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Investigation
POI: 1/1/2019–12/31/2019
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December 7, 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: Decision Memorandum for the Final Determination of the
Countervailing Duty Investigation of Prestressed Concrete Steel
Wire Strand from the Republic of Turkey

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to the producers of prestressed concrete steel wire strand (PC strand) from the Republic of Turkey (Turkey), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties:

- Comment 1: Application of Total Adverse Facts Available (AFA) to Guney Celik Hasir ve Demir (Guney Celik)
- Comment 2: Application of AFA to Certain Guney Celik Programs
- Comment 3: Correct Numerator for the Tax Reduction Regional Investment Incentive Scheme (RIIS) Program
- Comment 4: Allocation or Expense of Certain Grant Program Benefits for Guney Celik
- Comment 5: Application of AFA to the Property Tax Exemption Program for Guney Celik
- Comment 6: Application of AFA to Celik Halat ve Tel San A.S. (Celik Halat)

II. BACKGROUND

A. Case History

The mandatory respondents in this investigation are Celik Halat¹ and Guney Celik. On September 21, 2020, Commerce published the *Preliminary Determination* in this investigation.² We later aligned this final countervailing duty (CVD) determination with the final antidumping duty (AD) determination, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i).³

Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation, pursuant to section 782(i) of the Act. However, we took additional steps in lieu of on-site verification and requested additional documentation and information.⁴ Because we were unable to conduct an on-site verification in this investigation for reasons beyond our control, we relied on the information submitted on the record as facts available in making our final determination, except as detailed in the Analysis of Comments section, below.

We invited parties to comment on the *Preliminary Determination*. In November 2020, we received case briefs from the petitioners,⁵ the Government of Turkey (GOT), Celik Halat, and Guney Celik, and a rebuttal brief from the petitioners.⁶

B. Period of Investigation

The period of investigation (POI) is January 1, 2019 through December 31, 2019.

C. Scope of the Investigation

The product covered by this investigation is PC strand from Turkey. For a full description of the scope of this investigation, *see* the accompanying *Federal Register* notice at Appendix I.

¹ Celik Halat and its cross-owned affiliates, Dogan Holding and Adilbey Holding.

² *See Prestressed Concrete Steel Wire from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part*, 85 FR 59287 (September 21, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

³ *See Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Alignment of Final Countervailing Duty Determination with Final Less-Than Fair-Value Determinations*, 85 FR 70585 (November 5, 2020).

⁴ *See* Commerce's Letter, dated October 26, 2020; and Guney Celik's Letter, "Prestressed Concrete Steel Wire Strand from Turkey; In Lieu of Verification Questionnaire Response," dated November 3, 2020.

⁵ The petitioners in this investigation are: Insteel Wire Products Company; Sumiden Wire Products Corporation; and Wire Mesh Corp. (collectively, the petitioners).

⁶ *See* Petitioners' Case Brief, "Prestressed Concrete Steel Wire Strand from Turkey: Petitioners' Case Brief," dated November 23, 2020 (Petitioners' Case Brief); GOT's Case Brief, "Case Brief of the Government of Turkey in Countervailing Duty Investigation on Prestressed Concrete Steel Wire from the Republic of Turkey," dated November 19, 2020; Celik Halat's Case Brief, "Pre-Stressed Concrete Steel Wire Strand from Turkey: Case Brief of Celik Halat ve Tel Sanayi A.S.," dated November 23, 2020 (Celik Halat's Case Brief); Guney Celik's Case Brief, "Prestressed Concrete Steel Wire Strand from Turkey: Case Brief of Guney Celik Hasir ve Demir Mamulleri San. Ve Tic. A.S.," dated November 20, 2020 (Guney Celik's Case Brief); and Petitioners' Rebuttal Brief, "Prestressed Concrete Steel Wire Strand from Turkey: Petitioners' Rebuttal Brief," dated November 25, 2020 (Petitioners' Rebuttal Brief).

III. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES

Section 705(a)(2) of the Act provides that Commerce will determine that critical circumstances exist if: (A) the alleged countervailable subsidy is inconsistent with the World Trade Organization (WTO) Subsidies and Countervailing Measures (SCM) Agreement;⁷ and (B) there have been massive imports of the subject merchandise over a relatively short period. A final determination with respect to critical circumstances may be affirmative even if critical circumstances were found not to exist in the preliminary determination.⁸ In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 705(a)(2)(B) of the Act and 19 CFR 351.206(h) and (i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, the comparison period). However, the regulations also provide that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from the earlier time.⁹ Imports must increase by at least 15 percent during the comparison period to be considered massive.¹⁰

As explained in our *Preliminary Determination*, we determined that Guney Celik and Celik Halat each received countervailable benefits under certain programs that are contingent upon export performance.¹¹ Therefore, for this final determination, we continue to find that there is a reasonable basis to believe or suspect that there are programs in this CVD investigation that are inconsistent with the SCM Agreement. Use of an export subsidy program is sufficient to meet the inconsistent-with-the-SCM-Agreement criterion under section 703(e)(1)(A) of the Act.

For this final determination, we revised our “massive imports” analysis to expand the base and comparison periods to incorporate updated sales information provided by Celik Halat and Guney Celik.¹² As a result, for the purposes of the “massive imports” analysis, we now determine, pursuant to section 776(a)-(b) of the Act, that there is no reasonable basis to believe that Celik Halat and Guney Celik shipped PC strand products in “massive” quantities during the comparison period, thereby fulfilling the criteria under section 703(e)(1)(B) of the Act.¹³ As a result, we find that critical circumstances do not exist with regard to Celik Halat or Guney Celik.¹⁴ Further, because the quantity of imports shown in the Global Trade Atlas (GTA) data is smaller than the combined quantity of imports reported by the mandatory respondents, we

⁷ Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement). *See, e.g., Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany*, 67 FR 55808, 55809-10 (August 30, 2002).

⁸ *See* section 705(a)(2) of the Act.

⁹ *See* 19 CFR 351.206(i).

¹⁰ *See* 19 CFR 351.206(h)(2).

¹¹ *See* PDM at 6.

¹² *See* Memorandum, “Countervailing Duty Investigation of Prestressed Concrete Steel Wire from the Republic of Turkey: Critical Circumstances Analysis,” dated concurrently with this memorandum.

¹³ *Id.*

¹⁴ *Id.*

find the normal method of subtracting the mandatory respondents' data (*i.e.*, that of Celik Halat and Guney Celik) from the GTA data to be an unreliable indicator of the experience of the all-others companies for purposes of the "massive" determination. Therefore, we based the "massive" finding for the non-individually investigated companies on the experiences of Celik Halat and Guney Celik and find that critical circumstances did not exist for all others.

IV. USE OF ADVERSE FACTS AVAILABLE

Commerce relied on "facts otherwise available," including AFA, for several findings in the *Preliminary Determination*. Commerce has made changes to its use of facts otherwise available and AFA, as applied in the *Preliminary Determination*.¹⁵ Those changes are discussed in detail below.

A. Legal Standard

Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, select from among the "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an AFA rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner."¹⁶ Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."¹⁷

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any

¹⁵ See PDM at 7-15.

¹⁶ See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

¹⁷ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199.

previous review under section 751 concerning the subject merchandise.”¹⁸ It is Commerce’s practice to consider information to be corroborated if it has probative value.¹⁹ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.²⁰ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.²¹

Otherwise, under section 776(d) of the Act, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.²² For purposes of this final determination, in addition to continuing to apply AFA to Celik Halat for all programs except the two new subsidy allegation programs. We are also applying AFA to Guney Celik for select programs for which Guney Celik did not cooperate to the best of their ability (*see* Comments 1 and 2, below).

B. Application of Partial AFA: Guney Celik

As discussed in Comment 1, we find that Guney Celik failed to provide requested necessary information with regard to its use of the Provision of Land for Less than Adequate Remuneration (LTAR) program, Rediscount Program (Export Financing: Short Term Pre-Shipment Rediscount/Post Shipment Rediscount), and the Investment Credit for Export Program. Further, as discussed in Comment 2, we were unable to conduct on-site verification of the information relied upon in making our final determination in this investigation, pursuant to section 782(i) of the Act. Accordingly, we took additional steps in lieu of on-site verification and requested additional documentation and information in November 2020.²³ Thus, in reaching a final determination, pursuant to sections 776(a)(1) and (a)(2)(A) through (D) of the Act, we determined the benefits for these programs by applying facts available.

Moreover, we determine that AFA is warranted regarding certain programs for Guney Celik, pursuant to section 776(b) of the Act, because the company failed to provide a full and complete initial questionnaire response, failed to provide additional requested information within the deadlines established information related to these programs, and failed to provide accurate information regarding its purchases of wire rod. Thus, we find that Guney Celik did not cooperate to the best of its ability to comply with Commerce’s requests for information. Accordingly, we determine that the use of an adverse inference in selecting from among the facts otherwise available is warranted to ensure that these companies do not obtain a more

¹⁸ *See, e.g.*, SAA at 870.

¹⁹ *Id.* at 870.

²⁰ *Id.* at 869.

²¹ *Id.* at 869-70.

²² *See* section 776(d)(3) of the Act.

²³ *See* Questionnaire In Lieu of Verification; and Guney Celik November 3, 2020 SQR.

favorable result by failing to cooperate than if they had complied with our requests for information.

With respect to financial contribution and specificity for the above-mentioned programs, the GOT provided necessary information for financial contribution and specificity. For this final determination, for the Provision of Land for LTAR, we continue to find this program provides a financial contribution under 771(5)(D) (iii) of the Act. We also preliminarily determine that this program is specific under section 771(5A)(D)(i) and (iv) of the Act because the program is limited to specific geographic regions, for the Rediscount Program, we continue to find that loans from this program constitute a financial contribution in the form of a direct transfer of funds from the government under section 771(5)(D)(i) of the Act. We also continue to find that this program is specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.²⁴ For the Investment Credit for Export Program, we continue to find this program constitutes a financial contribution in the form of a direct transfer of funds from the government under section 771(5)(D)(i) of the Act. We also continue to find this program is specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.²⁵ For the Provision of Wire Rod for LTAR program, we continue to find this program constitutes a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act and is *de facto* specific within the meaning of section 771(5A)(D)(iii)(II) of the Act because the construction industry, of which PC strand producers are a part, is the predominant user of wire rod.²⁶

With respect to benefit, as AFA, we find Guney Celik benefited from the above-mentioned programs. Therefore, we are including each of these programs in the determination of the AFA rate for Guney Celik. We selected an AFA rate for each of these programs based on the statutory hierarchy provided in section 776(d) of the Act, and we included them in the determination of the AFA rates applied for the above-mentioned programs to Guney Celik. For a description of the selection of the AFA rate and our corroboration of this rate, *see* “Selection of the AFA Rate” and “Corroboration of the AFA Rate.” For purposes of this final determination we are continuing to apply AFA to Celik Halat for those programs other than those on which we initiated as New Subsidy Allegations.²⁷

Selection of the AFA Rate

It is Commerce’s practice in CVD proceedings to compute an AFA rate using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation or, if not available, rates calculated in prior CVD cases involving the same

²⁴ *Id.* at 30-31.

²⁵ *Id.* at 31.

²⁶ *See* Memorandum, “Countervailing Duty Investigation of Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Post-Preliminary Analysis,” dated November 19, 2020 (Post-Preliminary Decision Memo) at 8-10.

²⁷ *See* PDM at “Application of Total AFA: Celik Halat;” and Post-Preliminary Decision Memo at 6-12.

country.²⁸ When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates.²⁹ Accordingly, when selecting AFA rates, if we have cooperating respondents in the investigation, we first determine if there is an identical program in the instant investigation and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above *de minimis* for a cooperating respondent in the investigation, we then determine if an identical program was countervailed in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the identical program.³⁰ If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) countervailed in any CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company-specific program in a CVD case involving the same country that the company's industry could conceivably use.³¹

Commerce's methodology is consistent with section 776(d)(1)(A) of the Act. Section 776(d)(1)(A) of the Act states that when applying an adverse inference in selecting from the facts otherwise available, Commerce may (i) use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or (ii) if there is no same or similar program, use a countervailable subsidy for a subsidy rate from a proceeding that Commerce considers reasonable to use. Thus, section 776(d)(1)(A) of the Act expressly allows for Commerce's existing practice of using an AFA hierarchy in selecting a rate "among the facts otherwise available" in CVD cases, should the facts warrant such a selection.

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin,

²⁸ See, e.g., *Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination with Final Antidumping Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018), and accompanying PDM at "X: Use of Facts Otherwise Available and Adverse Inferences: A. Application of Total AFA: Chalco Ruimin and Chalco-SWA," unchanged in *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018), and accompanying Issues and Decision Memorandum (IDM).

²⁹ See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 12-14; see also *Essar Steel, Ltd. v. United States*, 753 F. 3d 1368, 1373-74 (Fed. Cir. 2014) (upholding use of a "hierarchical methodology for selecting an AFA rate.").

³⁰ For purposes of selecting AFA program rates, we normally consider rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at "E. Various Grant Programs: 1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

³¹ See *Shrimp from China* IDM at 13-14.

based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available.” No legislative history accompanied this provision. Accordingly, Commerce is left to interpret this “evaluation by the administering authority of the situation” language in light of existing agency practice and the structure and provisions of section 776(d) of the Act itself.

We find that the Act anticipates a two-step process for determining an appropriate AFA rate in CVD cases: (1) Commerce may apply its hierarchy methodology; and (2) Commerce may apply the highest rate derived from this hierarchy to a respondent, should it choose to apply that hierarchy in the first place, unless, after an evaluation of the situation that resulted in the use of AFA, Commerce determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.³²

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”³³ Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”³⁴ It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.³⁵

In applying its AFA hierarchy in CVD investigations, Commerce’s goal is as follows: in the absence of necessary information from cooperative respondents, Commerce is seeking to find a rate that is a relevant indicator of how much the government of the country under investigation is likely to subsidize the industry at issue, through the program at issue, while inducing cooperation. Accordingly, in sum, the three factors that Commerce takes into account in

³² This differs from AD proceedings, for which no hierarchy applies, under section 776(d)(1)(B) of the Act. Under that provision, “any dumping margin from any segment of the proceeding under the applicable {AD} order” may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

³³ See SAA, H.R. Doc. No. 103-316, vol. 1 at 870, reprinted in 1994 U.S.C.C.A.N 4040, 4090; see also *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012) (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate’ with Commerce’s investigation, not to impose punitive damages.”) (quoting *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*De Cecco*)).

³⁴ See *De Cecco*, 216 F. 3d at 1032.

³⁵ Commerce has adopted a practice of applying its hierarchy in CVD cases. See, e.g., *Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at Comment 4 (applying the AFA hierarchical methodology within the context of a CVD investigation); see also *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of a CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. See, e.g., *Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

selecting a rate are: (1) the need to induce cooperation, (2) the relevance of a rate to the industry in the country under investigation (*i.e.*, can the industry use the program from which the rate is derived), and (3) the relevance of a rate to a particular program, though not necessarily in that order of importance.

Furthermore, the hierarchy (as well as section 776(d)(1) of the Act) recognizes that there may be a “pool” of available rates that Commerce can rely upon for purposes of identifying an AFA rate for a particular program. In investigations for example, this “pool” of rates could include the rates for the same or similar programs used in either that same investigation or prior CVD proceedings for that same country. Of those rates, the hierarchy provides a general order of preference to achieve the goal identified above. The hierarchy therefore does not focus on identifying the highest possible rate that could be applied from among that “pool” of rates; rather, it adopts the factors identified above of inducement, relevancy to the industry, and relevancy to the particular program.

Under the first step of Commerce’s investigation hierarchy, Commerce applies the highest nonzero rate calculated for a cooperating company for the identical program in the investigation. Under this step, we will even use a *de minimis* rate as AFA if that is the highest rate calculated for another cooperating respondent in the same industry for the same program. However, if there is no identical program match within the investigation, or if the rate is zero, then Commerce will shift to the second step of its investigation hierarchy and either apply the highest non-*de minimis* rate calculated for a cooperating company in another CVD proceeding involving the same country for the identical program or, if the identical program is not available, for a similar program. This step focuses on the amount of subsidies that the government has provided in the past under the investigated program. The assumption under this step is that the non-cooperating respondent under investigation uses the identical program at the highest above *de minimis* rate of any other company using the identical program.

Finally, if no such rate exists, under the third step of Commerce’s investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.³⁶

In all three steps of Commerce’s AFA investigation hierarchy, if Commerce were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the “reward” for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce’s investigation AFA hierarchy (which is different from selecting the

³⁶ In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

highest possible rate in the “pool” of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.³⁷

Furthermore, we find that section 776(d)(2) of the Act applies as an exception to the selection of an AFA rate under section 776(d)(1) of the Act; that is, after “an evaluation of the situation that resulted in the application of an adverse inference,” Commerce may decide that given the unique and unusual facts on the record, the use of the highest rate within that step is not appropriate.

Therefore, we are applying, where available, the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a Turkey CVD investigation or administrative review as AFA for Guney Celik for the specific programs mentioned in Comments 1 and 2, below. For this final determination, we are able to match, based on program names, descriptions, and benefit treatments, the following programs to the same or similar programs from other Turkey CVD proceedings:

- Rediscount Program
- Investment Credit for Export
- Provision of Land for LTAR
- Provision of Wire Rod for LTAR
- Exemption from Property Tax³⁸

Based on the methodology described above, we preliminarily determine the AFA countervailable subsidy rate for the programs for which Commerce is applying AFA for Guney Celik to be 29.76 percent *ad valorem*. The Appendix to this memorandum contains a chart summarizing our calculation of this rate.

Corroboration of the AFA Rate

Section 776(c)(1) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that

³⁷ It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. *See, e.g., Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying IDM at 2 (“As AFA in the instant case, {Commerce} is relying on the highest calculated final subsidy rates for income taxes, VAT and policy lending programs of the other producer/exporter in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed....”). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as AFA under its hierarchy.

³⁸ We applied AFA to this program at the *Preliminary Determination*. *See* PDM at 9. Our decision remains unchanged in this final determination. *See* Comment 5.

gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.” The SAA provides that, to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.

Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information. Furthermore, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.

In the absence of record evidence concerning Guney Celik’s usage of the subsidy programs at issue, Commerce reviewed the information concerning Turkish subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this case. The relevance of these rates is that they are actual calculated CVD rates for Turkish programs, from which the non-responsive company could actually receive a benefit.

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

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

B. Attribution of Subsidies

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding, the attribution of subsidies used in the *Preliminary Determination*. For a description of the methodologies used for this final determination, *see the Preliminary Determination*.

C. Denominators

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding the denominators used in the *Preliminary Determination*. For a description of the methodologies used for this final determination, *see* the *Preliminary Determination*.

D. Loan Interest Rate Benchmarks and Discount Rates

Commerce made no changes to, and interested parties raised no issues in their case briefs regarding the loan interest rate benchmarks and discount rates used in the *Preliminary Determination*. For a description of the methodologies used for this final determination, *see* the *Preliminary Determination*.

VI. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable³⁹

1. Deductions for Taxable Income for Export Revenue

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat:	0.11 percent <i>ad valorem</i>
Guney Celik:	0.11 percent <i>ad valorem</i>

2. Inward Processing Certificates

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat:	14.01 percent <i>ad valorem</i>
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3. Free Zones Law No. 3218: Corporate Income Tax Exemption

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

³⁹ For additional information on the below subsidy rate calculations, *see* the *Preliminary Determination* and the Memoranda: “Countervailing Duty Investigation of Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Final Results Calculation Memorandum for Guney Celik Hasir ve Demir Mamulleri San. Ve Tic. A.S.” (Guney Celik Final Calculation Memorandum), dated concurrently with these final results; and “Countervailing Duty Investigation of Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Final Determination Calculation Memorandum for Celik Halat ve Tel San A.S.,” dated concurrently with this final determination.

Celik Halat: 14.01 percent *ad valorem*

4. Free Zones Law No. 3218: Exemption from Income Tax for Workers' Wages

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 14.01 percent *ad valorem*

5. Tax and Fee Incentives for Renewable Energy

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 14.01 percent *ad valorem*

6. Investment Incentive Scheme Program (Investment Encouragement Program)

a. RIIS

i. Income Tax Reductions

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. See Comment 3.

Celik Halat: 0.63 percent *ad valorem*

Guney Celik: 0.63 percent *ad valorem*

ii. Social Security Premium Support

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 0.02 percent *ad valorem*

Guney Celik: 0.02 percent *ad valorem*

iii. Customs Duties

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from its post-preliminary analysis.

Celik Halat: 14.01 percent *ad valorem*

- b. Large Scale Investment Incentive Scheme (LSIIS), Strategic Investment Incentive Scheme (SIIS), and General Investment Incentive Scheme (GIIS)

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 14.01 percent *ad valorem*

7. Project Based Investment Incentive System

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 14.01 percent *ad valorem*

8. R&D Incentives Under Turkey's R&D Law

- a. Corporate Income Tax Deductions for R&D

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 0.08 percent *ad valorem*

Guney Celik: 0.08 percent *ad valorem*

- b. Insurance Premium Support

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 0.01 percent *ad valorem*

Guney Celik: 0.01 percent *ad valorem*

9. Foreign Fair Support

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 0.03 percent *ad valorem*

Guney Celik: 0.03 percent *ad valorem*

10. Foreign Market Research

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 2.11 percent *ad valorem*

11. Scientific and Technological Research Council of Turkey (TUBITAK) Grants

a. 1501 TUBITAK Industrial R&D Projects Grant Program (TUBITAK Grant 1501)

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 0.04 percent *ad valorem*

Guney Celik: 0.04 percent *ad valorem*

b. 1511 – Research Technology Development and Innovation Projects

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 0.01 percent *ad valorem*

Guney Celik: 0.01 percent *ad valorem*

12. Exemption from Property Tax

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 14.01 percent *ad valorem*

Guney Celik: 14.01 percent *ad valorem*

13. Provision of Natural Gas for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 3.30 percent *ad valorem*

14. Rediscount Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. See Comment 1.

Celik Halat: 1.96 percent *ad valorem*

Guney Celik: 1.96 percent *ad valorem*

15. Investment Credit for Export

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 8.82 percent *ad valorem*

Guney Celik: 8.82 percent *ad valorem*

16. Export-Oriented Business/Export Oriented Working Capital Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 8.82 percent *ad valorem*

17. Pre-Export Credit Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from the *Preliminary Determination*.

Celik Halat: 8.82 percent *ad valorem*

18. Exemption on Exchange Tax for Foreign Exchange Transactions

No parties submitted comments regarding this program. Commerce has not modified its calculation of the subsidy rate for this program from its post-preliminary analysis.

Celik Halat: 0.05 percent *ad valorem*

Guney Celik: 0.09 percent *ad valorem*

19. Export Buyer's Credits

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from its post-preliminary analysis.

Celik Halat: 8.82 percent *ad valorem*

20. Renewable Energy Support Mechanism

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has not modified its calculation of the subsidy rate for this program from its post-preliminary analysis.

Celik Halat: 2.11 percent *ad valorem*

21. Provision of Steel Wire Rod for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from its post-preliminary analysis. *See* Comment 2.

Celik Halat: No measurable benefit
Guney Celik: 4.43 percent *ad valorem*

22. Provision of Land for LTAR

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from its *Preliminary Determination*. *See* Comment 1.

Celik Halat: 0.53 percent *ad valorem*
Guney Celik: 0.53 percent *ad valorem*

B. Programs Determined No to Confer Measurable Benefit

1. Programs Conferring No Measurable Benefit to Celik Halat

1. Provision of Wire Rod for LTAR

2. Programs Conferring No Measurable Benefit to Guney Celik During the POI

- 1. Foreign Market Research**
- 2. Export-Oriented Business/Export Oriented Working Capital Credit Program**
- 3. Pre-Export Credit Program**
- 4. RIIS – Customs Duty Exemption**

5. Renewable Energy Support Mechanism

C. Programs Determined Not to Be Used by Guney Celik During the POI

1. Export Buyer's Credits
2. Free Zones Law No. 3218: Corporate Income Tax Exemption
3. Free Zones Law No. 3218: Exemption from Income Tax for Workers' Wages
4. Tax and Fee Incentives for Renewable Energy
5. Large Scale Investment Incentive Scheme
6. Project Based Investment Incentive Scheme

D. Program Determined Not to Be Specific to Guney Celik

1. Natural Gas for LTAR

E. Programs Determined Not to Provide a Countervailable Benefit

1. Investment Incentive Scheme Program – VAT Programs
2. Inward Processing Certificates

VII. ANALYSIS OF COMMENTS

Comment 1: Application of Total AFA to Guney Celik

Petitioners' Case Brief

- Commerce issued an extensive supplemental questionnaire to Guney Celik to remedy numerous “deficiencies, omissions, and areas where further clarification is needed” based on Guney Celik’s Section III questionnaire response.⁴⁰ Following Commerce’s grant of an extension request by Guney Celik,⁴¹ Guney Celik failed to meet the extended deadline, and Commerce properly rejected the untimely filed submission in accordance with Commerce’s regulations.⁴²
- Commerce issued a nine-page supplementary questionnaire to clarify and correct critical information regarding Guney Celik’s corporate affiliations and the benefits Guney Celik received from many subsidy programs under investigation.⁴³ Absent Guney Celik’s response to this questionnaire, the record is severely deficient, and Commerce lacks the necessary information to determine an accurate countervailable subsidy rate.⁴⁴

⁴⁰ See Petitioners’ Case Brief at 5 (citing Commerce’s Letter, “First Supplemental Questionnaire,” dated August 17, 2020 (Guney Celik August 17, 2020 SQ)). Petitioners note that this was the second supplemental questionnaire issued to Guney Celik.

⁴¹ *Id.* (citing Commerce’s Letter, “Investigation of Prestressed Concrete Steel Wire from the Republic of Turkey: Partial Extension for Supplemental Questionnaire Response,” dated August 31, 2020).

⁴² *Id.* (citing Commerce’s Letter, “Countervailing Duty Investigation of Prestressed Concrete Steel Wire Strand from the Republic of Turkey,” dated September 9, 2020 (Guney Celik September 9, 2020 SQ), which references 19 CRF 351.302(d) and 351.104(a)(2)(iii)).

⁴³ *Id.* at 5-6 (citing Guney Celik September 9, 2020 SQ).

⁴⁴ *Id.* at 6.

- One critical defect is that Guney Celik did not provide audited 2019 sales information. The 2019 sales information forms the basis for the calculation of all *ad valorem* program benefits. Further, although Guney Celik provided a 2019 tax declaration that included an income statement, balance sheet, and cash flow statement, Guney Celik omitted the worksheet reconciling the total reported sales value to its 2019 income statement, as specifically requested by Commerce. Although Commerce stated that it was “unable to reconcile the total sales quantity and value to Guney Celik’s 2019 tax return,”⁴⁵ Commerce nevertheless used these sales values in its preliminary calculations.⁴⁶
- A complete and comprehensive sales denominator is central to the accretion derivation of *ad valorem* countervailable program-benefit margins, and audited financial statements provide an independently-verified record of the company’s financial accounting.⁴⁷ Without a reconciliation, Commerce has little assurance that the information presented in a company’s records comports with standard accounting principles. Applying these standards to the information on the record demonstrates that Guney Celik’s 2019 sales values are not reliable.⁴⁸ Thus, it is improper to use Guney Celik’s 2019 sales values for Commerce’s quantification of countervailable subsidies received by Guney Celik during the POI.⁴⁹
- The record is significantly deficient regarding Guney Celik’s affiliated companies.⁵⁰ Guney Celik reported that only one company met the affiliation standard as defined in section 771(33) of the Act, but Guney Celik’s financial statement included more than ten related parties in 2018⁵¹ Although Commerce asked Guney Celik to explain this discrepancy in its supplemental questionnaire, Guney Celik’s response was rejected as untimely.⁵² Thus, there is no information on the record to clarify the nature of the relationships, nor the transactions, between Guney Celik and its related parties.⁵³ Therefore, information on GOT assistance received by Guney Celik through its related parties is missing from the record, hindering Commerce’s ability to accurately evaluate all potential subsidies that the company received.⁵⁴
- Guney Celik’s initial questionnaire response was also incomplete in regard to program benefits. Commerce’s supplemental questionnaire sought additional information on more than 12 programs under investigation that Guney Celik failed to provide.⁵⁵ Based on the extensive deficiencies in Guney Celik’s initial questionnaire response, the record information regarding the benefits Guney Celik received from these programs is not

⁴⁵ *Id.* (citing Guney Celik September 9, 2020 SQ).

⁴⁶ *Id.* (citing PDM at 17).

⁴⁷ *Id.* at 6-7.

⁴⁸ *Id.* at 7.

⁴⁹ *Id.* (citing Guney Celik’s June 30, 2020 Affiliation Response (Guney Celik June 30, 2020 AFFR) at Q.1; and Guney Celik’s July 24, 2020 Supplemental Affiliated Companies Response (Guney Celik July 24, 2020 SAFFR) at Q.1). The petitioners also cite to certain business proprietary information that is not capable of public summary to support their contention. *Id.* (citing Guney Celik QR at Exhibits 5.2 and 5.3).

⁵⁰ *Id.*

⁵¹ *Id.* (citing Guney Celik August 17, 2020 SQ at Q.A.1).

⁵² *Id.*

⁵³ *Id.* at 7-8.

⁵⁴ *Id.* at 8.

⁵⁵ *Id.* (citing Guney Celik August 17, 2020 SQ at B, Q.B.50-52 and Q.B.58-61; and PDM at 18-28).

reliable, and, therefore, not appropriate for calculation of a company-specific benefit rate.⁵⁶

- Commerce has previously refused to use evidence provided by a respondent where it found such evidence inadequate. For example, in *CTL Plate from China Prelim*, Commerce preliminarily determined that the application of total AFA was necessary due to a “significantly deficient questionnaire response,” and the respondent’s failure to remedy the deficiencies when given the opportunity.⁵⁷ Commerce cited to the respondent company’s incomplete information regarding its sales, parent/holding company, supporting documentation (including both tax returns and financial statements), and program-specific benefits.⁵⁸ In the *CTL Plate from China Final*, Commerce affirmed this determination and noted that it “based its AFA determination on the totality of the deficiencies, and no one deficiency was determinative.”⁵⁹
- Similarly, Guney Celik provided some limited, albeit deficient, company-specific information, and it failed to remedy the deficiencies in this information by the established deadline, which left the record incomplete and inconsistent.⁶⁰ As in *CTL Plate from China Prelim*, Commerce should not use Guney Celik’s “significantly deficient questionnaire response,” and should instead assign subsidy rates based on AFA for each investigated program.⁶¹
- In the *Preliminary Determination*, Commerce preliminarily found that the application of AFA was warranted, but Commerce still calculated *ad valorem* program benefit rates for most subsidies.⁶² In accordance with the law and established case precedent,⁶³ Commerce should have assigned AFA rates consistent with its CVD hierarchy to each program under investigation as it did in determining the preliminary subsidy rates for the other mandatory respondent, Celik Halat.⁶⁴

⁵⁶ *Id.*

⁵⁷ *Id.* at 8-9 (citing *Certain Carbon and Alloy Steel Cut-to-Length Plate from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 62871 (September 13, 2016) (*CTL Plate from China Prelim*), and accompanying PDM at 15-19; affirmed in *Certain Carbon and Alloy Steel Cut-to-Length Plate from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 8507 (January 26, 2017) (*CTL Plate from China Final*), and accompanying IDM at Comment 1).

⁵⁸ *Id.* at 9 (citing *CTL Plate from China Prelim* PDM at 15-19).

⁵⁹ *Id.* (citing *CTL Plate from China Final* IDM at Comment 1).

⁶⁰ *Id.* at 9-10 (citing section 782(d) of the Act).

⁶¹ *Id.* at 10 (citing *CTL Plate from China Prelim* PDM at 19-26).

⁶² *Id.* (citing PDM at 9-10).

⁶³ *Id.* (citing section 776(d) of the Act; *Certain Glass Containers from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination*, 85 FR 12256 (March 2, 2020) (*Glass Containers from China Prelim*), and accompanying PDM at 8-9, unchanged in *Certain Glass Containers from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 31141 (May 22, 2020) (*Glass Containers from China Final*), and accompanying IDM at 4; and *Refillable Stainless Steel Kegs from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 13634 (April 5, 2019), and accompanying PDM at 15-17, unchanged in *Refillable Stainless Steel Kegs from the People’s Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part*, 84 FR 57005 (October 24, 2019), and accompanying IDM at 3).

⁶⁴ *Id.* at 10-11 (citing PDM at 9-15 and Appendix; *ArcelorMittal USA LLC v. United States*, 337 F. Supp.3d 1285, 1293 (CIT 2018); *SolarWorld Americas, Inc. v. United States*, 229 F. Supp.3d 1362, 1366-7 (CIT 2017); *Glass Containers from China Prelim* PDM at 8-9, unchanged in *Glass Containers from China Final* IDM at 4)).

No other party commented on this issue.

Commerce's Position:

Commerce acknowledges that Guney Celik failed to timely respond to Commerce's supplemental questionnaire and, after evaluating the record again for this final, as explained below, application of AFA is warranted for certain programs in this investigation. However, Commerce disagrees with the petitioners that the record of this investigation supports applying total AFA (*i.e.*, application of AFA to all programs in this investigation) to Guney Celik for deficiencies in its initial questionnaire response and its failure to timely respond to Commerce's supplemental questionnaire. It is uncontested that Guney Celik timely filed its affiliated questionnaire response, supplemental affiliated questionnaire, and its initial questionnaire response. Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

The prerequisites for applying facts available *for certain programs*, such as under section 776(a) of the Act are not present in this case. For example, Guney provided complete and accurate information about the Deductions for Taxable Income for Export Revenue program. Thus, for certain programs, Commerce used the information in these responses to calculate an *ad valorem* countervailable subsidy rate for Guney Celik at the *Preliminary Determination*.

We disagree with the petitioners that the length of the supplemental questionnaire issued by Commerce is grounds for applying total AFA. The supplemental questionnaire identified areas in which Commerce requested additional information or more complete responses from Guney Celik. Further, the issuance of a supplemental questionnaire does not indicate that an initial questionnaire response lacks veracity. As we discuss below and in Comment 2, where we have concerns that Guney Celik did not respond to the best of its ability and, thus, significantly impeded this investigation, we have applied AFA for specific programs. However, there is nothing on the record of this investigation that would indicate that Guney Celik's entire response lacks credibility.

With respect to total sales, we acknowledge there is a discrepancy between the total sales figure Guney Celik reported in its initial questionnaire response and that in its 2018 income statement. However, after evaluating the record, this discrepancy is not sufficient to apply total AFA (*i.e.* application of AFA to all programs) to Guney Celik. There are only two possibilities for total sales on this record: (1) use the sales reported by Guney Celik; or (2) use the sales information contained in the financial statements of Guney Celik's income statement. Thus, necessary information is available on the record. Moreover, of the two total sales amounts available on

the record of this investigation, because using the amount reported by Guney Celik results in a less favorable outcome for the company than using the amount from the company's 2018 income statement, the former is a more conservative approach.

We further disagree with the petitioners that there are outstanding questions regarding the related parties listed in Guney Celik's 2018 financial statements. Guney Celik provided a timely response to Commerce's affiliation questionnaire and supplemental affiliation questionnaire.⁶⁵ Thus, Guney Celik timely responded to Commerce's questions regarding its affiliated companies. The information in Guney Celik's financial statements does not contradict Guney Celik's assertion that the only cross-owned affiliate that meets the requirements under 19 CFR 351.525(b)(6) is Guney International Disş Ticaret A.S (Guney International). Therefore, we do not find that the information in Guney Celik's financial statements regarding related parties is insufficient and do not find the application of total AFA warranted.

We also find that the facts on the record of this investigation are distinct from *CTL Plate from China Final*. In that investigation, the respondent failed to provide *any* usable sales denominators for six out of its nine cross-owned affiliates and failed to respond at all for one of its cross-owned affiliates. The deficiencies related to Guney Celik's responses do not rise to the level of those found in *CTL Plate from China Final* and, therefore, we find that the application of total AFA is not warranted.

However, upon review of the record of this investigation, we do agree with the petitioners that Guney Celik failed to respond to the best of its ability for the following programs: Provision of Land for LTAR, Rediscount Program (Export Financing: Short Term Pre-Shipment Rediscount/Post Shipment Rediscount), and the Investment Credit for Export Program.

With regard to the Provision of Land for LTAR, this program allows for the allocation of free land to businesses located in OIZs. Guney Celik reported in its initial questionnaire response that it is located in Adana Hacı Sabancı OIZ.⁶⁶ While Guney Celik stated that it did not use this program because it "purchased the land at market value," it provided no support for this assertion.⁶⁷ The property deeds it provided fail to support Guney Celik's assertion that it purchased land in the OIZ at market value. We requested additional information regarding this program from Guney Celik in our supplemental questionnaire to which Guney Celik failed to submit a timely response.⁶⁸ With regard to the Rediscount Program and the Investment Credit for Export Program, Guney stated in its initial questionnaire response that "Guney Celik and Guney International did not use this program for subject merchandise product."⁶⁹ However, Commerce did not limit its investigation of benefit from this program to subject merchandise.⁷⁰ Nor did we limit our questions in the initial questionnaire to usage of the program related to subject merchandise.⁷¹ We requested that Guney Celik respond to the relevant appendices

⁶⁵ See Guney Celik June 30, 2020 AFFR; and Guney Celik July 24, 2020 SAFFR.

⁶⁶ See Guney Celik July 27, 2020 Initial Questionnaire Response (Guney Celik July 27, 2020 IQR) at 14.

⁶⁷ *Id.*

⁶⁸ See Guney Celik Supplemental Questionnaire.

⁶⁹ See Guney Celik July 27, 2020 IQR at 15 and 16.

⁷⁰ See Memorandum, "Enforcement and Compliance; Office Of AD/CVD Operations; Countervailing Duty Investigation Initiation Checklist," dated May 6, 2020.

⁷¹ See Commerce's Letter, "Countervailing Duty Questionnaire," dated June 9, 2020 (Initial CVD Questionnaire).

regarding *any* usage of this program in our supplemental questionnaire, to which Guney Celik failed to submit a timely response.

By not properly responding to Commerce’s initial questionnaire and not timely responding to Commerce’s supplemental questionnaire, Guney Celik withheld information requested by Commerce and failed to provide such information by the deadline. In doing so, Guney Celik significantly impeded this proceeding.⁷² Thus, in reaching a determination, pursuant to sections 776(a)(1) and (a)(2)(A), (B), and (C) of the Act, we based the CVD rate for the above-mentioned programs for Guney Celik on facts available because necessary information is missing from the record of this investigation. Further, we determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not timely responding to the supplemental questionnaire, Guney Celik failed to cooperate to the best of its ability to comply with the requests for information in this investigation. As noted above, Guney Celik did not provide the requested information needed to allow Commerce to analyze these programs fully, despite having this information and the ability to provide it to Commerce. Moreover, absent the requested information, we are unable to rely on the Guney Celik’s claims of non-use of the above-mentioned programs.

Comment 2: Application of AFA to Certain Guney Celik Programs

Petitioners’ Case Brief

- In lieu of on-site verification, Commerce issued a questionnaire to Guney Celik seeking additional information regarding the TUBITAK Grant 1501, Foreign Fair Support, and the Provision of Steel Wire Rod for LTAR programs.⁷³ Given that Guney Celik failed to verify the record evidence regarding the TUBITAK Grant 1501 and Provision of Steel Wire Rod for LTAR programs, if Commerce determines to calculate program benefits for Guney Celik in the final determination, Commerce should apply AFA to determine Guney Celik’s countervailable benefits for these programs.⁷⁴
- For TUBITAK Grant 1501, Commerce requested screenshots and a narrative description to document Guney Celik’s accounting treatment of grants received under this program.⁷⁵ Guney Celik reported that TUBITAK Grant 1501 funds are recorded in its “Special funds” account 549 and claims that the underlying “Offset Receipts” for this program are provided in Exhibit VE.1.⁷⁶ While certain “Offset Receipts” reconcile with the grant amounts reported, others do not.⁷⁷ Guney Celik’s inability to reconcile its TUBITAK Grant 1501 information with its accounting system completely undermines the reliability of its data, preventing its use to calculate accurate program benefit rates.⁷⁸
- For the Provision of Steel Wire Rod for LTAR, Commerce selected three purchases of steel wire rod and requested all underlying documentation, including “the relevant

⁷² See section 776(a)(2)(A) and (B).

⁷³ *Id.* at 12 (citing Questionnaire In Lieu of Verification).

⁷⁴ *Id.*

⁷⁵ *Id.* (citing Questionnaire In Lieu of Verification at 3).

⁷⁶ *Id.* (citing Guney Celik November 3, 2020 SQR at 1).

⁷⁷ *Id.* at 12-13 (citing Guney Celik November 3, 2020 SQR at 1 and Exhibit VE.1. The petitioners detail certain business proprietary information not further capable of public summary to illustrate their arguments).

⁷⁸ *Id.* at 13.

contract, purchase order, supplier invoice, mill certificate, and proof of payment/receipts, as well as screenshots of the relevant financial account transactions in your accounting system, for each transaction{, }” and to reconcile the total amount of steel wire rod purchased during the POI to its year-end financial statement.⁷⁹ Guney Celik was unable to verify its purchase database using the three selected transactions⁸⁰ and was unable to reconcile its steel wire rod purchases to its POI financial statements.⁸¹

- Pursuant to section 776(a)(2)(D) of the Act, Commerce is required to apply facts available when an interested party “provides such information but the information cannot be verified.”⁸² Guney Celik’s inaccurate reporting and lack of explanation for the discrepancies demonstrates that it failed to comply to the “best of its ability” with Commerce’s requests.⁸³ Guney Celik’s failure to comply to the best of its ability need not be intentional, as conduct marked by “inattentiveness and carelessness” is similarly censured under the AFA provisions of the Act.⁸⁴ Further, Commerce properly determined the Provision of Steel Wire Rod for LTAR to be countervailable in its post-preliminary analysis.⁸⁵ Thus, Commerce should find that the application of AFA is warranted with regard to this countervailable LTAR program used by Guney Celik.⁸⁶

No other party commented on this issue.

Commerce’s Position:

We disagree with the petitioners that Commerce should apply AFA to determine Guney Celik’s countervailable benefits received during the AUL under the TUBITAK Grant 1501 program. As part of our request for documentation in lieu of verification, we requested “screenshots and a narrative” description to document Guney Celik’s accounting treatment of grants received under this program.⁸⁷ Guney Celik responded in a timely manner, and we were able to tie all of the information reported in Guney Celik’s initial questionnaire response to the information provided in Guney Celik’s response to Commerce’s request for documentation in lieu of verification.⁸⁸ The “discrepancy” asserted by the petitioners is a simple error—Guney Celik inadvertently omitted a grant in their summary of the grants it received under this program in their in lieu of verification response. This grant was, however, reported in its initial

⁷⁹ *Id.* (citing Questionnaire in Lieu of Verification at 3).

⁸⁰ *Id.* at 14-15 (citing Guney Celik November 3, 2020 SQR at 2-3 and Exhibits VE.3, VE.4, and VE.5; and Guney Celik’s September 22, 2020 New Subsidies Allegations Questionnaire Response (Guney Celik’s September 22, 2020 NSAQR) at Exhibit F3. The petitioners detail certain business proprietary information not further capable of public summary to illustrate their arguments).

⁸¹ *Id.* at 15 (citing Guney Celik November 3, 2020 SQR at 4 and Exhibit VE.6; and Guney Celik’s September 22, 2020 NSAQR at Exhibit F3. The petitioners detail certain business proprietary information not further capable of public summary to illustrate their arguments).

⁸² *Id.*

⁸³ *Id.* (citing section 776(b) of the Act).

⁸⁴ *Id.* at 15-16 (citing *Tianjin Machinery Imp. & Exp. Corp v. United States*, 353 F. Supp.2d 1294, 1305 (CIT 2004), affirmed without opinion 2005 U.S. App. Lexis 23082 (Fed. Cir. 2005) (*Tianjin Machinery*)).

⁸⁵ *Id.* at 16 (citing Post-Preliminary Decision Memo at 9-10).

⁸⁶ *Id.*

⁸⁷ See Questionnaire In Lieu of Verification at 3.

⁸⁸ See Guney Celik July 27, 2020 IQR at 42-44.

questionnaire response.⁸⁹ Therefore, given that we were able to tie all the information provided by Guney Celik in its in lieu of verification response to the information reported in its initial questionnaire response, we find no basis to apply FA or AFA to the TUBITAK 1501 Grant Program and have made no changes to the calculation of the subsidy rate for this program in the *Preliminary Determination*.

We do, however, find merit in the petitioners' arguments regarding the Provision of Steel Wire Rod for LTAR program. Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation, pursuant to section 782(i) of the Act. Accordingly, we took additional steps in lieu of on-site verification and requested additional documentation and information in November 2020.⁹⁰ In our in lieu of verification questionnaire, we requested that Guney Celik provide all underlying documentation for three selected purchases of steel wire rod to test the accuracy of Guney Celik's NSA questionnaire response on the Provision of Steel Wire Rod for LTAR program. We specifically requested that Guney Celik provide "the relevant contract, purchase order, supplier invoice, mill certificate, and proof of payment/receipts, as well as screenshots of the relevant financial account transactions in your accounting system, for each transaction."⁹¹ We further requested that Guney Celik reconcile the total amount of steel wire rod purchased during the POI to its year-end financial statement.⁹² We also stated that if the company was uncertain of how to respond to an inquiry, uncertain whether related documents or information are permitted to be submitted, or are unable to respond completely to any requests, to contact the Commerce officials in charge of this case before submitting its response.⁹³

Guney Celik reported a different value for total steel wire rod purchases during the POI in its in lieu of verification response than it reported in its NSA questionnaire response⁹⁴ but did not provide an explanation for this discrepancy. More concerning, given the magnitude of the discrepancy, is the fact that one of three transactions examined had a significant difference between the amount reported in Guney Celik's in lieu of verification response and its NSA questionnaire response.⁹⁵ These unexplained discrepancies are sufficient to call into question the entirety of Guney Celik's reported purchases of steel wire rod in its NSA questionnaire response.

Under section 776(a) of the Act, Commerce may make a determination based on facts available if, among other reasons, a party provides information but that information cannot be verified.⁹⁶ As noted above, Commerce was unable to conduct on-site verification of the information relied upon in making its final determination in this investigation, pursuant to in section 782(i) of the

⁸⁹ *Id.* at 4. The petitioners also rely on certain business proprietary data that is not capable of further public summary. See Petitioners' Case Brief at 12.

⁹⁰ See Questionnaire In Lieu of Verification; and Guney Celik November 3, 2020 SQR.

⁹¹ See Questionnaire In Lieu of Verification at 3.

⁹² *Id.*

⁹³ *Id.* at 1.

⁹⁴ See Guney Celik's September 22, 2020 NSAQR at Exhibit F3; and Guney Celik's November 3, 2020 SQR at 4 and Exhibit VE.6.

⁹⁵ See Guney Celik's September 22, 2020 NSAQR at Exhibit F3; and Guney Celik's November 3, 2020 SQR at 2-4 and Exhibits VE.3, VE.4, and VE.5.

⁹⁶ See section 776(a)(2)(D) of the Act.

Act. Accordingly, we relied on the information submitted on the record as facts available in making our final determination.

Further, we find that Guney Celik did not cooperate to the best of its ability, in accordance with section 776(b) of the Act. As described above, the purpose of the in lieu of verification questionnaire is to test the accuracy of Guney Celik's NSA questionnaire response. Guney Celik's questionnaire response contains significant unexplained discrepancies. As explained by the Court of Appeals for the Federal Circuit in *Nippon Steel*, the ordinary meaning of "best of its ability" means "one's maximum effort," and that the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do.⁹⁷ The Court has also recognized that, while Commerce's "best of its ability" standard "does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping."⁹⁸ Further, Guney Celik could have contacted the analyst assigned to the case to discuss the discrepancies or offered an explanation in its in lieu of verification questionnaire response, but it did neither. Nor did Guney Celik respond to the arguments of the petitioners by submitting a rebuttal brief. Thus, we find the application of AFA as to the benefit received by Guney Celik under the Provision of Steel Wire Rod LTAR program is warranted.

Comment 3: Correct Numerator for the Tax Reduction RIIS Program

Petitioners' Case Brief

- In the *Preliminary Determination*, Commerce found that Guney Celik received a countervailable tax reduction under the RIIS.⁹⁹ To calculate the benefit, Commerce intended to multiply the amount that Guney Celik deducted from its taxable income under the RIIS by the Turkish corporate income tax rate.¹⁰⁰ Commerce used the amount of tax savings rather than the amount that Guney Celik deducted from its taxable income, as evidenced by Guney Celik's 2019 income tax filing.¹⁰¹ For the final determination Commerce should multiply the amount deducted from Guney Celik's taxable income by the corporate tax rate of 22 percent.¹⁰²

No other party commented on this issue.

Commerce's Position:

Commerce agrees with the petitioners and has revised the numerator to calculate the rate for Guney Celik for this program.

⁹⁷ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003) (*Nippon Steel*).

⁹⁸ *Id.*

⁹⁹ See Petitioners' Case Brief at 16 (citing PDM at 21-22).

¹⁰⁰ *Id.* (citing PDM at 22).

¹⁰¹ *Id.* at 16-17 (citing Guney Celik July 27, 2020 IQR at Exhibit 6.2).

¹⁰² *Id.* at 17.

Comment 4: Allocation or Expense of Certain Grant Program Benefits for Guney Celik

Petitioners' Case Brief

- In the *Preliminary Determination*, Commerce applied partial AFA to grants received under the Foreign Fair Support program and the TUBITAK program by Guney Celik because Guney Celik failed to provide its sales information over the AUL period.¹⁰³ For grants received during the POI, Commerce indicated that it would divide the amount received during the POI by Guney Celik's reported 2019 sales.¹⁰⁴ For grants under these programs received prior to the POI as non-recurring subsidies, Commerce indicated that it would allocate benefits to the POI in accordance with 19 CFR 351.524(d)(1).¹⁰⁵
- Commerce failed to implement this methodology in the *Preliminary Determination*.¹⁰⁶ Instead, Commerce treated all grants, including those received during the POI, as allocable subsidies.¹⁰⁷ If Commerce does not apply total or partial AFA to Guney Celik, Commerce should amend the final calculations to comport with the intended methodology and use the full amount of Foreign Fair Support and TUBITAK grants received during the POI to determine Guney Celik's *ad valorem* benefits.¹⁰⁸

No other party commented on this issue.

Commerce's Position:

We agree with the petitioners with regard to Foreign Fair Support program. In Guney Celik's July 27, 2020 IQR, Guney Celik provided sales information for the POI.¹⁰⁹ However, they failed to provide sales information for the remaining years in the AUL period. Therefore, in the *Preliminary Determination*, Commerce applied AFA to non-recurring grants that Guney Celik received outside the POI (*i.e.*, the years for which Guney Celik did not provide sales information). However, for grants that Guney Celik received in the POI, Commerce failed to examine whether the total amount received under the subsidy program was less than 0.5 percent of relevant sales to determine whether to expense or allocate those grants.¹¹⁰ Therefore, for grants Guney Celik received in the POI, Commerce has revised its calculation of the Foreign Fair Support program to examine any grant approved in the POI under 19 CFR 351.524(b)(2) and allocate or expense based on the result of the 0.5 percent test.

¹⁰³ *Id.* (citing PDM at 25-28).

¹⁰⁴ *Id.* (citing PDM at 26 and 28).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 17-18 (citing Memorandum, "Preliminary Results Calculation Memorandum for Guney Celik," dated September 14, 2020, (Guney Prelim Calculation Memorandum) at Attachments 7 and 8. The petitioners detail certain business proprietary information not further capable of public summary to illustrate their arguments in regard to benefits under the Foreign Fair Support program received in 2019 and the TUBITAK grant program received in 2019).

¹⁰⁸ *Id.* at 18.

¹⁰⁹ See Guney Celik July 27, 2020 IQR at 8-12.

¹¹⁰ See 19 CFR 351.524(b)(2).

However, we disagree with the petitioners that Commerce failed to properly apply our stated methodology with regard to the TUBITAK grants. For our calculation of benefit for the TUBITAK grants, Commerce followed its methodology, as described above. Therefore, we have not revised our calculation of the TUKITAK grants for this final determination.

Comment 5: Application of AFA to the Property Tax Exemption Program for Guney Celik

Guney Celik's Case Brief

- While Commerce applied AFA to Guney Celik for this program in the *Preliminary Determination*, there is sufficient information and documentation on the record to calculate the benefit Guney Celik received from this program.¹¹¹
- The rate for property tax, 0.2 percent, is provided in the GOT's initial questionnaire response¹¹² and the total building cost is provided on the balance sheet in Guney Celik's 2019 corporate tax declaration that was approved by Turkey's Ministry of Finance.¹¹³
- There is a large difference between the AFA rate and the actual benefit rate. Commerce can correct this error easily and without affecting the period of investigation.¹¹⁴

Petitioners' Rebuttal Brief

- The property tax rate in the Adana Hacı Sabancı OIZ is not established by record evidence. While Guney Celik asserts the rate is 0.2 percent, the GOT's supplemental response failed to directly respond to a question about the rate.¹¹⁵ Guney Celik's response similarly lacks support regarding the applicable property tax rate.¹¹⁶
- Guney Celik asserts that Commerce can rely on the building value included on the balance sheet contained in its 2019 corporate tax filing. However, according to the GOT, municipalities determine the value of a building's property value using a number of different factors. In order to determine Guney Celik's property value, Commerce would require information on those valuation factors, which is not available on the record.¹¹⁷ The deficiencies on the record warrant the application of AFA for this program.¹¹⁸

Commerce's Position:

Commerce disagrees with Guney Celik that it should use available information on the record to calculate a benefit for the property tax exemption program. In the Initial Questionnaire, Commerce asked Guney Celik to respond to our Standard Appendix and the Tax Appendix.¹¹⁹

¹¹¹ See Guney Celik Case Brief at 1.

¹¹² *Id.* at 1 (citing GOT July 27, 2020 Initial Questionnaire Response at Exhibits 12 and 19).

¹¹³ *Id.* (citing Guney Celik July 27, 2020 IQR at Exhibit 6.3).

¹¹⁴ *Id.* at 1-2.

¹¹⁵ See Petitioners' Rebuttal Brief at 21-22 (citing GOT August 31, 2020 Supplemental Questionnaire Response (GOT August 31, 2020 SQR)).

¹¹⁶ *Id.* at 22-23 (citing Guney Celik July 27, 2020 IQR).

¹¹⁷ *Id.* at 23-25 (citing GOT August 31, 2020 SQR).

¹¹⁸ *Id.* at 24-25.

¹¹⁹ See Initial CVD Questionnaire at Section III, page 11.

However, Guney Celik failed to respond to the questions in the Tax Appendix, which instructed Guney Celik to “{i}ndicate the amount of the tax savings derived from the use of this program.”¹²⁰ While Guney Celik acknowledged that it used this program, it failed to provide any benefit information regarding its use of the program. In Commerce’s supplemental questionnaire to Guney Celik, we requested that they respond to the Tax Appendix for this program and provide the value of Guney Celik’s buildings and property during the POI.¹²¹ As described above, Guney Celik failed to timely respond to Commerce’s supplemental questionnaire. Therefore, in the *Preliminary Determination*, Commerce applied AFA to Guney Celik for this program.¹²²

We disagree with Guney Celik that we can use the property tax value listed on the balance sheet of their 2019 corporate tax filing to properly calculate Guney Celik’s benefit amount under this program. According to the GOT, the building cost value, which is used to determine the property tax, is determined by a joint publication put out by Turkey’s Ministry of Treasury and Finance and the Ministry of Environment and Urbanization.¹²³ The value is determined by the construction cost per square meter according to the building specifications (type, class, using way). Additions to the building such as central heating elevators can add value to the building. A building’s value can also depreciate at different rates based on the age and type of the building.¹²⁴

There is nothing on the record that indicates that Guney Celik used the same methodology published by Turkey’s Ministry of Treasury and Finance and the Ministry of Environment and Urbanization to report the value of its buildings on its balance sheet. Indeed, there is nothing on the record of this investigation that explains how Guney Celik determined the reported value of its buildings. Therefore, we find that the value on Guney Celik’s balance sheet is not a sufficient proxy for the benefit information that Guney Celik should have provided in its initial questionnaire response. Accordingly, we continue to find the deficiencies on the record of this investigation warrant the application of AFA to Guney Celik on this program.

Comment 6: Application of AFA to Celik Halat

Celik Halat’s Case Brief

- In the *Preliminary Determination*, Commerce assigned Celik Halat a CVD rate based on total AFA.¹²⁵ Commerce incorrectly asserted that Celik Halat “withheld information that had been requested” and “failed to cooperate to the best of its ability to comply with the requests for information in this investigation.”¹²⁶
- The imposition of total AFA is unwarranted because Celik Halat fully cooperated to the best of its ability, and Commerce could have and should have accepted Celik Halat’s

¹²⁰ *Id.* at Section III, page 25; and Guney Celik July 27, 2020 IQR at 21-23.

¹²¹ See Guney Celik Supplemental Questionnaire.

¹²² See PDM at 9.

¹²³ See GOT August 31, 2020 SQR at 32.

¹²⁴ *Id.*

¹²⁵ See Celik Halat’s Case Brief at 2 (citing *Preliminary Determination*, 85 FR at 59288).

¹²⁶ *Id.* at 2-3 (citing *Preliminary Determination*, 85 FR at 59288; and PDM at 9).

late submissions in accordance with its own regulations and established practice.¹²⁷ Moreover, even if the late submission is excluded, there is sufficient information on the record to calculate a more accurate CVD rate without using total AFA.¹²⁸

- Commerce failed to account for the detailed explanation provided by Celik Halat's counsel as to why the final versions of Celik Halat's response were filed a few minutes after the deadline.¹²⁹ The explanation describes exactly the kind of "extraordinary circumstances" that Commerce's regulations anticipate.¹³⁰ Commerce's rejection of Celik Halat's questionnaire response because of late filing is not fair and does not follow Commerce's precedent.¹³¹
- Commerce's rejection of Celik Halat's entire questionnaire response was too harsh a penalty for an innocent and unavoidable clerical failure. The questionnaire response was filed a few minutes after the deadline because of an unexpected and unpredictable reaction that counsel had to medications prescribed in response to serious emergency surgery.¹³²
- In spite of counsel's numerous precautions, the stress of surgery and the side-effects of medication resulted in a clerical misreading of the submission time.¹³³ This was not a refusal to cooperate or obstruction of the proceeding but, rather, an extraordinary and unavoidable clerical mistake.¹³⁴
- Even if the late filing deserves some kind of sanction, that sanction must be proportionate to the error.¹³⁵ Instead, what Commerce preliminarily imposed is wholly disproportionate. Further, the sanction is not against Celik Halat's counsel, who arguable made the error, but against a fully cooperative company that did everything in its ability to participate in good faith.¹³⁶
- In exercising its discretion to impose facts available, Commerce must balance interests and equities.¹³⁷ The rejection of Celik Halat's submission has resulted in great hardship for Celik Halat and Commerce's acceptance of the late submission would not cause any party or Commerce any inconvenience.¹³⁸ The application of total AFA to Celik Halat in these extraordinary circumstances would be an abuse of discretion.¹³⁹
- If Commerce continues to apply total AFA to Celik Halat in the final determination, the company will be punished with a prohibitively high, punitive CVD rate that would bar Celik Halat from the U.S. market and deny them the opportunity to demonstrate whether their actual, calculated rate would be *de minimis*.¹⁴⁰

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.* at 3, and 5-7. Celik Halat further argues that counsel acted in good faith and to the best of his ability discussing the circumstances of his surgery and precautions to assure a timely filing in great detail. *Id.* at 5-7.

¹³⁰ *Id.*

¹³¹ *Id.* at 3-4.

¹³² *Id.* at 4.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at 4-5 and 15.

¹³⁷ *Id.* at 5.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 7.

- While Commerce has an interest in efficient operations and proceedings, Commerce’s regulations explicitly recognize that mistakes will happen, and that, in extraordinary circumstances, Commerce may and should accept an out-of-time extension request submitted in good faith.¹⁴¹ Commerce’s regulations explicitly contemplate the extension of mercy in such circumstances.¹⁴²
- Commerce has routinely granted out-of-time extensions due to extraordinary circumstances pursuant to 19 CFR 351.302.¹⁴³ Commerce has found such extraordinary circumstances to exist in similar cases of medical issues involving respondent’s counsel, as well as in less compelling cases of printer jams, confused paralegals, calendaring errors, *etc.* In light of these precedents, it would be unfair and an arbitrary and capricious abuse of the discretion that Commerce must exercise in an even-handed and fair manner.¹⁴⁴
- Even if Commerce continues to reject Celik Halat’s questionnaire response as untimely, the GOT provided information on the record regarding Celik Halat’s use and non-use of each of the programs under consideration in this investigation, as well as the benefits Celik Halat received for many of the programs, and Commerce could use this information to calculate a reasonable AFA rate.¹⁴⁵ Using this information from the GOT results in an AFA rate of 18.48 percent, rather than the exaggerated and unlawfully punitive preliminary AFA rate of 135.11 percent.¹⁴⁶
- The Court has found that Commerce must exercise its discretion to accept untimely filings in a reasonable and equitable manner.¹⁴⁷ For example, the Court has found that Commerce abused its discretion when it denied a separate rate due an untimely filed quantity and value questionnaire response because missing the established deadline was “inconsequential” at the early stage of the proceeding and would not have had any “adverse consequences for the investigation.”¹⁴⁸ The Court also found that Commerce abused its discretion when Commerce in refused to accept a late filing because the AFA rate and likely actual rate diverged widely and there was minimal burden on Commerce in accepting the filing.¹⁴⁹ Here, Celik Halat’s 90 minute delay in submitting the final versions of its response is the epitome of a harmless error that would not inconvenience Commerce, while the refusal to accept the late filing creates a substantial hardship for Celik Halat.¹⁵⁰

GOT’s Case Brief

- The approach taken by Commerce to reject the questionnaire response of Celik Halat and the supplemental response of Guney Celik and apply AFA belies the duties of good

¹⁴¹ *Id.* at 7-8 (citing 19 CFR 351.302).

¹⁴² *Id.* at 8.

¹⁴³ *Id.* (citing Celik Halat’s August 20, 2020 Submission at 6-10).

¹⁴⁴ *Id.* at 10.

¹⁴⁵ *Id.* at 11-12 (citing GOT August 7, 2020 Initial Questionnaire Response (GOT August 7, 2020 CH IQR).

¹⁴⁶ *Id.* at 12-14 and Exhibit 1.

¹⁴⁷ *Id.* at 16.

¹⁴⁸ *Id.* (citing *Artisan Mfg. Corp. v. United States*, 978 F. Supp. 2d 1334, 1339 and 1349 (CIT 2014) (*Artisan*)).

¹⁴⁹ *Id.* at 16-17 (citing *Grobtest & I-Mei Indus. (Vietnam) Co. v. United States*, 815 F. Supp. 2d 1342, 1365-66 (CIT 2012) (*Grobtest*)).

¹⁵⁰ *Id.* at 17.

faith and flexibility imposed on investigating authorities by the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Antidumping Agreement). An unbiased and objective investigating authority evaluating the exact time of the submissions in both the AD and CVD investigations could not have found that the respondent companies failed to provide the necessary information with a “reasonable period” for the sole reason that the responses were filed beyond the deadlines.¹⁵¹

- Commerce has granted out of time extensions in countless cases for circumstances including printer jams, calendaring errors, requesting an extension for the wrong questionnaire section, or failure of counsel to look on ACCESS for a new questionnaire. However, Commerce rejected responses from both respondents in this investigation for being just a few hours late, and Commerce calculated punitive preliminary margins based on AFA for both respondents, as well as the all-others companies.¹⁵²
- In *HRS Japan AB*, the WTO Appellate Body upheld that the United States acted inconsistently with Article 6.8 of the Antidumping Agreement by applying FA to exporters after Commerce rejected information submitted after the deadline without considering whether it was still submitted within a reasonable period of time.¹⁵³
- Both respondent companies acted to the best of their ability to cooperate with Commerce, and the GOT has fully cooperated with Commerce.¹⁵⁴
- The respondents’ failures to file timely submissions were based on extraordinary circumstances faced by the respondents’ counsel or advisors. Furthermore, neither respondent has past experience in countervailing duty investigations.¹⁵⁵
- Taking into account the past practices of Commerce and the fact the responses were submitted within a reasonable period (*i.e.*, a period which allows Commerce to use and verify the information), Commerce should consider the respondents’ responses and verify them prior to the final determination rather than resorting to AFA.¹⁵⁶

Petitioners’ Rebuttal Brief

- Commerce correctly rejected the respondents’ untimely questionnaire responses. Neither respondent contests that the rejected responses were not filed by their respective deadlines.¹⁵⁷
- Commerce’s regulations are clear that Commerce “will reject any untimely or unsolicited questionnaires response.”¹⁵⁸ Contrary to the GOT’s or Celik Halat’s claims, it is not unreasonable, contrary to the duties of good faith, or an abuse of discretion for

¹⁵¹ See GOT’s Case Brief at 3-4.

¹⁵² *Id.* at 4.

¹⁵³ *Id.* (citing *United States-Antidumping Measures on Certain Hot-Rolled Steel Products from Japan*, WT/DS184/AB/R (July 24, 2001) at paragraph 7.55 (*HRS Japan AB*)).

¹⁵⁴ *Id.* at 5.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ See Petitioners’ Rebuttal Brief at 2.

¹⁵⁸ *Id.* at 3 (citing 19 CFR. 351.301(c)(1); 19 CFR. 351.302(d); 19 CFR 351.104(a)(2)(iii)).

Commerce to enforce its own deadlines, and Commerce routinely rejects untimely filed submissions where a respondent fails to demonstrate good cause.”¹⁵⁹

- Commerce is well within its authority and its enforcement of time limits is reasonable.¹⁶⁰ In *Dongtai Peak Honey*, the CIT and the Federal Circuit upheld Commerce’s discretion to apply the letter of its regulations to the respondent by rejecting both the supplemental response and the extension request that were not filed by the established deadline. Moreover, the Federal Circuit has expressly rejected Celik Halat’s fairness and accuracy argument.¹⁶¹ As in *Dongtai Peak Honey*, the respondents were placed on notice regarding the deadlines for questionnaire response and the consequences of failure. Respondents’ failure to meet their respective deadlines justified the rejection of their untimely data from the record of this case.
- The GOT states, without citation, that Commerce has a past practice of granting out-of-time extensions. The GOT also fails to acknowledge that neither respondent requested an extension of time (timely or otherwise). Further, Celik Halat could have submitted an extension request before the deadline and the fact it failed to do is sufficient grounds for rejection.¹⁶²
- Commerce will not consider an extension request filed after the applicable time limit unless the party demonstrates that an extraordinary circumstances, which are defined as an “unexpected event that: (i) Could not have been prevented if reasonable measures had been taken, and; (ii) Precludes a party or its representative from timely filing an extension request through all reasonable means.”¹⁶³ Celik Halat failed to demonstrate the kind of extraordinary circumstances that would justify Commerce accepting its late submission.¹⁶⁴ Thus, Commerce appropriately denied Celik Halat’s request for reconsideration.¹⁶⁵
- The GOT’s reliance on *HRS Japan AB* is misplaced as Commerce has long recognized that U.S. law is fully compliant with the United States’ WTO obligations.¹⁶⁶

¹⁵⁹ *Id.* (citing *Xiping Opeck Food Co. v. United States*, 378 F. Supp. 3d 1340, 1347 (CIT 2019) (*Xiping Opeck Food Co.*); *Apex Frozen Foods Private Ltd. v. United States*, 144 F. Supp. 3d 1308, 1337-38 (CIT 2016), *aff’d*, 862 F.3d 1337 (Fed. Cir. 2017); *Maverick Tube Corp. v. United States*, 107 F. Supp. 3d 1308, 1331 (CIT 2015) (*Maverick Tube Corp.*); *ArcelorMittal USA LLC v. United States*, 399 F. Supp. 3d 1271, 1281 (CIT 2019) (*ArcelorMittal*); and *Dongtai Peak Honey Industry Co., Ltd. v. United States*, 777 F.3d 1343, 1351-52 (Fed. Cir. 2015) (*Dongtai Peak Honey*)).

¹⁶⁰ *Id.* at 3-4 (citing *Dongtai Peak Honey*, 777 F.3d at 1352-53; *Maverick Tube Corp.*, 107 F. Supp. 3d at 1331; *Xiping Opeck Food Co.*, 378 F. Supp. 3d at 1347).

¹⁶¹ *Id.* at 4-5 (citing *Dongtai Peak Honey Industry Co., Ltd. v. United States*, 971 F. Supp. 2d 1234, 1237-38 (CIT 2014), *aff’d* 777 F.3d at 1350-53).

¹⁶² *Id.* at 6-7 (citing *Dongtai Peak Honey*, 777 F.3d at 1351-52).

¹⁶³ *Id.* at 7 (citing 19 CFR 351.302(c)).

¹⁶⁴ *Id.* at 7-8.

¹⁶⁵ *Id.* at 8-11 (citing Commerce’s Letter, “Denial of Extension for Initial Questionnaire Response,” dated August 4, 2020; Commerce’s Letter, “Rejection of Reconsideration Request,” dated September 4, 2020; 19 CFR 351.302(c)(2); *Certain Stilbenic Optical Brightening Agents from Taiwan: Final Results of Antidumping Duty Administrative Review, 2014-2015*, 81 FR 43991 (July 6, 2016) (*Brightening Agents from Taiwan*), and accompanying IDM at 10).

¹⁶⁶ *Id.* at 10 (citing *Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber from India: Final Affirmative Determination*, 83 FR 3122 (January 23, 2018), and accompanying IDM at 20; *Corus Staal BV v. United States*, 395 F.3d 1343, 1348-49 (Fed. Cir. 2005) (*Corus Staal*); *SNR Roulements v. United States*, 341 F. Supp. 2d 1334, 1343 (CIT 2004)).

- Despite Celik Halat’s assertion, Commerce’s decision to reject Celik Halat’s submission is not inconsistent with Commerce’s regulations, general practice, or decisions of the CIT.¹⁶⁷ Celik Halat’s reliance on *Artisan* and *Grobest* is misplaced. The facts of this investigation are distinct from *Artisan*, and the CIT decided *Grobest* prior to Commerce’s revision and tightening of its rules on establishment and enforcement of its deadlines, as well as the Federal Circuit’s decision in *Dongtai Peak Honey*.¹⁶⁸
- Commerce’s application of total AFA was appropriate.¹⁶⁹ Celik Halat’s assertion that Commerce calculate program rates based on purported program usage and benefit amounts as reported by the GOT is not practical or legal. The GOT did not provide undisputed information on Celik Halat’s program usage, as the GOT refused to answer questions regarding income tax programs. Further, while the GOT claims Celik Halat did not benefit from certain programs during the POI, Celik Halat could have received benefits prior to the POI.¹⁷⁰ There is also no policy basis for Commerce to calculate benefit for Celik Halat based solely on the GOT’s data and Commerce has rejected similar claims.¹⁷¹

Commerce’s Position:

We disagree with Celik Halat and continue to find that we properly rejected its questionnaire response as untimely filed. Specifically, in the *Preliminary Determination*, we explained that, because Celik Halat failed to submit its response to section III of the questionnaire by the established deadline, Celik Halat failed to cooperate to the best of its ability to comply with Commerce’s request for information, within the meaning of section 776(b)(1) of the Act. As a result, we preliminarily determined to use an adverse inference when selecting from among the facts otherwise available to assign subsidy rates to Celik Halat, in accordance with section 776(b) of the Act.¹⁷² We included all programs upon which Commerce initiated an investigation to determine the AFA rate, other than those programs we deferred to our post-preliminary analysis.¹⁷³

¹⁶⁷ *Id.* at 11-14, 19-20 (citing 19 CFR 351.302(c); *Extension of Time Limits*, 78 FR 57790, 57793 (September 20, 2013) (*Extension of Time Limits*); *Universal Polybag Co. v. United States*, 577 F. Supp. 2d 1284, 1291-92 (CIT 2008); and *Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States*, 276 F. Supp. 2d 1371, 1380 (CIT 2003)).

¹⁶⁸ *Id.* at 12-13 (citing *Artisan*; *Grobest*; *Dongtai Peak Honey*; *ArcelorMittal*, 399 F. Supp. 3d at 1281; *Brightening Agents from Taiwan* IDM at 10).

¹⁶⁹ *Id.* at 14-16 (citing Section 776(a)(2) of the Act; *Nippon Steel*, 337 F.3d at 1382 (Fed. Cir. 2003); and *Tianjin Machinery*, 353 F. Supp. 2d at 1305).

¹⁷⁰ *Id.* at 16-17 (citing GOT August 7, 2020 IQR at 19-25).

¹⁷¹ *Id.* at 17-18 (citing *Aluminum Extrusions from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2015, 82 FR 57951 (December 8, 2017), and accompanying IDM at Comments 1 and 2; *Certain Carbon and Alloy Steel Cut-to-Length Plate from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 82 FR 8507 (January 26, 2017), and accompanying IDM at Comment 1; and *Certain Oil Country Tubular Goods from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 52301 (September 3, 2014), and accompanying IDM at Comment 3; and *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909 at 8932 (February 23, 1998)).

¹⁷² See PDM at 9.

¹⁷³ *Id.* at 9-11; and Post-Preliminary Decision Memo at 6-12.

In our post-preliminary analysis, we applied AFA to assign subsidy rates to Celik Halat for those programs we deferred from our *Preliminary Determination*, other than those we found did not provide a countervailable benefit.¹⁷⁴ For the programs on which we initiated based on the New Subsidy Allegations (NSA programs), we calculated Celik Halat's subsidy rates based on Celik Halat's timely response to our NSA questionnaire.¹⁷⁵ For the purposes of this final determination, we find no basis to alter our use of AFA pursuant to section 776(b) of the Act, or the AFA subsidy rates assigned to Celik Halat for the programs in the *Preliminary Determination* and the Post-Preliminary Decision Memo.

Celik Halat concedes that it did not file the final business proprietary and public versions of its response to section III of the initial questionnaire by 5:00 p.m. on the due date of August 10, 2020.¹⁷⁶ However, Celik Halat argues that its late filing was due to extraordinary circumstances, as defined in Commerce's regulations and past practice, and that Commerce should accept its response and calculate a countervailable subsidy rate based on that response.¹⁷⁷ In the alternative, Celik Halat argues that Commerce should use information provided in the GOT response to determine its use or non-use of various programs and to determine Celik Halat's benefit.¹⁷⁸

We disagree with Celik Halat and find that the circumstances in this case are not extraordinary circumstances within the meaning of 19 CFR 351.302(c)(2). Section 351.302(a) of Commerce's regulations provides that "{a}n untimely filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists." Section 351.302(c)(2) defines an extraordinary circumstance:

An extraordinary circumstance is an unexpected event that:

- (i) Could not have been prevented if reasonable measures had been taken, and
- (ii) Precludes a party or its representative from timely filing an extension request through all reasonable means.

In the preamble to the regulation, Commerce stated:

Examples of extraordinary circumstances include a natural disaster, riot, war, force majeure, or medical emergency. Examples that are unlikely to be considered extraordinary circumstances include insufficient resources, inattentiveness, or the inability of a party's representative to access the Internet on the day on which the submission was due.¹⁷⁹

¹⁷⁴ See Post-Preliminary Decision Memo at 6-12.

¹⁷⁵ *Id.* at 5 and 8-10.

¹⁷⁶ See Celik Halat Reconsideration Request at 2; *see also* Celik Halat's Letter, "Pre-Stressed Concrete Steel Wire Strand from Turkey: Response of Celik Halat to Petitioners' Pre-Preliminary Comments and Demand for Imposition of Total AFA, and to the Department's Denial of Reconsideration of the Rejection of its CVD Questionnaire Response," dated September 9, 2020 at 7; and Celik Halat Case Brief at 6-7.

¹⁷⁷ See Celik Halat Case Brief at 2-11 and 16-18; *see also* Celik Halat Reconsideration Request at 5-12; and Celik Halat's September 9 Letter at 2-16.

¹⁷⁸ See Celik Halat's Case Brief at 11-12 and Exhibit 1 (citing GOT August 7, 2020 CH IQR).

¹⁷⁹ See *Extension of Time Limits*, 78 FR at 57793.

In this case, the cause of the late filing was not a medical emergency or counsel’s medical situation. Rather, Celik Halat’s counsel set an alarm reminding him to file a submission to Commerce, but the alarm was set at the wrong time—after the deadline had already expired. The preamble to the “extraordinary circumstances” regulation specifically says that inattentiveness is not an extraordinary circumstance.¹⁸⁰ The late filing could have been prevented if reasonable measures had been taken—for example, setting the alarm at the correct time or planning to file the final bracketing version of documents earlier in the day on the due date. It is counsel’s responsibility to put in place backup systems to ensure that submissions are timely or request for an extension of the deadline.¹⁸¹

As Celik Halat notes, there have been instances in prior cases (although not all) in which Commerce has accepted certain late filings resulting from law firm mistakes. In some of those cases, Commerce provided the law firm with a warning following the missed deadline. However, 19 CFR 351.302 expressly states that an untimely filed extension request will not be considered unless the party demonstrates that an extraordinary circumstance exists. Commerce intends to adhere strictly to the regulation that we promulgated. It takes a great deal of time and resources for Commerce to conduct administrative proceedings, and it is important that our procedures be as dependable and timely as possible. Moreover, the instant situation does not constitute the sort of extraordinary circumstances envisioned by Commerce when it promulgated the time limit regulations under 19 CFR 351.302.¹⁸² Thus, we find no basis to reverse our rejection of Celik Halat’s untimely filed submission.

We disagree with Celik Halat that the Court’s decision in *Artisan* provides relevant guidance here.¹⁸³ In *Artisan*, Commerce rejected a respondent’s timely filed separate rate application as well as its untimely filed quantity and value response, denying the applicant’s separate rate request and assigning the applicant a margin based on AFA.¹⁸⁴ The Court, in determining that Commerce abused its discretion, noted that Commerce was ambiguous in stating its policy on time extensions for the information at issue and that its determination was based on “*the particular circumstances of this investigation.*”¹⁸⁵ Thus, the facts in *Artisan* stand in contrast to those present here, where Commerce: (1) established clear, unambiguous deadlines for submitting the requested information; and (2) notified interested parties of the consequences for untimely filings.

We also disagree that the Court’s decision in *Grobest* is relevant. Commerce and the courts have noted repeatedly that *Grobest* pre-dates Commerce’s revision of its rules on the

¹⁸⁰ *Id.*

¹⁸¹ Celik Halat requested, and we granted, a partial extension of time to file its response to Commerce’s Initial CVD Questionnaire. See Commerce’s Letter, “Investigation of Prestressed Concrete Steel Wire from the Republic of Turkey: Partial Extension for Initial Questionnaire Response,” dated July 27, 2020. On August 4, 2020, Celik Halat requested an additional one-week extension which was denied due to time constraints. See Celik Halat’s Letter, “Pre-stressed Concrete Steel Wire Strand from Turkey (C-489-843): Extension Request of Celik Halat ve Tel Sanayi A.S. for Section III Response in the CVD Investigation,” dated August 4, 2020; and Commerce’s Letter, “Investigation of Prestressed Concrete Steel Wire from the Republic of Turkey: Denial of Extension for Initial Questionnaire Response, dated August 4, 2020.

¹⁸² *Id.*

¹⁸³ *Id.* at 14.

¹⁸⁴ See *Artisan*, 978 F. Supp. 2d at 1337-1340.

¹⁸⁵ *Id.* at 1344, 1347-1348 (emphasis in original).

establishment and enforcement of deadlines as well as subsequent Federal Circuit precedent.¹⁸⁶ Further, even if the decision were applicable, *Grobest* involved the late filing of a separate rate certification that was consistent with information provided to Commerce in several earlier administrative reviews of the same company and was unlikely to prompt further investigation by Commerce.¹⁸⁷ The missing information in this case is the not minor or incidental to Commerce's subsidy rate calculation; instead, the section III initial questionnaire response that would have established benefit and usage information for all of the initiated programs in an investigation. Thus, because *Grobest* was based upon earlier, less-stringent regulations, not to mention its facts are inapposite to the facts at issue here, we find that is not applicable to the situation present in this case.

We also disagree with Celik Halat that it is appropriate to use information from the GOT to determine Celik Halat's use or non-use and the benefit amounts for various programs as AFA. The "Selection of the AFA Rate" section of the PDM sets forth Commerce's methodology for determining the AFA rate, and we are not persuaded to depart from that methodology here.¹⁸⁸

Moreover, we disagree with the GOT that *HRS Japan AB* is controlling in this investigation. WTO panel and Appellate Body conclusions are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the Uruguay Round Agreements Act (URAA).¹⁸⁹ Congress was very clear in the URAA and its legislative history that WTO reports have no application to U.S. law absent the United States agreeing to such application. In no case do WTO panel or Appellate Body dispute reports limit automatically Commerce's discretion in applying the statute in an AD or CVD proceeding.¹⁹⁰ Put simply, WTO reports "do not have any power to change U.S. law or to order such a change."¹⁹¹ Commerce has conducted this investigation in accordance with the Act and Commerce's regulations, and our CVD laws are consistent with our WTO obligations.

Consequently, for the reasons discussed above, we continue to assign AFA subsidy rates to Celik Halat for all programs on which we initiated that Celik Halat could have conceivably used for purposes of the final determination.

¹⁸⁶ See, e.g., *ArcelorMittal*, 399 F. Supp. 3d at 1281; and *Brightening Agents from Taiwan* IDM at 10.

¹⁸⁷ See *Grobest*, 815 F.Supp.2d at 1366-67.

¹⁸⁸ See PDM at 10-14.

¹⁸⁹ See *Corus Staal*, 395 F.3d at 1347-49 (Fed. Cir. 2005), accord *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007); and *NSK Ltd. v. United States*, 510 F.3d 1375, 1379-80 (Fed. Cir. 2007).

¹⁹⁰ See 19 USC 3538(b)(4) (implementation of WTO reports is discretionary) (Section 129(b)(4) of the URAA).

¹⁹¹ See SAA at 659.

VIII. RECOMMENDATION

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



Agree



Disagree

12/7/2020

X



Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

Appendix

AFA Rate Calculation for Celik Halat	
Program Name	AFA Rate (%)
Direct Tax Exemptions and Reductions	
Deductions from Taxable Income for Export Revenue	0.11 ¹⁹²
Corporate Income Tax Deductions for R&D Expenses	0.08 ¹⁹³
Loan Programs	
Rediscount Program	1.96 ¹⁹⁴
Investment Credit for Export	8.82 ¹⁹⁵
Export-Oriented Business/Export Oriented Working Capital Credit Program	8.82 ¹⁹⁶
Pre-Export Credit Program	8.82 ¹⁹⁷
Export Buyer's Credits	8.82 ¹⁹⁸
Grant Programs	
Foreign Fair Support	0.03 ¹⁹⁹
1501 TUBITAK Industrial R&D Projects Grant Program	0.04 ²⁰⁰
Insurance Premium Support	0.01 ²⁰¹
Foreign Market Research	2.11 ²⁰²
1511 – Research Technology Development and Innovation Projects	0.01 ²⁰³
Renewable Energy Support Mechanism	2.11 ²⁰⁴
LTAR Programs	
Natural Gas for LTAR	3.30 ²⁰⁵

¹⁹² See Guney Celik Final Calculation Memorandum.

¹⁹³ *Id.*

¹⁹⁴ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 47479 (October 12, 2017) (CWP Turkey 2015), and accompanying IDM at 6.

¹⁹⁵ See *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (WLP Investigation), and accompanying IDM at 8.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ See Guney Celik Final Calculation Memorandum.

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² See *Pasta from Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2014*, 81 FR 52825 (August 10, 2016) (*Pasta from Turkey 2014 Prelim*), and accompanying PDM at 6, unchanged in *Pasta from Turkey: Final Results of Countervailing Duty Administrative Review; 2014*, 81 FR 90775 (December 15, 2016) (*Pasta from Turkey 2014 Final*).

²⁰³ See Guney Celik Final Calculation Memorandum

²⁰⁴ See *Pasta from Turkey 2014 Prelim* PDM at 6, unchanged in *Pasta from Turkey 2014 Final*.

²⁰⁵ See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 16056 (March 20, 2020), and accompanying IDM at 4, unchanged in *Steel Concrete Reinforcing Bar from the Republic of Turkey: Correction to Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 20665 (April 14, 2020)..

Land for LTAR	0.54 ²⁰⁶
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Tax Programs	
Regional Investment Incentive Scheme—Income Tax Deductions	0.63 ²⁰⁷
Regional Investment Incentive Scheme—Social Security Premium Support	0.02 ²⁰⁸
Regional Investment Incentive Scheme—Customs Duties	14.01 ²⁰⁹
Corporate Income Tax Deductions for R&D Expenses	0.08 ²¹⁰
Exemption from Property Tax	14.01 ²¹¹
Inward Processing Certificates	14.01 ²¹²
Free Zones Law No. 3218: Corporate Income Tax Exemption	14.01 ²¹³
Free Zones Law No. 3218: Exemption from Income Tax for Workers' Wages	14.01 ²¹⁴
Tax and Fee Incentives for Renewable Energy	14.01 ²¹⁵
Large Scale Investment Incentive Scheme, Strategic Investment Incentive Scheme, and General Investment Incentive Scheme	14.01 ²¹⁶
Project-Based Investment Incentive Scheme	14.01 ²¹⁷
Total AFA Rate:	158.39%

²⁰⁶ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*HWR from Turkey Investigation*), and accompanying IDM at 15.

²⁰⁷ See Guney Celik Prelim Calculation Memorandum.

²⁰⁸ *Id.*

²⁰⁹ See *WLP Investigation* IDM at 8.

²¹⁰ *Id.*

²¹¹ See *WLP Investigation* IDM at 8.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

AFA Rate Calculation for Guney Celik	
Program Name	AFA Rate (%)
Loan Programs	
Rediscount Program	1.96 ²¹⁸
Investment Credit for Export	8.82 ²¹⁹
Tax Programs	
Exemption from Property Tax	14.01 ²²⁰
LTAR Programs	
Wire Rod for LTAR	4.43 ²²¹
Land for LTAR	0.54 ²²²
Total AFA Rate:	29.76

²¹⁸ See CWP Turkey 2015 IDM at 6.

²¹⁹ See WLP Investigation IDM at 8.

²²⁰ See WLP Investigation IDM at 8.

²²¹ See CWP Turkey 2015 IDM at 6-7.

²²² See HWR from Turkey Investigation IDM at 15.