



C-489-502  
Administrative Review  
POR: 01/01/18 - 12/31/18  
Public Document  
E&C/OIII: JL

January 13, 2021

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

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

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

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## I. SUMMARY

The Department of Commerce (Commerce) analyzed the case and rebuttal briefs submitted by interested parties in the administrative review of the countervailing duty (CVD) order on circular welded carbon steel pipes and tubes from the Republic of Turkey (Turkey), covering the period of review (POR) January 1, 2018 through December 31, 2018. This review covers 20 producers/exporters of subject merchandise, and we selected the Borusan Companies<sup>1</sup> as the sole mandatory respondent.<sup>2</sup>

As a result of this analysis, we have not made changes to the *Preliminary Results* with respect to the Borusan Companies. However, as discussed below, we have made changes to the net subsidy rate assigned to the companies not selected for individual review. We recommend that you approve the positions described in the “Discussion of Comments” section of this memorandum.

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

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<sup>1</sup> We use “Borusan Companies” to refer to the cross-owned entity that includes the following companies: Borusan Holding A.S. (also referred to as Borusan Holding), Borusan Mannesmann Yatirim Holding, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), and Borusan Istikbal Ticaret T.A.S. (Istikbal).

<sup>2</sup> See *Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Partial Rescission; Calendar Year 2018*, 85 FR 18917 (April 3, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



**Comment 1:** Whether to Include Purchases of All Series Grades of Hot-Rolled Steel (HRS) in the HRS Benchmark to Measure the Adequacy of Remuneration for HRS

**Comment 2:** Whether Commerce Should Include Istikbal's Export Credit Bank of Turkey (Eximbank) Loan in the Benefit Analysis for Short Term Pre-Shipment Rediscount Program

## **II. BACKGROUND**

On April 3, 2020, Commerce published the *Preliminary Results* of this administrative review.<sup>3</sup> On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.<sup>4</sup> On June 22, 2020, Nucor Tubular Products Inc. (the petitioner), timely filed a case brief.<sup>5</sup> On June 29, 2020, the Borusan Companies timely filed a rebuttal brief.<sup>6</sup> On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60 days.<sup>7</sup> On October 28, 2020, Commerce extended the deadline for the final results to January 15, 2021.<sup>8</sup>

## **III. SCOPE OF THE ORDER**

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

## **IV. PERIOD OF REVIEW**

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

## **V. NON-SHIPMENT CLAIMS**

In the *Preliminary Results*, we determined that Cayirova Boru Sanayi ve Ticaret A.S., Yucel Boru ve Profil Endustrisi A.S., and Yucelboru Ihracat Ithalat ve Pazarlama A.S. (collectively, the Yucel Companies) and Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) had reviewable entries during the POR, and, as a result, we included the Yucel Companies and Erbosan among the firms to which we applied the non-selected rate.<sup>9</sup> Interested parties raised no issues in their

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<sup>3</sup> See *Preliminary Results*, 85 FR at 18917.

<sup>4</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments due to COVID-19," dated April 24, 2020.

<sup>5</sup> See Petitioner's Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey: Case Brief and Request to Participate in Hearing," dated June 22, 2020 (Petitioner's Case Brief).

<sup>6</sup> See Borusan Companies' Letter, "Circular Welded Carbon Steel Pipe and Tube from Turkey, Case No. C-489-502: BMB's Rebuttal Brief," dated June 29, 2020 (Borusan Companies' Rebuttal Brief).

<sup>7</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

<sup>8</sup> See Memorandum, "Circular Welded Carbon Steel Pipes and Tubes from Turkey: Extension of Deadline for Final Results of Countervailing Duty Administrative Review," dated October 28, 2020.

<sup>9</sup> See *Preliminary Results*, 85 FR at 18919, and PDM at 6 and 11.

case briefs regarding these findings. Further, we have made no changes in these final results regarding our findings that the Yucel Companies and Erbosan had reviewable entries during the POR or our decision to assign these companies the non-selected rate.

On June 28, 2019, the Borusan Companies timely submitted a letter to Commerce certifying that Istikbal had no entries, exports, or sales of subject merchandise during the POR.<sup>10</sup> In the *Preliminary Results*, we determined that we would not rescind the review of Istikbal, which we preliminarily determined to be part of the cross-owned entity, the Borusan Companies, the mandatory respondent in this review.<sup>11</sup> Interested parties raised no issues in their case briefs regarding this finding, and Commerce has made no changes to this finding in these final results.

## VI. NON-SELECTED RATE

The Tariff Act of 1930, as amended (the Act), and Commerce's regulations do not address the establishment of a rate to be applied to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. Generally, when determining the rate for such respondents in an administrative review, Commerce looks to section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs Commerce to use the average of the individually calculated rates as the all-others rate, excluding rates which are zero, *de minimis*, or based entirely on facts available. Thus, the Act articulates a preference not to derive the all-others rate from rates which are zero, *de minimis*, or based entirely on facts available.

Accordingly, Commerce's practice in administrative reviews for determining the rate for respondents not selected for individual examination is to average the weighted-average net subsidy rates for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.<sup>12</sup> However, section 705(c)(5)(A)(ii) of the Act provides that, where all the individually calculated rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the all-others rate, including averaging the estimated weighted-average net subsidy rates determined for the exporters and producers individually investigated.

In the *Preliminary Results*, we found that a "reasonable method" was to apply the *de minimis* net subsidy rate calculated for those firms subject to review that were not selected for individual examination.<sup>13</sup> However, upon further review, we have revised our method for determining the net subsidy rate applied to firms not selected for individual review to conform to Commerce's current practice in situations where all the individually calculated rates are zero, *de minimis*, or based entirely on facts available.<sup>14</sup>

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

<sup>11</sup> See *Preliminary Results* PDM at 6.

<sup>12</sup> See, e.g., *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386, 37387 (June 29, 2010).

<sup>13</sup> See *Preliminary Results*, 85 FR at 18919, and PDM at 11.

<sup>14</sup> See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of*

As explained above, when determining the rate for respondents not selected for individual examination in an administrative review, Commerce looks to section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. That statutory provision authorizes Commerce to use “any reasonable method” to determine the all-others rate where all the individually calculated rates are zero, *de minimis*, or based entirely on facts available. Neither the Act nor Commerce’s regulations specify or express a preference for the method that Commerce must employ in such situations in CVD proceedings. We recognize that the Statement of Administrative Action (SAA) states the following:

Section 219(b) of the bill adds new section 735(c)(5)(B) which provides an exception to the general rule if the dumping margins for all of the exporters and producers that are individually investigated are determined entirely on the basis of the facts available or are zero or *de minimis*. In such situations, Commerce may use any reasonable method to calculate the all others rate. The expected method in such cases will be to weight-average the zero and *de minimis* margins and margins determined pursuant to the facts available, provided that volume data is available. However, if this method is not feasible, or if it results in an average that would not be reasonably reflective of potential dumping margins for non-investigated exporters or producers, Commerce may use other reasonable methods.<sup>15</sup>

However, the above-referenced section of the SAA describing an “expected method” pertains to antidumping duty (AD) proceedings, whereas the section of the SAA covering the all-others rate in CVD investigations states:

Section 264(b)(2) of the bill amends section 705(c) of the Act to establish rules for calculating the all-others rates and the country-wide subsidy rate. Where Commerce has examined a limited number of individual companies, section 705(c)(5)(A)(i) provides that the all-others rate would be an amount equal to the weighted average individual countervailable subsidy rates established for exporters and producers individually investigated, exclusive of zero and *de minimis* rates and any rates determined entirely on the basis of the facts available. Where the countervailable subsidy rates for all exporters and producers examined are zero or *de minimis*, or are determined entirely on the basis of the facts available, section 705(c)(5)(A)(ii) authorizes Commerce to use any reasonable method to establish an all-others rate.<sup>16</sup>

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

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*Countervailing Duty Administrative Review*; 2017, 85 FR 42353, 42354-42355 (July 14, 2020) (*Rebar from Turkey 2017*) and accompanying Issues and Decision Memorandum (IDM) at Comment 5.

<sup>15</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) (SAA) at 873.

<sup>16</sup> *Id.* at 942.

we find that the restriction in the AD context to an “expected method” does not apply to the “reasonable method” approach in the CVD context.

We recognize that, in *Albemarle*, the Court of Appeals for the Federal Circuit (Federal Circuit) held that Commerce should assign the *de minimis* dumping margins calculated for mandatory respondents in an administrative review to the firms not selected for individual review.<sup>17</sup> However, the Federal Circuit’s opinion in *Albemarle* involved an AD case, not a CVD case, and focused specifically on the “expected method” language in the AD section of the SAA.<sup>18</sup> Thus, not only did *Albemarle* involve an AD case specifically, but a key factor in the Federal Circuit’s decision was the “expected method” articulated in the AD section of the SAA, which, as noted above, is entirely absent in the CVD section of the SAA.<sup>19</sup>

Additionally, there are methodological distinctions between AD and CVD practices that make the equivalence problematic in terms of the premises behind the Federal Circuit’s decision in *Albemarle*, distinctions that argue against presuming that *Albemarle* and the “expected method” have straightforward application to CVD proceedings. AD and CVD practices are conducted pursuant to distinct statutory authorities to address different types of unfair trade.<sup>20</sup> In *Albemarle*, the Federal Circuit focused on the pricing behavior of companies in the context of alleged dumping.<sup>21</sup> However, in the CVD context, Commerce’s concern is with government subsidization and the extent to which different companies may use or benefit from the subsidy programs. Where the CVD case records show a history of subsidization for a certain respondent, there is a reasonable chance that the respondent continues to receive and benefit from that subsidy. Particularly in the case of a non-recurring subsidy, such as a grant, for which Commerce normally allocates a benefit stream across a number of years corresponding to the average useful life of the respondent’s capital assets, there is every expectation that the respondent continues to benefit from segment to segment of a CVD proceeding until the allocation period ends.<sup>22</sup> Similarly, for a recurring subsidy, such as the provision of an input for less than adequate remuneration (LTAR), for which Commerce determines benefit on a year-specific basis, there is a reasonable expectation of continuing use by a respondent for whom the proceeding records show repetitive use of the program. If the mandatory respondents in a given segment are found not to use or not to benefit from a certain subsidy, their rates may not be reflective of the subsidy rate for another company not currently under individual examination but found in a prior segment to have benefited from the same subsidy. This would be particularly true where the mandatory respondents in the current segment have *de minimis* rates under that program, but the other company was significantly above *de minimis* in the prior segment for the same program.

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<sup>17</sup> See *Albemarle Corp. & Subsidiaries v. United States*, 821 F. 3d 1345, 1353 (Fed. Cir. 2016) (*Albemarle*).

<sup>18</sup> *Id.* at 1351-54.

<sup>19</sup> *Id.* at 1354 (“Congress has spoken directly to this precise situation in § 1673d(c)(5)(B), and the SAA unambiguously provides that the expected method to calculate the separate rate in such circumstances is to average the individually examined respondents’ *de minimis* margins.”) (citing SAA at 873).

<sup>20</sup> See *Guangdong Wireking Housewares & Hardware Co. v. United States*, 745 F. 3d 1194, 1203 (Fed. Cir. 2014).

<sup>21</sup> See *Albemarle*, 821 F. 3d at 1353, 1356.

<sup>22</sup> The average useful life for non-recurring subsidies in this proceeding is 15 years. See *Preliminary Results PDM* at 7. As explained in section VII.A. of this memorandum, no change has been made to the allocation period in these final results.

Accordingly, consistent with Commerce’s practice as recently articulated in other CVD proceedings including *Rebar from Turkey 2017*,<sup>23</sup> in these final results, we have determined that a “reasonable method” in the CVD context to derive the rate applicable to companies not individually examined when all the rates of selected mandatory respondents are zero, *de minimis*, or based entirely on facts available, is to assign to the non-selected respondents the average of the most recently determined rates in this CVD proceeding that are not zero, *de minimis*, or based entirely on facts available. Under this approach, if a non-selected respondent has its own calculated rate that is contemporaneous with or more recent than such previous rates, Commerce has found it appropriate to apply that calculated rate to that non-selected respondent, even when that rate is zero or *de minimis*.<sup>24</sup> Further, under this approach, companies for which no individual rates have been calculated previously, we assign the average of the most recently determined above-*de minimis* net subsidy rates in the CVD proceeding.<sup>25</sup>

Thus, following the approach described above, we examined whether Commerce had previously calculated a company-specific net subsidy rate for any of the firms not selected for individually review and whether such company-specific net subsidy rate was contemporaneous with or more recent than the most recently determined rates in this CVD proceeding that are not zero, *de minimis*, or based entirely on facts available. Commerce determined above-*de minimis* rates that were not based entirely on facts available in the prior administrative review conducted in this proceeding, covering the period of review January 1, 2017, through December 31, 2017.<sup>26</sup> Our examination indicates that the firms not selected for individual examination in this review lack company-specific net subsidy rates that are contemporaneous with or more recent than the most recently determined rates in *Pipe and Tube from Turkey 2017*, or have not previously been subject to an administrative review in this proceeding. Therefore, in keeping with the approach in the *Rebar from Turkey 2017*, we are assigning to the firms not selected for individual review a net subsidy rate of 1.18 percent *ad valorem*, which is the average of the above-*de minimis* net subsidy rates calculated for the mandatory respondents in *Pipe and Tube from Turkey 2017*.

## VII. SUBSIDIES VALUATION INFORMATION

### A. Allocation Period

Commerce has 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 Results*. For a description of the allocation period and the methodology used for these final results, see the *Preliminary Results* and accompanying PDM at 7.

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<sup>23</sup> See *Rebar from Turkey 2017*, 85 FR at 42354-55 and accompanying IDM at Comment 5. We note that Commerce also followed the same approach for “reasonable method” in *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review in Part; 2015*, 82 FR 57574 (December 6, 2017), and accompanying Preliminary Decision Memorandum at 5-6, unchanged in the final.

<sup>24</sup> See *Rebar from Turkey 2017*, 85 FR at 42354-55.

<sup>25</sup> *Id.*

<sup>26</sup> See *Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part; Calendar Year 2017*, 84 FR 56173, 56175 (October 21, 2019) (*Pipe and Tube from Turkey 2017*) and accompanying IDM at 5-6.

## B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Results* for attributing subsidies. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary attribution of subsidies. For a description of the methodologies used for these final results, *see* the *Preliminary Results* and accompanying PDM at 7-10.

## C. Loan Benchmark and Discount Interest Rates

Commerce has made no changes to benchmarks or discount rates used in the *Preliminary Results*. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary benchmarks or discount rates. For a description of the benchmarks and discount rates used for these final results, *see* the *Preliminary Results* and accompanying PDM at 10.

## D. Denominator

Commerce has made no changes to the denominators used in the *Preliminary Results*. No issues were raised by interested parties in case briefs, nor was any new factual information provided that would lead us to reconsider our preliminary finding regarding the appropriate denominators. For a description of the denominators used for these final results, *see* the *Preliminary Results* and accompanying PDM at 9-10.

# VIII. ANALYSIS OF PROGRAMS

## A. Programs Determined to be Countervailable

### 1. Provision of Hot-Rolled Steel (HRS) for LTAR

The petitioner submitted comments in its case brief, and the Borusan Companies submitted rebuttal comments regarding the HRS benchmark in the final results, which are addressed in Comment 1. Commerce did not make any changes to this program. For the description, analysis, and calculation methodology for this program, *see* the *Preliminary Results*.<sup>27</sup> The final program rate for the Borusan Companies is 0.28 percent *ad valorem*.<sup>28</sup>

### 2. Deduction from Taxable Income for Export Revenue

No issues were raised by interested parties regarding this program. Commerce did not make any changes to this program. For the description, analysis, and calculation methodology for this

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<sup>27</sup> *See Preliminary Results* PDM at 11-15.

<sup>28</sup> *See* Memorandum, “Preliminary Calculations for Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), and Borusan Istikbal Ticaret T.A.S. (Istikbal), (collectively, the Borusan Companies),” dated March 27, 2020 (Borusan Companies Preliminary Calculation Memorandum), which is unchanged in these final results.

program, *see the Preliminary Results*.<sup>29</sup> The final program rate for the Borusan Companies is 0.04 percent *ad valorem*.<sup>30</sup>

### 3. Export Financing: Short-Term Pre-Shipment Rediscount Program

The petitioner submitted comments in its case brief, and the Borusan Companies submitted rebuttal comments regarding this program, which are addressed in Comment 2. Commerce did not make any changes to this program. For the description, analysis, and calculation methodology for this program, *see the Preliminary Results*.<sup>31</sup> The final program rate for the Borusan Companies is 0.05 percent *ad valorem*.<sup>32</sup>

## **B. Programs Determined Not to Confer a Measurable Benefit During the POR**

### 1. Inward Processing Certificate Duty Exemption Program

No issues were raised by interested parties regarding this program. Commerce did not make any changes to this program. For the description, analysis, and calculation methodology for this program, *see the Preliminary Results*.<sup>33</sup> The final program rate for the Borusan Companies is 0.005 percent *ad valorem*.

### 2. Various Programs

The Borusan Companies reported receiving benefits under various programs, some of which were specifically alleged, and some were self-reported. Based on the record evidence, we determine that the benefits from certain programs: (1) were fully expensed and thus not allocable to the POR; or (2) if allocable to the POR, are less than 0.005 percent *ad valorem* in the POR when attributed to the respondent's applicable sales.

Consistent with Commerce's practice,<sup>34</sup> we have not included these programs in our subsidy rate calculations for the Borusan Companies.<sup>35</sup>

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

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<sup>29</sup> See *Preliminary Results* PDM at 15-16.

<sup>30</sup> See Borusan Companies Preliminary Calculation Memorandum, which is unchanged in these final results.

<sup>31</sup> See *Preliminary Results* PDM at 16-17.

<sup>32</sup> See Borusan Companies Preliminary Calculation Memorandum, which is unchanged in these final results.

<sup>33</sup> See *Preliminary Results* PDM at 17-19.

<sup>34</sup> See e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) and accompanying IDM at 32, footnote 144.

<sup>35</sup> See Borusan Companies Preliminary Calculation Memorandum, which is unchanged in these final results.



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

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

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

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

## IX. ANALYSIS OF COMMENTS

### **Comment 1:** Whether to Include Purchases of All Series Grades of HRS in the HRS Benchmark to Measure the Adequacy of Remuneration for HRS

#### *Petitioner's Case Brief*<sup>36</sup>

- In the *Preliminary Results*, Commerce erred in accurately assessing actual HRS market prices when it excluded the Borusan Companies' purchases of X-70 series grade HRS from the HRS for LTAR benchmark calculations.
- It is Commerce's practice to calculate a single HRS benchmark and not to differentiate based on grade. It is critical that Commerce use a single HRS benchmark, that includes all the Borusan Companies' private HRS purchases, to provide the most accurate estimate of actual HRS market prices.
- Commerce should follow the approach taken in the *OCTG from Turkey Investigation* and examine the provision of all HRS for LTAR in a manner that does not differentiate by grade.<sup>37</sup>
- Commerce's regulations do not require the products used in an LTAR benchmark to be identical for them to be comparable.<sup>38</sup>
- Commerce should compare all the Borusan Companies' HRS purchases from government authorities against all of its HRS purchases from private suppliers.
- In the interest of comparability, Commerce cannot make adjustments that result in differences between how specificity is defined and how benefit is measured for the same LTAR program.

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<sup>36</sup> See Petitioner's Case Brief at 3-15.

<sup>37</sup> See Petitioner's Case Brief at 11-12 (citing to 19 CFR 351.525(b)(5) and *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey Investigation*) and accompanying IDM at 42).

<sup>38</sup> See Petitioner's Case Brief at 11 (citing to *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) (*Pipe and Tube from Turkey 2015*) and accompanying IDM at 16; *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) (*Softwood Lumber from Canada*) and accompanying IDM at 115; *Hot-Rolled Carbon Steel Flat Products from India: Final Results and Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 20923, (May 6, 2009) (*HRS from India*) and accompanying IDM at 2); and *Archer Daniels Midland Co. v. United States*, 968 F. Supp. 2d 1269, 1279 (CIT 2014) (*Archer Daniels*)).

Thus, Commerce should use a single HRS benchmark, inclusive of all grades of HRS, in the final results.

- In finding the provision of HRS for LTAR program to be specific in the *Preliminary Results*, Commerce stated that the program was specific to all industries/enterprises that use HRS without any reference to grade. Consistent with its specificity finding, Commerce should utilize a single HRS benchmark that includes all HRS purchases regardless of grade.
- The Borusan Companies failed to demonstrate that the HRS purchases they wish to exclude could not be used to produce subject merchandise. There is evidence on the record that X-70 series grade HRS could be used to produce subject merchandise, but that is not used due to its higher cost.<sup>39</sup> The mere fact that X-70 series grade HRS is more expensive is not a reason to exclude those purchases from a benchmark calculation.
- In the *OCTG Turkey CVD Investigation*, Commerce initiated an investigation into the provision of HRS for LTAR, not a specific type of HRS.<sup>40</sup> Thus, Commerce should follow that approach in this proceeding and examine the provision of all HRS for LTAR and not differentiate by grade.<sup>41</sup>
- In *Pipe and Tube from Turkey 2015*, Commerce stated that its inclusion of all available transactions purchased from private parties “produces a conservative benchmark” and that “the HRS purchased by the Tosçelik Companies from Erdemir and the HRS imported or purchased by the Tosçelik Companies from private parties are of the identical product (HRS).” Thus, in *Pipe and Tube from Turkey 2015*, Commerce found that the proper HRS benchmark was that of a single product that encompassed all grades and sizes.<sup>42</sup>
- In *Pipe and Tube from Turkey 2015*, Commerce stated that “it is not required to rely upon an LTAR benchmark that is identical to the product sold by the government authority, and the application of such a standard would likely invalidate many, if not all, potential LTAR benchmarks from consideration.”<sup>43</sup> Thus, Commerce should follow the approach in *Pipe and Tube from Turkey 2015* when deriving the HRS benchmark.
- Under 19 CFR 351.511, Commerce is not instructed to alter the products covered under an LTAR program, but rather to account for adjustments like freight costs and delivery charges. Thus, in the interest of comparability, Commerce cannot make adjustments that result in differences between how specificity is defined and how benefit is measured for the same LTAR program.
- In *Citric Acid from China*, Commerce determined there is no requirement to calculate a benchmark price “solely reflective of a respondent’s particularities,” as doing so would prevent Commerce from approximating the market price.<sup>44</sup>
- In *Softwood Lumber from Canada*, Commerce noted that under 19 CFR 351.511(a)(2)(i), in choosing such in-country prices, it will consider factors affecting comparability. However, the legal requirements governing Commerce’s selection of benchmarks do not require perfection.<sup>45</sup>

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<sup>39</sup> See Petitioner’s Case Brief at 11 (citing Memorandum, “Verification of Information submitted by Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, the Borusan Companies),” dated March 10, 2020 (Borusan Companies Verification Report) at 8).

<sup>40</sup> *Id.* at 11-12 (citing *OCTG Turkey CVD Investigation* IDM at 42).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 11 (citing *Pipe and Tube from Turkey 2015* IDM at Comment 3).

<sup>43</sup> *Id.* (citing *Pipe and Tube from Turkey 2015* IDM at 16).

<sup>44</sup> *Id.* at 12 (citing *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78799 (December 31, 2014) (*Citric Acid from China*), and accompanying IDM at 68).

<sup>45</sup> *Id.* at 14 (citing *Softwood Lumber from Canada* IDM at 10).

- In *Archer Daniels*, the U.S. Court of International Trade (CIT) rejected the respondent's attempt to force Commerce to use "benchmark prices that are nearly identical to respondent's reported purchases because the regulation does not manifest such a stringent standard."<sup>46</sup> Thus, Commerce should not unduly restrict its HRS benchmark such that it only compares HRS purchases from government authorities and private suppliers that are identical.
- In *HRS from India*, Commerce found that there is no requirement that the benchmark used in Commerce's LTAR analysis be identical to the good sold by the foreign government. Thus, consistent with its own practice, Commerce should use a single HRS benchmark that includes X-70 series grade HRS.<sup>47</sup> Commerce should calculate a single HRS benchmark that includes the Borusan Companies' purchases of HRS from private parties, regardless of the grade differences.
- Therefore, in the final results, consistent with Commerce's regulations and practice, Commerce should include all the Borusan Companies' HRS purchases, regardless of grade, in derivation of the HRS benchmark.

#### *Borusan Companies' Rebuttal Arguments*<sup>48</sup>

- Consistent with Commerce's regulations and prior practice, Commerce should continue to exclude X-70 series grade HRS from the HRS benchmark when calculating any benefit received under the HRS for LTAR Program.
- Commerce's approach in the *Preliminary Results* regarding the HRS for LTAR benchmark is based on numerous steel pipe from Turkey cases and the record in this administrative review demonstrates that Commerce should continue to exclude X-series grade HRS from the HRS benchmark when calculating any benefit the Borusan Companies received under this program.
- The petitioner failed to address Commerce's long-standing practice with respect to this issue. Namely, Commerce has conducted several Turkish CVD proceedings in which it declined to compare non-X series grade HRS to a benchmark that included X-series grade HRS.<sup>49</sup>

<sup>46</sup> *Id.* at 13 (citing *Archer Daniels Midland Co.*, 968 F. Supp. 2d at 1279).

<sup>47</sup> *Id.* at 13 (citing *HRS from India* IDM at Comment 12).

<sup>48</sup> See Borusan Companies' Rebuttal Brief at 3-10.

<sup>49</sup> *Id.* at 5-6 (citing *Oil Country Tubular Goods from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review*, in Part, 82 FR 46767 (October 6, 2017), and accompanying PDM at 16, unchanged in *Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*, 83 FR 6511 (February 14, 2018) (*OCTG from Turkey 2015*), and accompanying IDM at 4; *Oil Country Tubular Goods From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2016*, 83 FR 51440 (October 11, 2018), and accompanying PDM at 16, unchanged in *Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2016*, 84 FR 11504 (March 27, 2019) (*OCTG from Turkey 2016*), and accompanying IDM at 5; *Large Diameter Welded Pipe From the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 30697 (June 29, 2018), and accompanying PDM at 11, unchanged in *Large Diameter Welded Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019) (*LDWP from Turkey Investigation*), and accompanying IDM at 4; and *Welded Line Pipe from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 83 FR 1237 (January 10, 2018) (*WLP Turkey Prelim*), and accompanying PDM at 11, unchanged in *Welded Line Pipe from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34113 (July 19, 2018) (*Line Pipe from Turkey 2015*), and accompanying IDM at 3).

- Record evidence indicates that the Borusan Companies do not purchase X-70 series grade HRS from Erdemir and Isdemir and that Erdemir and Isdemir do not produce X-70 series grade HRS.
- The Borusan Companies explained that it uses X-70 series grade HRS to produce large diameter line pipe because it is produced in accordance with specific customer requirements, which relate to the demands of the particular line pipe project.<sup>50</sup>
- The petitioner’s reliance on the *OCTG from Turkey Investigation* as evidence of Commerce’s alleged practice is inapposite. The comparability of X-series grade HRS for benchmark purposes was not at issue in the *OCTG from Turkey Investigation*, and the facts of that investigation are different from this review, in which the Borusan Companies have delineated their HRS purchases by X and non-X series grade and have also demonstrated that X-series grade HRS is not comparable to non-X-series grade HRS.
- Commerce verified that the Borusan Companies only purchased X-70 series grade HRS to produce large diameter line pipe, which supports the Borusan Companies’ claim that such HRS series grade is not comparable with the non-X series grade HRS the company purchased from Turkish government authorities during the POR.<sup>51</sup>
- The petitioner’s arguments conflate Commerce’s specificity and benefit analysis and ignore Commerce’s regulations. Commerce rejected the petitioner’s arguments in *Pipe and Tube from Turkey 2017*.<sup>52</sup>
- The petitioner’s argument that Commerce may only make adjustments for “freight costs and delivery charges” is absurd since the issue is comparability of the products, not the terms of sale.<sup>53</sup>
- The petitioner mischaracterizes Commerce’s finding in *Pipe and Tube from Turkey 2015* by claiming Commerce found that the appropriate benchmark for HRS was that of a single product that encompassed all grades and sizes.<sup>54</sup>
- The portion of *Pipe and Tube from Turkey 2015* cited by the petitioner says nothing regarding the comparability of grades and sizes of the items that comprise the benchmark price. Rather, in *Pipe and Tube from Turkey 2015*, Commerce was merely responding to an argument from Toscelik that Commerce should account for the differing volumes of purchases of HRS from different sources when calculating the benchmark.<sup>55</sup>
- Furthermore, in that review, Commerce did not use BMB’s purchases of X-70 grade HRS in the benchmark because of the evidentiary record. In fact, the CIT commented on how BMB developed the administrative record in the 2015 review of *Pipe and Tube from Turkey 2015* and made a “rigorous and persuasive evidentiary proffer,” which earned it the “exclusion of certain noncomparable purchases of HRS from the benchmark.”<sup>56</sup>

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<sup>50</sup> *Id.*; see also Borusan Companies Verification Report at 8.

<sup>51</sup> *Id.* at 8.

<sup>52</sup> See *Pipe and Tube from Turkey 2017* IDM at Comment 1.

<sup>53</sup> See Borusan Companies’ Rebuttal Brief at 6 (citing Petitioner’s Case Brief at 8).

<sup>54</sup> *Id.* at 7 (citing Petitioner’s Case Brief at 7 and *Pipe and Tube from Turkey 2015* IDM at 16-17).

<sup>55</sup> *Id.* (citing *Pipe and Tube from Turkey 2015* IDM at 16-17).

<sup>56</sup> *Id.* at 7-8 (citing *Pipe and Tube from Turkey 2015* and quoting *Tosçelik Profil ve Sac Endüstrisi A.Ş. v. United States*, 358 F. Supp. 3d 1370, 1375 (CIT 2019)).

- Commerce verified the Borusan Companies' mill certificates, invoices, and contracts for X-70 series grade HRS purchases to confirm that X-70 series grade HRS is not comparable to the non-X series grade HRS purchased from Erdemir and Isdemir.<sup>57</sup>
- Commerce verified that all the Borusan Companies' purchases of X-70 series grade HRS were: 1) consumed by the Borusan Companies' Gemlik HSAW mill, which only produces non-subject large diameter line pipe; 2) were tied to specific large diameter pipeline projects; and 3) the Borusan Companies did not purchase X-70 series grade HRS from Erdemir/Isdemir.<sup>58</sup>
- For these reasons, Commerce should continue to calculate an HRS benchmark that excludes the Borusan Companies' purchases of X-70 series grade HRS.

**Commerce's Position:** During the POR, the Borusan Companies purchased X-series and non-X-series grade HRS from private parties and purchased only non-X-series grade HRS from Erdemir and Isdemir.<sup>59</sup> In the *Preliminary Results*, we excluded the Borusan Companies' private purchases of X-series grade HRS from the HRS benchmark that was used to determine whether the Borusan Companies purchased non-X-series grade HRS from Turkish government authorities for LTAR. We find that no evidence or argument from interested parties warrants reconsideration of our approach in the *Preliminary Results*.

Commerce must consider factors affecting comparability, such as product quality and similarity, in determining the appropriate benchmark to measure the adequacy of remuneration for the HRS provided by Turkish authorities.<sup>60</sup> In the *Preliminary Results*, we found that X-series grade and non-X-series grade HRS are not comparable according to the evidence on the record of this review.<sup>61</sup> The Borusan Companies have clearly segregated their HRS purchases into X-series and non-X-series grade HRS.<sup>62</sup> The Borusan Companies have also provided product catalogues and invoices, which demonstrate that X-series grade and non-X-series grade HRS each possess distinct physical characteristics and, thus, the two HRS grades are not comparable.<sup>63</sup> Although we are examining whether HRS was provided for LTAR during the POR, regardless of grade, the subsidy benefit analysis should take into account our finding that X-series and non-X-series grade HRS are not comparable grades of HRS.

As noted above, the Borusan Companies reported purchases of X-series grade HRS and non-X-series grade HRS from private suppliers and purchases of only non-X-series grade HRS from Erdemir and Isdemir during the POR. Accordingly, we have excluded the Borusan Companies' purchases of X-series grade HRS from the HRS benchmark and then compared the Borusan Companies' purchases of non-X-series grade HRS from Turkish government authorities to the

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<sup>57</sup> See Borusan Companies Verification Report at Exhibit 8.

<sup>58</sup> See Borusan Companies' Rebuttal Brief at 10.

<sup>59</sup> See *Preliminary Results* PDM at 15 and footnote 91.

<sup>60</sup> See section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(2)(i).

<sup>61</sup> See *Preliminary Results* PDM at 15; see also Borusan Companies Verification Report at 5-8 and Exhibit VE-8; and Borusan Companies SQR at 5-7 and Exhibit N-10.

<sup>62</sup> See Borusan Companies Preliminary Calculation Memorandum, which is unchanged in these final results.

<sup>63</sup> See Borusan Companies' Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: BMB's First Supplemental Questionnaire Response," dated January 6, 2020 (Borusan Companies First SQR), at Exhibit N-10; see also Borusan Companies Verification Report at Exhibit 8.

Borusan Companies' purchases of non-X series grade HRS from private suppliers.<sup>64</sup> Our approach in this regard is consistent with Commerce's practice in prior Turkish CVD proceedings. For example, in *Pipe and Tube from Turkey 2017*, Commerce excluded the Borusan Companies' purchases of X-series grade HRS from private parties from the HRS benchmark calculation because the Borusan Companies had no comparable purchases of X-series grade HRS from Turkish authorities.<sup>65</sup>

We disagree with the petitioner that the *OCTG from Turkey Investigation* stands for the proposition that Commerce should compare the Borusan Companies' purchases of X-series grade HRS from private suppliers to the non-X-series grade HRS it purchased from Erdemir and Isdemir. In the *OCTG from Turkey Investigation*, Commerce was addressing the input acquired from government authorities that should be included in the LTAR benefit analysis and was not addressing the make-up of the benchmark used to determine whether those purchases conferred a benefit.<sup>66</sup> Additionally, in the *OCTG from Turkey Investigation*, Commerce explained that the respondent neither identified the grades of HRS it purchased nor supplied the information necessary to allow Commerce to adjust the benchmark for factors affecting comparability.<sup>67</sup> As explained above, the Borusan Companies have provided information on the record of this review that supports our finding that X-series grade HRS and non-X-series grade HRS are not comparable,<sup>68</sup> and the HRS benchmark should be adjusted to exclude prices of goods that are not comparable to the government-provided good.

Similarly, we disagree with the petitioner that *Citric Acid from China* requires that Commerce alter its calculation of the HRS benchmark. In that case, the Chinese respondent argued that Commerce should revise the benchmark so that it matched the respondent's purported concentration of caustic soda levels.<sup>69</sup> In response, Commerce determined that the respondent had failed to provide sufficient evidence to warrant such adjustment; Commerce further noted that its use of a tier-two world market price prevented it from making a more accurate price comparison.<sup>70</sup> The facts of *Citric Acid from China* are distinct from those of the instant review. As explained above, the Borusan Companies have demonstrated that X-series grade HRS is distinct and not comparable to non-X-series grade HRS.<sup>71</sup> Further, unlike *Citric Acid from China*, Commerce is relying upon a tier-one, company-specific benchmark that enables Commerce to make a more precise price comparison than the benchmark used in *Citric Acid from China*.

We disagree with the petitioner that the facts of *Pipe and Tube from Turkey 2015* should compel Commerce to revise its approach to the HRS benchmark. In *Pipe and Tube from Turkey 2015*,

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<sup>64</sup> As noted above, the Borusan Companies did not purchase X-series grade HRS from Turkish government authorities during the POR.

<sup>65</sup> See *Pipe and Tube from Turkey 2017* IDM at Comment 1; see also *OCTG from Turkey 2015* IDM 15-16; *OCTG from Turkey 2016* IDM at 16-17; *LDWP from Turkey Investigation* IDM at Comment 2; *WLP Turkey Prelim PDM* at 10-11, unchanged in the final results of *Line Pipe from Turkey 2015*.

<sup>66</sup> See *OCTG from Turkey Investigation* IDM at Comment 3.

<sup>67</sup> *Id.*

<sup>68</sup> See Borusan Companies First SQR at Exhibit N-10; see also Borusan Companies Verification Report at Exhibit 8.

<sup>69</sup> See *Citric Acid from China* IDM at Comment 5.

<sup>70</sup> *Id.*

<sup>71</sup> See Borusan Companies First SQR at Exhibit N-10; see also Borusan Companies Verification Report at Exhibit 8.

Commerce did not differentiate between X-series grade and non-X-series grades of HRS when conducting its benefit calculations under the HRS from LTAR program. However, in that review, the respondent (Toscelik) did not delineate its government or private purchases of HRS by X-series and non-X-series grades, which prevented Commerce from conducting a grade-specific benefit calculation.<sup>72</sup> Unlike the data provided by respondent Toscelik in *Pipe and Tube from Turkey 2015*, in the instant review, the Borusan Companies have segregated their HRS purchases into X-series and non-X-series grades. As explained above, the Borusan Companies have also provided product catalogues and invoices generated in the ordinary course of business that differentiate between X-series and non-X-series grades.<sup>73</sup> We find this information indicates that the HRS market distinguishes between these two series grades, which further supports our finding that X-series and non-X-series grades require separate benchmarks. As a result, we have the means and the factual basis to differentiate HRS by grade for purposes of determining whether Turkish authorities sold HRS to the respondent firms for LTAR during the POR. These facts are consistent with the facts present in the more recent *Pipe and Tube from Turkey 2017*.<sup>74</sup>

We also disagree with the petitioner's argument that our specificity analysis should inform how we perform the price comparisons under our LTAR benefit analysis. The analysis we utilize to determine whether the provision of a good is specific under section 771(5A) of the Act (*e.g.*, whether a subsidy, by law or in fact, is limited to an enterprise or industry, or groups thereof) is distinct from the analysis utilized to measure the adequacy of remuneration for a government-provided good and determine the appropriate price comparison under section 771(5)(E)(iv) of the Act. This distinction is evident in the language contained in 19 CFR 351.511, which governs subsidies involving the provision of goods. When Commerce is calculating a tier-one benchmark, such as the X-series and non-X-series grade HRS the Borusan Companies purchased from private parties during the POR, 19 CFR 351.511(a)(2)(i) instructs Commerce to "consider product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability." Product grade, which in this case manifests itself in the form of X-series and non-X-series grade HRS, affects comparability, as evidenced by the product catalogue and invoice information the Borusan Companies submitted on the record. Further, in describing how Commerce should conduct its LTAR benefit analysis, 19 CFR 351.511(a) makes no reference to Commerce's specificity analysis under section 771(5A) of the Act.

We also disagree with the petitioner's claim that our decision to delineate by X-series and non-X-series grade HRS when conducting the LTAR benefit analysis: (1) runs counter to Commerce's practice of using broad averages to calculate benchmarks; and (2) conflicts with the Court's holding in *Archer Daniels* or Commerce's finding in *HRS from India* and *Softwood Lumber from Canada* that private and world market goods need not be identical to the goods sold by "authorities" in order to constitute viable benchmarks. Generally, we agree that Commerce

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<sup>72</sup> See *Pipe and Tube from Turkey 2015* IDM at Comment 4, where Commerce discusses how the respondent in that case (Toscelik) couched its argument upon the purported grade of the manufactured pipe to argue that the HRS from which the pipe was produced was also of a higher grade and, therefore, not comparable to the HRS it purchased from Turkish "authorities." The factual record of the instant review is different because, as noted above, the respondent in this review delineated its HRS purchases from Turkish "authorities" and from private suppliers by HRS grade, and also provided production catalogue and sales documentation demonstrating that the market for HRS accounts for such differences in grade.

<sup>73</sup> See Borusan Companies First SQR at Exhibit N-10; see also Borusan Companies Verification Report at Exhibit 8.

<sup>74</sup> See *Pipe and Tube from Turkey 2017* IDM at Comment 1.



seeks to utilize benchmarks derived from broad averages and that the benchmark need not reflect goods that are identical to the government-provided good. However, as noted above, in deriving LTAR benchmarks, 19 CFR 351.511(a) directs Commerce to consider “product similarity; quantities sold, imported, or auctioned; and other factors affecting comparability.” Thus, we cannot allow the practice of using broad averages to overcome Commerce’s regulatory obligation to utilize benchmarks that are more comparable if record information permits it. For this reason, Commerce delineates by grade or product characteristic when such data are available and where record information indicates that the market for the good in question accounts for such grade or product characteristics in the ordinary course of business.<sup>75</sup>

Therefore, in accordance with 19 CFR 351.511(a)(2)(i), and consistent with our practice in prior Turkish CVD proceedings (including prior segment of this proceeding), we have continued to differentiate between X-series and non-X-series grade HRS when conducting the LTAR benefit analysis. As a result, we have continued to compare the Borusan Companies’ purchases of non-X-series grade HRS from Turkish government authorities to an HRS benchmark that is comprised exclusively of non-X-series grade HRS that the Borusan Companies purchased from private parties.

**Comment 2:** Whether Commerce Should Include Istikbal’s Eximbank Loan in the Benefit Analysis for Short Term Pre-Shipment Rediscount Program

*Petitioner’s Arguments*<sup>76</sup>

- In the *Preliminary Results*, Commerce failed to include in its benefit analysis the loan that Istikbal, an affiliate of the Borusan Companies, obtained from the Eximbank.
- Commerce erred in finding that Istikbal’s loan from the Eximbank was tied to export sales outside of the United States.
- Record evidence does not support finding that the shipments facilitated by this loan were made to non-U.S. markets. Specifically, the documentation on the record fails to demonstrate that the merchandise associated with the loan in question was not, in fact, shipped to the United States.
- Accordingly, in the final results, Commerce should find that shipments made under this loan were not tied to non-U.S. markets, and therefore, should include this loan in its benefit analysis for the short-term pre-shipment rediscount program.

*Borusan Companies’ Rebuttal Arguments*<sup>77</sup>

- In the *Preliminary Results*, Commerce correctly determined not to include Istikbal’s Eximbank loan in its benefit calculations because: 1) the loan documentation demonstrates

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<sup>75</sup> See, e.g., *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009) (*Austenitic Pressure Pipe from China*) and accompanying IDM at 21, where Commerce delineated by steel grade in the LTAR benefit calculation; see also *Certain Softwood Lumber Products From Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 19657 (April 28, 2017) (*Softwood Lumber from Canada Preliminary Determination*), and accompanying PDM at 54-56 (where Commerce delineated by coniferous species in the LTAR benefit calculation); and *Softwood Lumber from Canada* IDM at Comment 13.

<sup>76</sup> See Petitioner’s Case Brief at 2-3.

<sup>77</sup> See Borusan Companies’ Rebuttal Brief at 1-3.

that this loan relates to exports to non-U.S. markets; 2) any subject merchandise produced by the Borusan Companies and exported by another party would appear in the U.S. Customs and Border Protection (CBP) data;<sup>78</sup> and 3) Commerce verified that Istikbal had no U.S. exports of any kind (let alone subject merchandise) during the time period that encompassed the issue date of the loan in question.<sup>79</sup>

- The Borusan Companies reported Istikbal's Eximbank loan out of an abundance of caution. Nonetheless, Istikbal did not export to the United States.
- Commerce verified that the loan in question was associated with merchandise that was going to be exported to a non-U.S. market.<sup>80</sup>
- Commerce should not include Istikbal's Eximbank loan in its final results calculations.

**Commerce's Position:** The Borusan Companies reported that Istikbal received Eximbank rediscount financing during the POR in relation to a single short-term loan.<sup>81</sup> In the *Preliminary Results*, we determined that the documentation for the loan in question indicates that Istikbal's receipt of the Eximbank loan was contingent upon Istikbal's sales of merchandise to export markets that did not include the United States.<sup>82</sup> In its case brief, the petitioner argues that Commerce should reverse its tying determination because, while the loan documentation on the record indicates that it was "used to facilitate non-U.S. exports," there is no evidence indicating that the goods in question were, in fact, shipped to those non-U.S. destinations and were not instead shipped to the United States.<sup>83</sup> We disagree with the petitioner's argument.

Record evidence indicates that the purpose of the loan in question was to finance Istikbal's sales of merchandise to non-U.S. markets.<sup>84</sup> As noted above, the petitioner does not contest this fact. When determining whether a subsidy benefit is tied, Commerce's practice is to examine the contingencies in place at the time of the bestowal of the benefit.<sup>85</sup> Here, the record evidence demonstrates that Istikbal's receipt of the loan in question was to facilitate its sale of merchandise to non-U.S. export markets. Therefore, in accordance with Commerce's practice, we find that Istikbal's receipt of the loan was contingent upon its sale of the merchandise associated with the loan to non-U.S. destinations and, thus, that any benefits associated with the loan are tied to these non-U.S. export sales.

As to the petitioner's claim that the merchandise associated with the loan in question could have nonetheless ended up in the U.S. market, thereby requiring Commerce to attribute any

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<sup>78</sup> See Borusan Companies' Rebuttal Brief at 2 (citing Memorandum, "Second Customs and Border Protection (CBP) Query Results," July 26, 2019 (Second CBP Query Results Memorandum)).

<sup>79</sup> See Borusan Companies' Rebuttal Brief at 2-3 (citing Borusan Companies Verification Report at Exhibit VE-5).

<sup>80</sup> See Borusan Companies Verification Report at Exhibit VE-5.

<sup>81</sup> See Borusan Companies First SQR at Exhibits G-6 and G-7.

<sup>82</sup> See *Preliminary Results* PDM at 17 (citing Borusan Companies First SQR at Exhibits G-6 and G-7; and Borusan Companies Verification Report at VE-25(D)).

<sup>83</sup> See Petitioner's Case Brief at 3.

<sup>84</sup> See Borusan Companies Verification Report at Exhibit VE-25(D).

<sup>85</sup> See, e.g., *Certain Quartz Surface Products from India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, In Part, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 54838 (October 11, 2019), and accompanying PDM at 29, unchanged in *Certain Quartz Surface Products From India: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, In Part*, 85 FR 25398 (May 1, 2020); see also *Countervailing Duties; Final Rule*, 63 FR 65348, 65403 (November 25, 1998).

countervailable benefits associated with the loan to the total sales of Istikbal and the Borusan Companies, we disagree. As noted above, to determine whether a subsidy is tied, Commerce looks to the contingencies in place at the time of bestowal, not at how the recipient subsequently uses that subsidy benefit. Additionally, record evidence demonstrates that Istikbal did not export any merchandise to the United States during the POR, which belies the petitioner's claims concerning the merchandise's possible entry into the United States.<sup>86</sup>

Therefore, we continue to find that any benefits that Istikbal received in connection with the loan in question is tied to non-subject merchandise and, thus, should not be included in the subsidy analysis conducted for the Borusan Companies in these final results.

## **X. RECOMMENDATION**

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of the review in the *Federal Register*.



Agree



Disagree

1/13/2021

X



Signed by: Christian Marsh

Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance

<sup>86</sup> See Borusan Companies Verification Report at Exhibit VE-5; see also Second CBP Query Results Memorandum.