received in the

[148] *See Rebar I 2016 Final Results* and accompanying IDM at Comment 5.
[149] *Id.*
[150] *See* Icdas IQR at CVD-24 and Exhibit-11.
[151] *See Rebar I 2016 Final Results* and accompanying IDM at Comment 5.
[152] *See* Icdas IQR at CVD-24 and Exhibit-11.
[153] In *Royal Thai Government*, the Thai government maintained a uniform national tariff policy, even though the agency which distributed electricity outside of Bangkok had higher delivery costs. The generation and transmission agency gave a discount to the provincial agency and applied a surcharge to Bangkok distribution agency for their respective electricity purchases (internal cross-subsidy). Commerce did not make an adjustment to its benefit calculation for a retroactive adjustment made by the Thai government to the internal cross-subsidy for accounting purposes, not to offset or reduce the value of the subsidy in any way (the adjustment clearly did not affect the actual rates paid by the respondent to the Thai government during the period of review). As such, Commerce and the Court found the unadjusted calculation of the net countervailable subsidy is a more accurate reflection of the amount of benefit received by the respondent through the government's provision of electricity. *See Royal Thai Government* 441 F. Supp. at 1355, 1363.

past.[154] Commerce determined that repayment of those benefits did not qualify as a permissible offset within the meaning section 771(6) the Act. Thus, *Pasta from Italy* is similar to the current situation, in that it involved repayment of certain recurring subsidies during a subsequent period. In that case, like here, we found it was not appropriate to adjust the benefit in the POR for changes or adjustments made to a prior period's benefits in the case of recurring subsidies, unless the adjustment qualifies as a permissible offset within the meaning section 771(6) the Act.

In sum, Icdas' payments and repayments to EPIAS are not among the permissible offsets enumerated in the statute, and not otherwise analogous to cited cases where we adjusted for them in the benefit calculation. To conclude otherwise would conflict with Commerce's established methodology and practice. Accordingly, we agree with the petitioner that our benefit calculation is consistent with our practice and regulations and, thus, we are not making any adjustments to our subsidy calculation.

Comment 4: Investment Incentive Certificates Calculation

Icdas Case Brief[155]

- Commerce should revise its benefit calculation to reflect that investment incentives are expensed during the year of receipt. An investment incentive certificate provides customs duty exemptions on imported machinery and equipment, as well as value-added tax (VAT) exemptions for both imported and domestic purchases of machinery and equipment.[156] Because the GOT must close out the relevant investment incentive certificates, Commerce, in the *Preliminary Results*, considered benefits pursuant to the investment incentive program to be received at the time the GOT certifies the investment requirements have been met and issues a "completion visa."[157] However, Commerce's treatment is not in keeping with how the program functions and when the benefit is actually received.

[154] *See Certain Pasta from Italy: Final Results of the Fourth Countervailing Duty Administrative Review*, 66 FR 64214 (December 12, 2001) (*Pasta from Italy*) and accompanying IDM at Comment 7. In *Pasta from Italy*, Commerce countervailed *sgravi* benefits in prior segments of that case. Commerce stated that if the respondent were, for example, repaying a non-recurring grant that it received prior to the POR, Commerce would agree that any portion of that grant that had not already been countervailed should be reduced by the amount repaid (and Commerce said it would do this without regard to the offset provision because the repayment would be a reduction in the financial contribution and benefit). However, Commerce found the situation faced by the *Pasta from Italy* respondent to be different because the benefits in question were treated by Commerce as recurring benefits. Consequently, the benefit of the *sgravi* subsidies in *Pasta from Italy* were assigned to the periods in which they were received (prior review periods), and thus, Commerce had already countervailed a portion of the *sgravi* benefits. Commerce also found that because the financial contributions that gave rise to the benefits in *Pasta from Italy* occurred in the earlier periods, Commerce had no basis for reducing those financial contributions and benefits (nor should it, during the POR, reduce financial contributions by the Italian government in the form of current *sgravi* subsidies by the respondent's repayment of past financial contributions from the Italian government). Commerce found that the only means of reducing the respondent's *sgravi* benefits during the POR would be if the respondent repaid during the POR the *sgravi* benefits it received during the current POR, or through the offset provision, but neither condition was met in that case.

[155] *See* Icdas Case Brief at 1 and 4-6.

[156] *See* Icdas Case Brief at 4 (citing *Preliminary Results* and accompanying PDM at 15).

[157] *See* Icdas Case Brief at 4 (citing *Preliminary Results* and accompanying PDM at 16).

- Because customs duties and VAT are paid when a product is imported, the benefit of non-payment is received at the time of entry. In other words, any benefit under the investment incentive program is bestowed when the machinery or equipment is imported without incurring taxes or import duties, not when the GOT issues a "completion visa." The non-payment of customs duties and VAT is in no way contingent on subsequent events.[158] Once the machinery or equipment is imported, the benefit is fully received.
- In the *Preliminary Results*, Commerce acknowledges that grants under the investment incentive program are a non-recurring benefit,[159] and consistent with the regulation, Commerce allocates non-recurring benefits to the year in which the benefits are received if the total amount approved under the subsidy program is less than 0.5 percent of the sales during the year in which the subsidy was approved.[160] Commerce should, thus, perform the 0.5 percent test based on Icdas' 2015 gross sales value.[161] Based on this analysis, the benefit amount is well below 0.5 percent of Icdas total sales, and, thus, the investment incentive program grants should be expensed to 2015, the year of receipt. Instead Commerce expensed the amount to the current POR, which covers 2017.[162] Commerce has adequate information on the record to confirm that Icdas did not import equipment covered by investment incentive certificates in 2017 and, therefore, did not and could not benefit from these grants during the POR.[163]
- Icdas' receipt of investment incentive certificate benefits in 2015 was comprehensively examined by Commerce in the 2015 administrative review, in which Commerce determined that the certificates did not confer countervailable benefits.[164] Commerce examined copies of the certificates received by Icdas and determined that any benefits received by Icdas under the certificates did not confer countervailable benefits because at the time of bestowal, they were tied to the production of and/or investment in non-subject merchandise.[165] Having fully examined the investment incentive certificates and finding them tied to non-subject merchandise, Commerce cannot now revisit them and decide those same certificates confer countervailable benefits in this review, two years after they were received.[166] Thus, Commerce should remove these grants from its final calculations.

Petitioner Rebuttal Brief[167]

- Commerce should continue to calculate the benefit Icdas received from the investment

[158] *Id.*
[159] *See* Icdas Case Brief at 5 (citing *Preliminary Results* and accompanying PDM at 16).
[160] *See* Icdas Case Brief at 5 (citing 19 CFR 351.524(b)(2)).
[161] *See* Icdas Case Brief at 5 (citing Icdas IQR at Exhibit CVD-3 and CVD-25).
[162] *See* Icdas Case Brief at 5 (citing *Preliminary Results* and accompanying PDM at 17-18).
[163] *See* Icdas Case Brief at 6 (citing Icdas IQR at Exhibit CVD-25).
[164] *See* Icdas Case Brief at 6 (citing *Rebar I 2015 Prelim* and accompanying PDM at 19, unchanged in *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015*, 83 FR 16051 (April 13, 2018) (*Rebar I 2015 Final Results*).
[165] *See* Icdas Case Brief at 6 (citing *Rebar I 2015 Prelim* and accompanying PDM at 19, unchanged *Rebar I 2015 Final Results*).
[166] *See* Icdas Case Brief at 6 (this treatment is consistent with Commerce's treatment of investment incentive certificates in past cases involving Turkey; citing, *e.g.*, *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 6, 2012) and accompanying IDM at 19).
[167] *See* Petitioner Rebuttal Brief at 1-2 and 7-8.

incentives program. As Commerce explained in the *Preliminary Results*, it had previously examined the program as a tax program and countervailed the amounts of import duties and VAT that were exempted during the period of review or investigation. Based on each purchase, it performed the 0.5 percent test on the forgone taxes and duties and either expensed the benefit in the year of receipt or allocated the benefit.

- The GOT reported that under this program, exempted import duties and VAT remain payable to the GOT with interest, if the exempted company fails its final onsite inspection by the GOT to close out the relevant investment incentive certificate and issue a "completion visa." As a result, unpaid duties and VAT under this program are contingent on subsequent events because the benefit in the form of revenue forgone is not formally bestowed unless and until the GOT officially decides to forgo that revenue and issue a "completion visa." Thus, Commerce appropriately expensed the subsidy for certificates completed during the POR, and it should continue to do so in the final results.

Commerce's Position: We disagree with Icdas and continue to countervail and attribute the full support provided to Icdas under the general investment incentives scheme (GIIS) program to Icdas' sales.[168] We also disagree with Icdas that we should modify our treatment of this program as a contingent liability. Therefore, for the reasons set forth below, we have not made any changes to our analysis of this program since the *Preliminary Results.*

Pursuant to 19 CFR 351.525(b)(5)(i), "(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." In making this determination, Commerce analyzes the intended purpose of the subsidy based on information available at the time the subsidy is bestowed.[169] In so doing, Commerce's practice is to identify the type and monetary value of a subsidy at the time of bestowal, rather than examine the use or effect of subsidies (*i.e.*, to trace how the benefits are used by companies).[170] A subsidy is tied only when the intended use is known to the subsidy provider (in this case, the GOT) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. For example, in determining whether a loan is tied to a particular product, Commerce examines the loan approval documents; likewise, to determine whether a grant is tied to a particular product, Commerce examines the grant approval documents.[171] The courts have previously upheld Commerce's analysis in this regard.[172]

In prior segments of the *Order*, Commerce examined this program as a tax program, and countervailed the amounts of import duties and VAT that were exempted during the review or investigation period, based upon each purchase, performed the 0.5 percent test on the forgone taxes and duties, and either expensed the benefit in the year of receipt or allocated the benefit, in accordance with 19 CFR 351.524(c)(2)(iii) and (d)(1). However, in *Welded Line Pipe from*

[168] This program is also known and referred to as the Investment Encouragement Program (IEP).
[169] *See CVD Preamble*, 63 FR at 65403-65404.
[170] *See Certain Uncoated Groundwood Paper from Canada: Final Affirmative Countervailing Duty Determination*, 83 FR 39414 (August 9, 2018) and accompanying IDM at comment 34.
[171] *Id.*; *see also CVD Preamble*, 63 FR at 65403.
[172] *See Maverick Tube Corp. v. United States*, Slip Op. 16-16, Consol. Court No. 14-00229 (CIT 2016), *aff'd*, *Maverick Tube Corp. v. United States*, 857 F. 3d 1353 (Fed. Cir. 2017).

Turkey 2015,[173] and, in the last administrative review of the *Order*,[174] Commerce revised its analysis of this program. In the last administrative review, the GOT reported that under this program, exempted import duties and VAT remain payable to the GOT, with interest, if the exempted company fails its final onsite inspection by the GOT to close out the relevant investment incentive certificate and issue a "completion visa."[175] Thus, pending a successful close-out of the investment incentive certificate, the company continues to be liable for the exempted duties and VAT, as Commerce similarly found in *Welded Line Pipe from Turkey 2015*. It is Commerce's practice to treat any balance on an unpaid liability, that may be waived in the future, as a contingent-liability interest-free loan pursuant to 19 CFR 351.505(d)(1). Accordingly, because the unpaid IEP duties and VAT under the program are liabilities contingent on subsequent events, we regard the unpaid amounts as an interest-free contingent-liability loan. Thus, we find that the amount the respondent would have paid during the POR, had it borrowed the full amount of the duty and VAT exemption or reduction at the time of importation, to constitute the first benefit under the IEP customs duty and VAT exemption program.

Furthermore, we find that a second benefit arises based on the amount of customs duties and VAT forgone by the GOT on the imports and/or domestic purchases covered by an IEP certificate at the time the GOT certifies that the investment requirements have been met and issues a "completion visa," which finalizes the customs duty and VAT exemptions, waiving the contingent liability. Pursuant to 19 CFR 351.505(d)(2), under such circumstances, we treat the total customs duty and VAT exemptions under a given IEP certificate as grants received in the year in which the GOT waived the contingent liability on those exemptions. Additionally, in accordance with 19 CFR 351.524(c)(2)(iii), because the import duty and VAT exemptions under this program are approved for the purchase of capital equipment and, thus tied to the company's capital assets, we are treating the exemptions as a non-recurring benefit as of the date of receipt of the "completion visa" from the GOT.

In the last review, officials from the GOT stated that the intended purpose of the customs duty and VAT exemptions provided under the GIIS is to encourage general investments in the country.[176] Notwithstanding Icdas' claim that the certificates are tied to the production of and/or investment in non-subject merchandise, we found in the last review (and Icdas and the GOT have not provided new information in this review) that the record did not reflect that the purpose of the exemptions "at the time of bestowal" was specifically intended to benefit the production of certain products only.[177] In the last administrative review, officials from the GOT, as well as Icdas itself, stated that the purpose of this program is to support a variety of investments in Turkey, and we have received no new or contradictory information in this review.[178]

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[173] *See Welded Line Pipe from the Republic of 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 7-11.
[174] *See Rebar I 2016 Prelim* and accompanying PDM at 16-19, unchanged in *Rebar I 2016 Final Results*
[175] *See Rebar I 2016 Prelim* and accompanying PDM at 17, unchanged in *Rebar I 2016 Final Results*.
[176] *See Rebar I 2016 Final Results* and accompanying IDM at 34.
[177] *Id.*; *see also* GOT IQR at 40.
[178] *See Rebar I 2016 Final Results* and accompanying IDM at 34. *See also* GOT IQR at 40.

For these reasons, we disagree with Icdas and find that there is no record evidence establishing that the exemptions Icdas received under the investment incentives program are tied to the production of non-subject merchandise. Consistent with *Wire Rod from Turkey* and *Rebar I 2016 Final Results*, we continue to find that because the duty and VAT exemptions are not tied to the production or sale of a particular product as provided under 19 CFR 351.525(b)(5)(i), the exemptions are thus "untied" and attributable to the company's overall operations.[179]

Concerning Icdas' contention that this program does not involve contingent liabilities, we disagree. Our preliminary results finding a contingent liability was firmly grounded on case precedent, as well as the information provided by the GOT and Icdas which was verified in the last review.[180] As explained in detail in the *Preliminary Results* and in the last administrative review, before a company obtains a final waiver in the form of a "completion visa" under this program, it must pass the mandatory, on-site inspection by the government confirming, *inter alia*, that it has installed all of the pre-approved machinery and equipment, and that the machinery and equipment meet the eligibility requirements for duty-free and VAT-free importation under the program.[181] Further, we found in the last review that if the company fails inspection, it must repay all the exempted duty and VAT, plus interest (*i.e.*, like a loan).[182] In this review, we received no information to contradict the last review's finding that, because Icdas remains liable for the exempted duties pending the issuance of a "completion visa" by the GOT, this program includes a loan component within the meaning of 19 CFR 351.505(d).[183] Icdas' arguments neither negate the last review's verified facts, nor detract from the preliminary conclusion, that the exemptions it receives under the GIIS are contingent liabilities for which it remains obligated until "some future action" (*i.e.*, mandatory inspection) is taken or "some goal"

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[179] *See Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Preliminary Affirmative Critical Circumstances Determination, in Part*, 82 FR 41929 (September 5, 2017) (*Wire Rod from Turkey*) (unchanged in *Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, in Part*, 83 FR 13239 (March 28, 2018) and accompanying IDM). *Wire Rod from Turkey* investigated investment certificates under the GIIS, and Icdas was a mandatory respondent. Thus, we would have investigated the certificates under the same program for the same company as we are examining here. In the PDM of *Wire Rod from Turkey*, we stated that "{b}oth companies report that the certificates are not tied to the production of subject merchandise…. Notwithstanding the respondents' claims, we preliminarily find that because the duty and VAT exemptions on the importation of machinery and equipment for the generation of electricity are not tied to the production or sale of a particular product within the meaning of 19 CFR 351.525(b)(5)(i), the exemptions are thus 'untied' and attributable to the company's overall operations. As such, the benefit is applicable to each company's total sales." *Wire Rod from Turkey*, like the instant case involved certificates related to electricity generation. *See also Rebar I 2016 Final Results* and accompanying IDM at 35.

[180] *See Preliminary Results* and accompanying PDM at 16; and *Rebar I 2016 Final Results* and accompanying IDM at 35; *see also, e.g., Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey*, 71 FR 43111 (July 31, 2006) and accompanying IDM at 10-11; *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2013 and Rescission of Countervailing Duty Administrative Review, in Part*, 80 FR 61361 (October 13, 2015) and accompanying IDM at 11-13; and *Welded Line Pipe from Turkey 2015* and accompanying IDM at 7.

[181] *See Preliminary Results* and accompanying PDM at 16; *see also Rebar I 2016 Final Results* and accompanying IDM at 35,

[182] *See Rebar I 2016 Final Results* and accompanying IDM at 36-37.

[183] *Id.*; *see also* GOT IQR at 40.

achieved (*i.e.*, passing inspection) to satisfy requirements for a final waiver from the government.

Because these facts have not changed since the *Preliminary Results*, or since the last review, we find no basis to abandon our preliminary treatment of this program as a contingent liability, pursuant to 19 CFR 351.505(d). In instances where Commerce determines that where a program involves a contingent liability, our regulations and the *CVD Preamble* require that we must countervail the benefits in a manner so as to take into account the fact that the monies forgone may one day either be forgiven and, thus, become a grant, or they may be reclaimed by the government and repaid, or not granted.[184] In such a case, if Commerce were to have originally considered the monies as a grant, we would be left with no remedy to restore the subsidies attributed and duties paid. Thus, we must countervail contingent liability programs as such, when the record shows that the subsidy recipients remain liable for payments pending the performance or satisfaction of a future action or requirement.

In its case brief, Icdas claims that we should perform our 0.5 percent test based on 2015, the year the exempted equipment was imported/VAT waived.[185] Icdas' argument is misplaced and improperly premised on Commerce's treatment of a grant as defined under 19 CFR 351.504, again ignoring the contingent-liability aspect of the program. The *CVD Preamble* and 19 CFR 351.506(4)(b)(2) provide that, "if, at any point in time, {Commerce} determines that the event upon which repayment depends is not a viable contingency, {Commerce} will treat the outstanding balance as a grant received in the year in which this condition manifests itself." As noted above, Icdas remains liable for the exemptions it received for the imported equipment pending a successful inspection and receipt of a completion visa by the GOT. Thus, the contingent liabilities become grants only once the unpaid duties and VAT are forgiven by the government through the issuance of the final waiver. Accordingly, we are continuing to treat any benefits resulting from the receipt of a "completion visa" issued in the POR (2017) as grants, and are allocating any benefits that pass the 0.05 percent test starting in the year the contingency is waived. Moreover, as set forth in the *CVD Preamble*, it is Commerce's practice to treat such benefits as a grant bestowed at the time of forgiveness, in this case upon receipt of a "completion visa" (in this case, 2017).[186] As Icdas notes, 19 CFR 351.524(b)(2) states that Commerce will normally allocate non-recurring benefits based on the company's sales in the year in which the subsidy was approved. Here, the non-recurring grant portion of this program is not approved until the year in which the "completion visa" is issued.[187] In sum, we find that Icdas' arguments do not warrant reconsidering our finding in the *Preliminary Results* that this program operates as both a contingent-liability, interest-free loan and a grant within the meaning of subsections 19 CFR 351.505(4)(d)(1) and (2), and the grant is received and approved in the year in which the "completion visa" is issued.

[184] *See* 19 CFR 351.505(d); and *CVD Preamble*, 63 FR at 65369-65370.
[185] *See* Icdas Case Brief at 5.
[186] *See CVD Preamble*, 63 FR at 65370.
[187] *See Rebar I 2016 Final Results* and accompanying IDM at 38; s*ee also* GOT IQR at

Certain imports entered pursuant to certificates completed during the POR.[188] Therefore, the import duty and VAT exemptions received by Icdas constitute deferrals on the payment of the import duties and VAT during the POR, *i.e.*, contingent liabilities within the meaning of 19 CFR 351.505(d) for all or part of the POR. Consistent with *Rebar I 2016 Final Results* and *Welded Line Pipe from Turkey 2015*, we are continuing to calculate a subsidy rate based on the interest otherwise payable on the amounts outstanding during the POR before completion.[189] For certificates completed during the POR, we calculated a separate grant benefit in the amount of the total import duty and VAT waived for the duration of each certificate pursuant to completion. In the *Preliminary Results*, after first performing the "0.5 percent test" of 19 CFR 351.524, we expensed the total benefit to the POR in accordance with 19 CFR 351.524(b)(2).[190]

Comment 5: Non-Selected Company Rate for Colakoglu

Colakoglu Case Brief[191]

- Commerce should reconsider its selection of Colakoglu's rate. Under the statute, Commerce normally calculates the rate for non-individually examined companies by averaging the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* rates.[192] The statute provides an exception, however, for situations like the present one in which all individually examined respondents receive *de minimis* margins. Under the exception, Commerce may use any reasonable method to establish an all-others rate for exporters and producers not individually investigated, including averaging the weighted average of countervailable subsidy rates determined for exporters and producers individually examined.[193]
- The SAA explains that when all individually examined respondents are assigned *de minimis* margins, the expected method in such cases will be to weight average the zero and *de minimis* margins provided that volume data is available.[194] However, if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.[195] Thus, the law makes clear that under the statute, when all individually examined respondents are assigned *de minimis* margins, Commerce is expected to calculate the separate rate by taking the average of those margins.
- The U.S. Court of Appeals for the Federal Circuit (CAFC) has consistently held, *e.g.*, in *Albemarle*, that the fact that the statute contemplates using data from the largest volume of exporters suggests an assumption that those data can be viewed as representative of all

[188] *See* Icdas IQR at Exhibit CVD-25.
[189] *See Prelim Results 2016 Review* and accompanying PDM at "Investment Incentive Certificates," unchanged in *Rebar I 2016 Final Results*; *see also Welded Line Pipe from Turkey 2015* and accompanying IDM at 7-11.
[190] *See Preliminary Results* PDM at 17.
[191] *See* Colakoglu Case Brief at 1-4.
[192] *See* Colakoglu Case Brief at 1 (citing section 705(c)(5)(A)(i) of the Act).
[193] *See* Colakoglu Case Brief at 1 (citing section 705(c)(5)(A)(ii) of the Act).
[194] *See* Colakoglu Case Brief at 2 (citing SAA at 873).
[195] *Id.*

exporters.[196] Commerce cannot deviate from the expected method unless it finds, based on substantial evidence, that the respondent's experience is different from that of the mandatory respondent's or if the expected method is not feasible.[197]

- By pulling forward Colakoglu's rate from the 2016 administrative review, Commerce has deviated from its practice and the law. Commerce skipped a step in its analysis: before using any reasonable method, Commerce must find that the expected method is not feasible or not reasonably reflective of Colakoglu's experience.[198] The CAFC has held that Commerce must rely on record evidence to make this determination.[199]
- Substantial evidence on the record does not support deviating from the expected method in this case. Commerce selected the largest exporters/producers, by volume, as mandatory respondents in this case. The statute contemplates this scenario, placing the burden on Commerce to determine that the experience of Colakoglu is different from Icdas and Kaptan (the two mandatory respondents who are deemed to be representative of producers/exporters in the industry),[200] such that a deviation from the expected method is warranted.
- Further, the cases cited by Commerce were decided before *Albemarle* further clarified the law.[201] Indeed, in the 2014 administrative review in this case, Commerce used the expected method to calculate the subsidy rates for non-individually examined companies, consistent with *Albemarle*.[202] In that review, both mandatory respondents received *de minimis* rates, and Commerce applied the *de minimis* rates to the non-selected companies. In the 2015 administrative review, Commerce determined that Colakoglu's rate was *de minimis*, indicating, if anything that a *de minimis* subsidy rate could be reasonably reflective of Colakoglu's experience.[203] Therefore, in this case, Commerce should use the expected method, which would require an average of the mandatory respondents' *de minimis* margins.

Petitioner Rebuttal Brief[204]

- Commerce should continue to assign Colakoglu the subsidy rate (1.82 percent) calculated in the most recently completed administrative review.
- Colakoglu misreads *Albemarle* in multiple respects. *Albemarle* addressed appeals from three respondents that were not individually selected as mandatory respondents in the administrative review at issue. Two of them had never been assigned an individual rate, while the third, like Colakoglu here, had an individual rate from the previous

[196] *See* Colakoglu Case Brief at 2 (citing *Albemarle Corp & Subsidiaries v. United States*, 821 F. 3d 1345, 1353 (Fed. Cir. 2016) (*Albemarle*)).
[197] *See* Colakoglu Case Brief at 2 (citing *Changzhou Hawd Flooring Co., Ltd. v. United States*, 848 F. 3d 1006, 1012 (Fed. Cir. 2017)).
[198] *See* Colakoglu Case Brief at 3 (citing *Albemarle*, 821 F. 3d at 1355).
[199] *See* Colakoglu Case Brief at 3 (citing *Albemarle*, 821 F. 3d at 1353).
[200] *Id.*
[201] *See* Colakoglu Case Brief at 3 (citing, *e.g.*, *Welded Pipe from Turkey*, 79 FR at 51140; and *Plate from Korea 2012 Final* IDM at "Non-Selected Rate").
[202] *See* Colakoglu Case Brief at 4 (citing *Rebar I 2014 Prelim*, 81 FR at 89058 (December 9, 2016), unchanged in *Rebar I 2014 Final Results*).
[203] *See* Colakoglu Case Brief at 4 (citing *Rebar I 2015 Final Results*, 83 FR at 16053).
[204] *See* Petitioner Rebuttal Brief at 1-5.

administrative review.[205] Colakoglu bases its argument on the CAFC's holding regarding the two companies that had never been individually examined. That holding is inapplicable here because Colakoglu was individually reviewed in the previous review of the *Order* and, thus, was assigned its own subsidy rate based on its company-specific subsidy usage. With respect to the third company in the *Albemarle* case, the CAFC held that Commerce had substantial evidence to support its conclusion that simply averaging the *de minimis* rates assigned in that review might not reasonably reflect the potential dumping margin in that period based on the significantly higher dumping margin calculated for the third company in the prior period.[206] As a result, Commerce was entitled to use other reasonable methods under the statute.[207]

- For the same reasons, Commerce's decision to use other reasonable methods, here, was proper. Colakoglu did not attempt to challenge the substance of Commerce's other reasonable method, only whether the agency was entitled to deviate from the expected method as an initial matter, which it was, based on a correct reading of *Albemarle*.[208]
- Moreover, *Albemarle* involved an antidumping duty (AD) review, not a CVD review. It is, thus, inapplicable to the case at hand because it was conducted under distinct statutory authority to address a different type of unfair trade. Because a CVD review involves distinct program usage from respondent to respondent, the notion of what a reasonable method is to determine a CVD rate for a non-selected respondent is very different than a reasonable method used to determine a rate for an AD review respondent. Market pricing is considered in an AD case instead of individual subsidy usage, so an average of the market might be appropriate in an AD case but does not apply in a CVD case.
- The subsidy programs used by Colakoglu are different than those used by Icdas and Kaptan, so Icdas' and Kaptan's rates do not reflect the subsidy rate Colakoglu might have received. For instance, in this review, Commerce found that Icdas and Kaptan did not use the provision of natural gas for LTAR program, which has generated the highest rates in this proceeding. In the most recently completed administrative review, Commerce found Colakoglu did use that program and assigned it an *ad valorem* rate of 1.78 percent. Commerce recently determined that other Turkish rebar producers using the natural gas for LTAR program received a countervailable benefit of 3.01 percent, which corroborates Colakoglu's rate from the previous review based on its usage of the program.[209] Commerce should, therefore, not allow Colakoglu to avoid the CVD rates applicable to its own subsidy usage by applying the average of the rates for companies with a documented history of using different subsidy programs.[210]

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[205] *See* Petitioner Rebuttal Brief at 2 (citing *Albemarle*, 821 F. 3d at 1355).
[206] *See* Petitioner Rebuttal Brief at 3 (citing *Albemarle*, 821 F. 3d at 1355).
[207] *Id.*
[208] *See* Petitioner Rebuttal Brief at 3 (there is no information on the record to allow Commerce to conduct even an approximate comparison of subsidies to Colakoglu with subsidies to mandatory respondents, as was the case with the third non-reviewed company in *Albemarle)*.
[209] *See* Petitioner Rebuttal Brief at 4 (citing *Rebar II 2017 Prelim* accompanying PDM at 15).
[210] *See* Petitioner Rebuttal Brief at 5 (Commerce should find that Icdas and Kaptan used the natural gas for LTAR program (*see* Comment 1); if Commerce chooses to do so in the final results, it would not be inappropriate for Commerce to assign Colakoglu and average of Icdas' and Kaptan's rates).

Commerce's Position: We disagree with Colakoglu. Section 705(c)(5)(A)(i) of the Act, on which Commerce relies in determining the non-selected rate in administrative reviews, articulates a preference not to derive the all-others rate from rates which are zero, *de minimis*, or based entirely on facts available. Accordingly, to determine the rate for companies under review but not selected for individual examination, Commerce's practice is to weight average the net subsidy rates of the selected mandatory companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.[211] Section 705(c)(5)(A)(ii) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the all-others rate.

As noted above, Colakoglu cites to part of the SAA, which states:

> Section 219(b) of the bill adds new section 735(c)(5)(B) which provides an exception to the general rule if the dumping margins for all of the exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or *de minimis*. In such situations, Commerce may use any reasonable method to calculate the all others rate. The expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available. However, if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.[212]

However, this citation is misplaced, as it pertains to the SAA section which covers AD measures, specifically citing section 735(c)(5)(A) of the Act (covering AD investigations). The section of the SAA covering the all-others rate in CVD investigations states:

> Section 264(b)(2) of the bill amends section 705(c) of the Act to establish rules for calculating the all-others rates and the country-wide subsidy rate. Where Commerce has examined a limited number of individual companies, section 705(c)(5)(A)(i) provides that the all-others rate would be an amount equal to the weighted average individual countervailable subsidy rates established for exporters and producers individually investigated, exclusive of zero and *de minimis* rates and any rates determined entirely on the basis of the facts available. Where the countervailable subsidy rates for all exporters and producers examined are zero or *de minimis*, or are determined entirely on the basis of the facts available, section 705(c)(5)(A)(ii) authorizes Commerce to use any reasonable method to establish an all-others rate.[213]

The plain text of the AD section of the SAA provides that, under the "reasonable method" approach, the "expected method" in an AD proceeding "will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available. . ." This language regarding an "expected method" is entirely absent from the CVD section of the SAA.

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[211] *See, e.g., Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386, 37387 (June 29, 2010).
[212] *See* SAA at 873.
[213] *Id.* at 942.

Accordingly, the restriction in the AD context to an "expected method" does not apply to the "reasonable method" approach in the CVD context.

The CAFC's opinion in *Albemarle* involved an AD case, not a CVD case, and focused specifically on the "expected method" language in the AD section of the SAA. Thus, not only did *Albemarle* involve an AD case specifically, but a key factor in the CAFC's decision was the "expected method" articulated in the AD section of the SAA and entirely absent in the CVD section.

Moreover, as the petitioner implied, there are methodological distinctions between AD and CVD practices that additionally make the equivalence problematic in terms of the premises behind the *Albemarle* court's decision and, thus, which argue against presuming that *Albemarle* has straightforward application to CVD. As noted by the petitioner, AD and CVD practices are conducted pursuant to distinct statutory authorities to address different types of unfair trade. In *Albemarle*, the CAFC focused on the pricing behavior of companies in the context of alleged dumping. However, in the CVD context, Commerce's concern is with government subsidization and the extent to which different companies may use or benefit from the subsidy programs. Where the CVD case records show a history of subsidization for a certain respondent, there is a reasonable chance that the respondent continues to receive and benefit from that subsidy. Particularly in the case of a non-recurring subsidy, such as a grant, for which Commerce normally allocates a benefit stream across a number of years corresponding to the average useful life of the respondent's capital assets, there is every expectation that the respondent continues to benefit from segment to segment of a CVD proceeding until the allocation period ends. Similarly, for a recurring subsidy, such as the provision of an input for LTAR, for which Commerce determines benefit on a year-specific basis, there is a reasonable expectation of continuing use by a respondent for whom the proceeding records show repetitive use of the program.[214] If the mandatory respondents in a given segment are found not to use or not to benefit from a certain subsidy, their rates may not be reflective of the subsidy rate for another company not currently under individual examination but found in a prior segment to have benefited from the same subsidy. This would be particularly true where the mandatory respondents in the current segment have *de minimis* rates under that program, but the other company was significantly above *de minimis* in the prior segment for the same program.

In the instant review, we have determined *de minimis* rates for mandatory respondents Kaptan and Icdas and found both not to have used the natural gas for LTAR program. We also found both not to have used the natural gas for LTAR program in the prior segment. By comparison, Colakoglu, a non-selected respondent in this review, was a mandatory respondent in the prior review for whom we determined a subsidy rate of 1.78 percent under the natural gas for LTAR

[214] *See, e.g.*, use of the program "Provision of Hot-Rolled Steel for LTAR, by respondent, Ozdemir Boru Profil San. ve Tic. Ltd. Sti, in (1) *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2016*, 83 FR 40228 (August 14, 2018) and accompanying PDM at 8-10 (unchanged in *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Affirmative Final Results of Countervailing Duty Administrative Review*, 83 FR 58757 (November 21, 2018)); and (2) *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2017*, 84 FR 70495 (December 23, 2019) and accompanying IDM at 4.

program.[215] It also purchased natural gas from BOTAS in another prior segment.[216] Colakoglu, therefore, has a history of using the program across segments of this proceeding. Thus, Kaptan's and Icdas' *de minimis* rates in this review, given their non-use of the natural gas for LTAR program, would not be reasonably reflective of Colakoglu's rate, given Colakoglu's recent history of benefiting from the natural gas for LTAR program at a well-above *de minimis* subsidy rate. Thus, it is reasonable in this review to assign Colakoglu the rate calculated for it in the most recently completed review under the *Order*.

VII. RECOMMENDATION

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

☒	☐
Agree	Disagree

7/6/2020

X

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[215] *See Rebar I 2016 Final Results* and accompanying IDM at 8. .
[216] *See Rebar I 2015 Final Results* and accompanying IDM at 5.