



C-489-817  
Administrative Review  
POR: 1/1/2018 - 12/31/2018  
**Public Document**  
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January 19, 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:** Decision Memorandum for the Preliminary Results of 2018  
Countervailing Duty Administrative Review: Oil Country Tubular  
Goods from the Republic of Turkey

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## I. Summary

The Department of Commerce (Commerce) is conducting an administrative review of countervailing duty (CVD) order on oil country tubular goods from the Republic of Turkey (Turkey) for the period of review (POR) January 1, 2018, through December 31, 2018. We preliminarily find that Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), the sole mandatory respondent in this administrative review, received countervailable subsidies during the POR that were *de minimis*. In addition, we are rescinding this review with respect to Cayirova Boru Sanayi ve Ticaret A.S. (Cayirova) and its affiliated trading company, Yucel Boru Ithalat-Ihracat ve Pazarlama A.S. Uic (Yucel) and announcing our preliminary intent to rescind this review with respect to five other companies.

## II. Background

### A. Case History

On September 10, 2014, Commerce published the CVD order on oil country tubular goods from Turkey.<sup>1</sup> On September 3, 2019, Commerce published a notice of opportunity to request an

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<sup>1</sup> See *Certain Oil Country Tubular Goods from India and the Republic of Turkey: Countervailing Duty Orders and Amended Affirmative Final Countervailing Duty Determination for India*, 79 FR 53688 (September 10, 2014) (Order).



administrative review of the *Order*.<sup>2</sup> On September 30, 2019, United States Steel Corporation, Maverick Tube Corporation, Tenaris Bay City, Inc., TMK IPSCO, Vallourec Star, L.P., and Welded Tube USA (collectively, the Domestic Interested Parties) requested a review of eleven exporters and/or producers of subject merchandise.<sup>3</sup> On the same date, Borusan, a foreign producer and exporter of subject merchandise, requested a review of itself.<sup>4</sup>

On October 23, 2019, Cayirova and its affiliated trading company, Yucel, notified Commerce that they had no sales, shipments, or entries of subject merchandise into the United States during the POR, and requested Commerce to rescind the reviews of these companies.<sup>5</sup>

On November 12, 2019, we published a notice of initiation of this CVD review.<sup>6</sup> On November 21, 2019, Commerce released CBP entry data for subject merchandise during the POR.<sup>7</sup> We did not receive any comments from interested parties regarding respondent selection. On January 7, 2020, we issued the Respondent Selection Memo, in which we found that the CBP entry data indicated that, of the eleven companies subject to review, Borusan was the only company subject to review that had entries of subject merchandise during the POR.<sup>8</sup> Therefore, we selected Borusan as the sole mandatory respondent in this administrative review.

On January 9, 2020, we issued the Initial Questionnaire to the Government of Turkey (GOT) with instructions to forward it to the respondent company, Borusan.<sup>9</sup> Borusan timely responded to the affiliation section of the Initial Questionnaire on January 23, 2020.<sup>10</sup> On February 27, 2020, both the GOT and Borusan timely responded to the remaining sections of the Initial Questionnaire.<sup>11</sup> On March 5, 2020, we issued Borusan a supplemental affiliation questionnaire,

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<sup>2</sup> See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 45949 (September 3, 2019).

<sup>3</sup> The Domestic Interested Parties also requested a review of Toscelik Profil ve Sac Endustrisi A.S., and its affiliates: Tosyali Dis Ticaret A.S., Tosyali Elektrik Enerjisi Toptan Satis, Ith. Ihr. A.S., Tosyali Demir Celik San.A.S., and Tosyali Holding A.S. (collectively, Toscelik), but subsequently withdrew their request for review after inadvertently including Toscelik in their September 30, 2019 request for an administrative review, and requested Commerce rescind the reviews of these companies. See Domestic Interested Parties' Letter, "Oil Country Tubular Goods from Turkey: Request for Administrative Review of Countervailing Duty Order," dated September 30, 2019, and Domestic Interested Parties' Letter, "Oil Country Tubular Goods from Turkey: Withdrawal of Request for Administrative Review of Countervailing Duty Order Re: Toscelik," dated October 25, 2019. Therefore, we did not initiate an administrative review of Toscelik.

<sup>4</sup> See Borusan's Letter, "Oil Country Tubular Goods from Turkey, Case No. C-489-817: Request for Countervailing Duty Administrative Review," dated September 30, 2019.

<sup>5</sup> See Cayirova's and Yucel's Letter, "OCTG from Turkey; Yucel No Shipment Letter," dated October 23, 2019 (No Shipment Letter).

<sup>6</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 61011 (November 12, 2019).

<sup>7</sup> See Memorandum, "Release of U.S. Customs and Border Protection Data," dated November 21, 2019 (CBP Data).

<sup>8</sup> See Memorandum, "Countervailing Duty Administrative Review of Oil Country Tubular Goods from the Republic of Turkey: Respondent Selection Memo," dated January 7, 2020 (Respondent Selection Memo).

<sup>9</sup> See Commerce's Letter, "Administrative Review of the Countervailing Duty Order on Certain Oil Country Tubular Goods from the Republic of Turkey: Initial Questionnaire," dated January 9, 2020 (Initial Questionnaire).

<sup>10</sup> See Borusan's Letter, "Certain Oil Country Tubular Goods from the Republic of Turkey, Case No. C-489-817: Response to Affiliated Companies Section of Initial Questionnaire," dated January 23, 2020 (Affiliation Response).

<sup>11</sup> See GOT's Letter, "Response of the Government of Turkey in 2018 Countervailing Duty Administrative Review on Imports of Certain Oil Country Tubular Goods from the Republic of Turkey," dated February 27, 2020 (GOT

to which Borusan timely responded on March 30, 2020.<sup>12</sup> On June 10, 2020, we issued Borusan a supplemental questionnaire to Borusan's IQR, to which Borusan timely responded on June 30, 2020.<sup>13</sup> On July 15, 2020, we issued the GOT a supplemental questionnaire to the GOT's IQR, to which the GOT timely responded on July 29, 2020.<sup>14</sup> On August 26, 2020, Commerce issued a supplemental questionnaire to both the GOT and Borusan, to which both parties timely responded on September 9, 2020 and September 16, 2020, respectively.<sup>15</sup> On October 9, 2020, Commerce issued another supplemental questionnaire to Borusan, to which Borusan timely responded on October 19, 2020.<sup>16</sup>

## **B. Extension of Time Limit for Preliminary Results**

On April 24, 2020, Commerce exercised its discretion to toll all deadlines in administrative reviews by 50 days.<sup>17</sup> On June 25, 2020, Commerce extended the deadline for the preliminary results by 120 days, in accordance with section 751(a)(3)(A) of the Act.<sup>18</sup> On July 21, 2020, Commerce tolled all deadlines in preliminary and final results of administrative reviews by an additional 60 days,<sup>19</sup> thereby extending the deadline for the preliminary results of this administrative review until January 19, 2021.

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IQR); *see also* Borusan's Letter, "Certain Oil Country Tubular Goods from the Republic of Turkey, Case No. C-489-817: Response to Section III of Initial Questionnaire," dated February 27, 2020 (Borusan IQR).

<sup>12</sup> *See* Commerce's Letter, "Administrative Review of Countervailing Duty on Certain Oil Country Tubular Goods from the Republic of Turkey: First Supplemental Questionnaire," dated March 5, 2020. *See also* Borusan's Letter, "Certain Oil Country Tubular Goods from the Republic of Turkey, Case No. C-489-817: Response to Supplemental Affiliated Companies Questionnaire," dated March 30, 2020.

<sup>13</sup> *See* Commerce's Letter, "Fourth Administrative Review of Oil Country Tubular Goods from Turkey Order: Supplemental Questionnaire," dated June 10, 2020; *see also* Borusan's Letter, "Certain Oil Country Tubular Goods from the Republic of Turkey, Case No. C-489-817: Response to Supplemental Questionnaire," dated June 30, 2020.

<sup>14</sup> *See* Commerce's Letter, "Administrative Review of Countervailing Duty on Certain Oil Country Tubular Goods from the Republic of Turkey: First Supplemental Questionnaire," dated July 15, 2020; *see also* GOT's Letter, "Response of the Government of Turkey to Supplemental Questionnaire of 2018 Countervailing Duty Administrative Review on Imports of Certain Oil Country Tubular Goods from the Republic of Turkey," dated July 29, 2020.

<sup>15</sup> *See* Commerce's Letters, "Administrative Review of Certain Oil Country Tubular Goods from Turkey: Supplemental Questionnaire for the Government of Turkey" and "Administrative Review of Certain Oil Country Tubular Goods from Turkey: Supplemental Questionnaire for Borusan," both dated August 26, 2020; *see also* GOT's Letter, "Response of the Government of Turkey to Supplemental Questionnaire of 2018 Countervailing Duty Administrative Review on Imports of Certain Oil Country Tubular Goods from the Republic of Turkey," dated September 9, 2020 (GOT Second SQR). *See also* Borusan's Letter, "Certain Oil Country Tubular Goods from the Republic of Turkey, Case No. C-489-817: Response to Third Supplemental Questionnaire," dated September 16, 2020 (Borusan's Second SQR).

<sup>16</sup> *See* Commerce's Letter, "Administrative Review of Certain Oil Country Tubular Goods from Turkey Order: Supplemental Questionnaire for Borusan," dated October 9, 2020. *See also* Borusan's Letter, "Certain Oil Country Tubular Goods from the Republic of Turkey, Case No. C-489-817: Response to Fourth Supplemental Questionnaire," dated October 19, 2020 (Borusan's Third SQR).

<sup>17</sup> *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID-19 Government," dated April 24, 2020.

<sup>18</sup> *See* Memorandum, "Administrative Review of the Countervailing Duty Order on Certain Oil Country Tubular Goods from the Republic of Turkey: Extension of Deadline for Preliminary Results," dated June 25, 2020.

<sup>19</sup> *See* Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

### III. Scope of the *Order*

The merchandise covered by the *Order* is oil country tubular goods (OCTG), which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (e.g., whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the *Order* also covers OCTG coupling stock.

Excluded from the scope of the *Order* are: casing or tubing containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to the *Order* is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The merchandise subject to the *Order* may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, 7304.59.80.80, 7305.31.40.00, 7305.31.60.90, 7306.30.50.55, 7306.30.50.90, 7306.50.50.50, and 7306.50.50.70.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the *Order* is dispositive.

### IV. Partial Rescission of Administrative Review

On October 23, 2019, Cayirova and its affiliated trading company, Yucel, notified Commerce that they had no sales, shipments, or entries of subject merchandise into the United States during the POR, and requested Commerce to rescind the reviews of these companies.<sup>20</sup> In the respondent selection memorandum, we stated that this notification is consistent with CBP data and that Commerce will rescind the administrative review of Yucel and Cayirova.<sup>21</sup> We received

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<sup>20</sup> See No Shipment Letter.

<sup>21</sup> See Respondent Selection Memo.

no comments with respect to our intent to rescind on these two companies. Because no evidence on the record contradicts these certifications, we are rescinding the review of the *Order* with respect to Yucel and Cayirova.

## **V. Intent to Rescind Administrative Review, in Part**

It is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.<sup>22</sup> Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate calculated for the review period.<sup>23</sup> Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the calculated CVD assessment rate calculated for the POR.<sup>24</sup>

According to the CBP import data, except for the mandatory respondent and its cross-owned companies, the companies subject to this review did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR, we are rescinding the review with respect to Yucel and Cayirova as explained above, and we intend to rescind this administrative review with respect to additional five companies, in accordance with 19 CFR 351.213(d)(3).<sup>25</sup>

## **VI. Subsidies Valuation Information**

### **A. Allocation Period**

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. The AUL in this proceeding is 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, which is updated by the Department of Treasury.<sup>26</sup> This AUL applies unless a party claims and establishes that it does not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. No party in this review disputed the allocation period. Commerce notified the respondents of the 15-year AUL in the Initial Questionnaire and requested data accordingly.<sup>27</sup> No party in this review disputed the allocation period.

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<sup>22</sup> See, e.g., *Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015*, 82 FR 14349 (March 20, 2017); and *Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017*, 84 FR 14650 (April 11, 2019).

<sup>23</sup> See 19 CFR 351.212(b)(2).

<sup>24</sup> See 19 CFR 351.213(d)(3).

<sup>25</sup> These five companies are: Bakir Grup Makine Imalat Bakim Montaj Demontaj Sanayi ve Ticaret Ltd. Sti.; Hydra Insaat Sanayi ve Ticaret Anonim Sirketi; Kalibre Boru Sanayi ve Ticaret; NETBORU San. ve Dis. Tic. Koll. Sti.; and Yilmaz Pipo.

<sup>26</sup> See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

<sup>27</sup> See Initial Questionnaire at II-2.

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

## **B. Attribution of Subsidies**

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

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

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.<sup>28</sup>

Thus, Commerce’s regulations make clear that the agency must look at the facts in each case to determine whether cross-ownership exists. The U.S. Court of International Trade (CIT) has upheld Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.<sup>29</sup>

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<sup>28</sup> See *Countervailing Duties, Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).

<sup>29</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

## Borusan

Borusan responded to Commerce's initial questionnaire on behalf of itself and its affiliates, Borusan Mannesmann Boru Yatirim Holding (BMBYH) and Borusan Holding A.S. (Borusan Holding).<sup>30</sup> Borusan did not respond for Borusan Istikbal Ticaret (Istikbal), its trading company for which a review was requested, because Istikbal did not export subject merchandise during the POR.<sup>31</sup> Borusan also identified Borusan Lojistik Dag. Deg. Tas Ve (Lojistik) as an affiliated transportation company for which a review was requested, in addition to other companies with which it was affiliated during the POR based on common ownership with Borusan Holding.<sup>32</sup> The majority of the equity share capital in Borusan is owned by BMBYH, a holding company, which is majority-owned by Borusan Holding.<sup>33</sup> The majority of equity share capital in Lojistik and Istikbal is owned by Borusan Holding.<sup>34</sup> By virtue of Borusan Holding's majority shareholdings of BMBYH, Lojistik, and Istikbal, and BMBYH's majority shareholdings of Borusan, we preliminarily find that Borusan is cross-owned with Istikbal, Lojistik, and BMBYH, within the meaning of 19 CFR 351.525(b)(6)(vi).

Borusan stated that, during the POR, neither BMBYH nor Borusan Holding was engaged in production or sales activities that would make them eligible for any of the alleged subsidies in this review.<sup>35</sup> Regardless, Borusan reported that Borusan Holding received one subsidy and BMBYH did not receive any subsidies from the programs listed in Commerce's Initial questionnaire.<sup>36</sup> The record shows that the subsidy received by Borusan Holding was received prior to the POR but was expensed in the year of receipt, rather than allocated to the POR.<sup>37</sup> Therefore, we preliminarily find that BMBYH and Borusan Holding received no subsidies that are attributable to Borusan for the POR under 19 CFR 351.525(b)(6).

Borusan produces subject merchandise for both the domestic and export markets. During the POR, Borusan accounted for all subject merchandise exported to the United States by Borusan Group.<sup>38</sup> Borusan reported that Istikbal did not export subject merchandise during the POR;<sup>39</sup> thus, the attribution rule under 19 CFR 351.525(c) does not apply.<sup>40</sup> Moreover, because Istikbal did not export subject merchandise during the POR, Borusan reported that it would not be answering the questionnaires on behalf of Istikbal.<sup>41</sup> Accordingly, consistent with 19 CFR

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<sup>30</sup> See Borusan IQR at 1.

<sup>31</sup> *Id.* at 2.

<sup>32</sup> See Affiliation Response at 7 and Borusan's Third SQR.

<sup>33</sup> See Affiliation Response at 4 and Exhibit 3.

<sup>34</sup> See Borusan IQR at Exhibit 18.

<sup>35</sup> See Affiliation Response at 10.

<sup>36</sup> See Borusan IQR at 13-50.

<sup>37</sup> *Id.* at 43.

<sup>38</sup> See Borusan Affiliation Response at 3. Borusan Mannesmann Boru Sanayi ve Ticaret A.S., Borusan Istikbal Ticaret, Borusan Mannesmann Boru Yatirim Holding A.S., Borusan Lojistik Dag. Deg. Tas Ve, and Borusan Holding A.S. (collectively, Borusan Group)

<sup>39</sup> See Borusan IQR at 2.

<sup>40</sup> See, e.g., *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 82 FR 23188 (May 22, 2017), and accompanying Issues and Decision Memorandum (IDM) under "Attribution of Subsidies."

<sup>41</sup> See Borusan IQR at 2.

351.525(c), we are preliminarily not cumulating any benefits from subsidies provided to Istikbal with benefits from subsidies provided to Borusan.

Finally, because Borusan reported that none of its other affiliated companies, including Lojistik, were involved in the production, sale or export of subject merchandise, provided inputs to Borusan for subject merchandise, were a holding company, or transferred subsidies to Borusan,<sup>42</sup> we preliminarily find that these companies do not satisfy the criteria enumerated in 19 CFR 351.525(b)(6)(ii)–(v) or 19 CFR 351.525(c). Therefore, we did not include these companies in our subsidy analysis.

Based on the above information, for these preliminary results, we are only attributing subsidies received by Borusan to the sales reported by Borusan, consistent with 19 CFR 351.525(b)(6)(i).

### **C. Denominators**

In accordance with 19 CFR 351.525(b)(1)–(5), Commerce considers the basis for the respondent’s receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent’s export sales (where the program is determined to be countervailable as an export subsidy) or total sales (where the program is determined to be countervailable as a domestic subsidy). In the “Analysis of Programs - Programs Preliminarily Determined to Be Countervailable” section below, we describe the denominators used to calculate the countervailable subsidy rates for the various subsidy programs.

## **VII. Benchmark Interest Rates**

We are examining export loans that Borusan received. In the section below, we discuss the derivation of the benchmark for the POR.

### **Short-Term Interest Rate Benchmarks**

Section 771(5)(E)(ii) of the Act explains that the benefit for loans is the “difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,” indicating that a benchmark must be a market-based rate. To determine whether government-provided loans under review conferred a benefit, Commerce uses, where possible, company-specific interest rates for comparable commercial loans obtained by the company.<sup>43</sup> When loans are denominated in a foreign currency, 19 CFR 351.505(a)(2)(i) directs us to use a benchmark denominated in the same foreign currency as the loan. As discussed below, Borusan reported receiving short-term loans from a subsidy program under examination that were denominated in U.S. dollars (USD). Borusan also submitted information regarding the interest rates on its comparable commercial short-term loans.<sup>44</sup> Consistent with 19 CFR 351.505(a)(2)(ii), we are using the interest rates that Borusan paid on comparable commercial short-term loans as benchmarks to calculate the benefit. To calculate the short-term interest rate benchmarks for

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<sup>42</sup> See Borusan Affiliation Response at 4-9.

<sup>43</sup> See 19 CFR 351.505(a)(2)(ii).

<sup>44</sup> See Borusan IQR at Exhibit A-2 and A-3.



Borusan, we derived an annual average of the interest rates on comparable commercial loans that Borusan obtained during the years in which the government loans were issued, weighted by the principal amount of each loan.

## **VIII. Analysis of Programs**

### **A. Programs Preliminarily Determined to be Countervailable**

#### ***1. Deductions from Taxable Income for Export Revenue***

Commerce determined in the investigation that this program is countervailable.<sup>45</sup> Specifically, we found that this income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, because it represents revenue forgone by the GOT, and provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. We also found that it is specific under section 771(5A)-(B) of the Act because its receipt is contingent upon export earnings.

In this review, the GOT did not submit any new information or evidence of changed circumstances that warrants reconsideration of Commerce's prior determination in the investigation concerning the countervailability of the program.<sup>46</sup> Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence, we preliminarily continue to find that this program confers a financial contribution as provided under section 771(5)(D)(ii) of the Act and is specific, under section 771(5A)(A) and (B) of the Act.<sup>47</sup>

During the POR, Borusan reported using the deduction for export earnings in 2017 against its 2017 income as shown on its income tax return for tax year 2017 filed in 2018, the POR.<sup>48</sup> Commerce typically treats a tax deduction as a recurring benefit, in accordance with 19 CFR 351.524(c)(1). The amount of the benefit is equal to the amount of tax that would have been paid absent the program. The total POR benefit to Borusan under this program, *i.e.*, the total tax savings in 2018, is the sum of the deductions for 2017, multiplied by the tax rate applicable to Borusan. To calculate the countervailable subsidy rate for Borusan, we divided the total tax savings by Borusan's total export sales value for the POR. On this basis, we preliminarily determine the net countervailable subsidy for this program to be 0.04 percent *ad valorem* for Borusan.<sup>49</sup>

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<sup>45</sup> See *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 Final Determination*), and accompanying IDM at 13-14.

<sup>46</sup> See GOT IQR at 16 and Borusan IQR at Exhibits B-1 and B-3.

<sup>47</sup> See *Magnola Metallurgy, Inc. v. United States*, 508 F. 3d 1349, 1353-1356 (CAFC 2007) (*Magnola*).

<sup>48</sup> See Borusan IQR at 16 and Exhibits B-1, B-2.

<sup>49</sup> See Memorandum, "Preliminary Results Calculations for Borusan Mannesmann Boru Sanayi ve Ticaret A.S.," dated January 19, 2021 (Calculation Memo) at 3.

## 2. Export Financing - Rediscount Program

In the investigation, we found that the “Rediscount Program,” known previously as the “Short-Term Pre-Shipment Rediscount Program,” was established in 1999 to provide financial support to Turkish exporters, manufacturer-exporters and manufacturers supplying exporters, and that the program was by the Export Credit Bank of Turkey (Turk Eximbank-TE).<sup>50</sup> However, in the second administrative review, the GOT reported that, effective October 4, 2016, firms can also use this program *via* commercial banks that apply to the Central Bank of the Republic of Turkey (CBRT).<sup>51</sup> As such, these commercial banks, through the CBRT, also administer the program.<sup>52</sup> This program continues to be contingent upon an export commitment.<sup>53</sup> Upon the approval of an exporter’s program application, the CBRT instructs the disbursement of the approved TL loan amount, minus interest, to the recipient.<sup>54</sup> Companies can repay the principal and interest either in the foreign currency in which the loan was obtained, or in the TL equivalent (using the exchange rate determined by the Turk Eximbank-TE).<sup>55</sup>

Commerce determined in the investigation that this program is countervailable.<sup>56</sup> Specifically, we found that these loans constitute a financial contribution in the form of a direct transfer of funds from the GOT under section 771(5)(D)(i) of the Act, and a benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between what the company paid on the loans during the POR and what the company would have paid on comparable commercial loans, including related lending costs.<sup>57</sup> Finally, we found the program specific, in accordance with section 771(5A)(B) of the Act, because receipt of the loans is contingent upon export performance.<sup>58</sup>

In this review, the GOT did not submit any new information or evidence of changed circumstances that warrants reconsideration of Commerce’s prior determinations in the investigation and subsequent reviews concerning the countervailability of the program.<sup>59</sup> Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence, we preliminarily continue to find that this program confers a financial contribution as

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<sup>50</sup> See *OCTG from Turkey Final Determination* and accompanying IDM at 14-15.

<sup>51</sup> See *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 Preliminary Decision Memorandum (PDM) at 11 (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 2016 Final*)).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> See *OCTG from Turkey Final Determination* and accompanying IDM at 14-15; see also *OCTG 2016 Final*.

<sup>57</sup> *Id.* It is Commerce’s practice normally to compare effective interest rates rather than nominal rates in making the loan comparison. See *Preamble*, 63 FR at 65362. “Effective” interest rates are intended to take into account the actual cost of the loan, including the amount of fees, commissions, compensating balances, government charges, or penalties paid in addition to the “nominal” interest rate.

<sup>58</sup> See *OCTG from Turkey Final Determination* and accompanying IDM at 14-15. See also *OCTG 2016 Final*.

<sup>59</sup> See GOT IQR at 4 and Borusan IQR at 13-15.

provided under section 771(5)(D)(i) of the Act and is specific, under section 771(5A)(B) of the Act.<sup>60</sup>

Borusan reported that it had loans outstanding under this program during the POR.<sup>61</sup> Under this program, the interest on the loan is paid when the loan is received.<sup>62</sup> Therefore, we have calculated the benefit based on loans that were granted during the POR. To compute the benefit, we applied a discounted benchmark interest rate calculated using the respondent's short-term weighted-average commercial USD interest rate as discussed above at "Benchmark Interest Rates." For each loan, we compared the actual interest that Borusan paid to the effective interest that Borusan would have paid at the appropriate USD benchmark interest rate. We summed the difference between the actual interest paid by Borusan and the interest that Borusan would have paid at the benchmark rates. In accordance with section 771(6)(A) of the Act, we subtracted from this benefit amount the fees Borusan paid to commercial banks for the required letters of guarantee. Our approach in this regard is consistent with Commerce practice.<sup>63</sup> In accordance with 19 CFR 351.525(b)(2), we then divided Borusan's net benefit amount by Borusan's total free-on-board export sales value for the POR. On this basis, we preliminarily calculate a net countervailable subsidy rate of 0.04 percent *ad valorem* for this program.<sup>64</sup>

### 3. Provision of Hot-Rolled Steel (HRS) for Less Than Adequate Remuneration (LTAR)

Commerce determined in the investigation that this program is countervailable.<sup>65</sup> Borusan reported purchasing HRS from Eriğli Demir ve Çelik Fabrikaları T.A.S. (Erdemir) and İskenderun Demir ve Çelik A.Ş. (Isdemir) during the POR.<sup>66</sup>

As explained below the information submitted by the GOT in this review with regard to this program remains consistent with our previous findings under this *Order*. The GOT provided information on Erdemir and Isdemir, producers of HRS, as well as Ordu Yardımlaşma Kurumu (OYAK), the Turkish military pension fund that is a shareholder of Erdemir and Isdemir.<sup>67</sup> During the POR, OYAK owned 49.29 percent of Erdemir's shares through a wholly-owned holding company, Ataer Holding A.S.<sup>68</sup> Moreover, because 3.08 percent of Erdemir's shares were owned by Erdemir itself in the form of treasury shares,<sup>69</sup> less than 48 percent of Erdemir's shares were accounted for by other shareholders, thus making OYAK the single largest, and

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<sup>60</sup> See *Magnola*, 508 F. 3d at 1353-1356.

<sup>61</sup> See Borusan IQR at 13-15 and Exhibit A-1.

<sup>62</sup> *Id.* at 15.

<sup>63</sup> See, e.g., *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), and accompanying IDM at 9; see also *Oil Country Tubular Goods from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2017* 84 FR 39797 (August 12, 2019) (*OCTG 2017 Prelim Results*), and accompanying PDM (unchanged in *Oil Country Tubular Goods from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2017*, 84 FR 68115 (December 13, 2019) (*OCTG 2017 Final Results*)).

<sup>64</sup> See Calculation Memo at 3-4.

<sup>65</sup> See *OCTG from Turkey Final Determination*, and accompanying IDM at 20-26.

<sup>66</sup> See Borusan IQR at 23.

<sup>67</sup> See GOT IQR at 24.

<sup>68</sup> *Id.* at 27 and Exhibit 4.

<sup>69</sup> *Id.*

controlling, shareholder of Erdemir. During the POR, Erdemir owned 94.87 percent of Isdemir.<sup>70</sup>

In its initial questionnaire response, the GOT responded to the Input Producer Appendix for Erdemir, Isdemir, and OYAK.<sup>71</sup> In addition, we asked the GOT to submit certain documents relevant to the Turkish flat steel industry.<sup>72</sup> The GOT claimed it could not submit these documents under its confidentiality agreements with the European Union.<sup>73</sup> However, the GOT did provide limited public summaries of the contents of these documents.<sup>74</sup>

Article 1 of the law establishing OYAK (the Military Personnel Assistance and Pension Fund Law), which was enacted on January 3, 1961, states that the GOT created OYAK as “an institution related to the Ministry of National Defense.”<sup>75</sup> Information in the GOT’s questionnaire responses indicates the GOT’s significant involvement in OYAK. For example, pursuant to Article 3 of the pension fund law, OYAK’s Representative Assembly is comprised of not less than 50 and not more than 100 members of the Turkish Armed Forces “designated by their respective commanders or superiors.”<sup>76</sup> The Representative Assembly, in turn, elects 20 of the 40 members of OYAK’s General Assembly.<sup>77</sup> Of the General Assembly’s remaining 20 members, 17 are, by statute, government officials (*e.g.*, Ministers of Finance and National Defense).<sup>78</sup> The members of the General Assembly then get to elect the Board of Directors.<sup>79</sup> Also, by law, OYAK is exempt from corporate and other taxes, its property has the “same rights and privileges of state property,” and its armed forces members must contribute part of their salaries to OYAK.<sup>80</sup>

Record evidence indicates that the GOT’s significant involvement in OYAK extended to Erdemir and Isdemir during the POR. For example, Erdemir’s 2018 Annual Report shows continued growth during the POR, stating that Erdemir “produced 9.145 million tonnes of crude steel and met about 25% of Turkey’s crude steel needs... {and} exported 1.6 million tonnes to 200 different customers in 50 countries.”<sup>81</sup> Further, the 2018 Annual Report indicates sustained growth showing how net sales revenue grew from 18,736 million TL in 2017 to 27,015 million TL in 2018.<sup>82</sup> These policies are in line with the GOT’s stated policy in its 2019-2021 Medium

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

<sup>71</sup> *Id.* at Exhibit 4.

<sup>72</sup> See Commerce’s Letter, “Administrative Review of the Countervailing Duty Order on Certain Oil Country Tubular Goods from the Republic of Turkey: Initial Questionnaire,” dated January 9, 2020 at Section II page 8. Specifically, we requested that the GOT provide: 1) Advanced assessment of Turkish state aids to the steel industry (the WYG Report); 2) The Turkish authorities’ observations on the WYG Report; 3) the National Restructuring Plan for the Turkish Steel Industry and its annexes; and 4) two reports drafted by the Commission in 2008.

<sup>73</sup> See GOT IQR at 18.

<sup>74</sup> *Id.* at 19-22.

<sup>75</sup> *Id.* at Exhibit 4-G, Article 1.

<sup>76</sup> *Id.* at Exhibit 4-G, Article 3.

<sup>77</sup> *Id.* at Exhibit 4-G, Article 4.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at Exhibit 4-G, Article 5.

<sup>80</sup> *Id.* at Exhibit 4-G, Articles 18, 35, and 37.

<sup>81</sup> *Id.* at Exhibit 4-C, Erdemir’s 2018 Annual Report at 16.

<sup>82</sup> *Id.* at 6.

Term Programme to improve Turkey’s foreign trade balance.<sup>83</sup> Also, the GOT explained that the Turkish Privatization Administration (TPA) holds veto power over decisions related to the closedown, sale, demerger, merger, or liquidation of Erdemir and Isdemir’s integrated steel production and mining facilities.<sup>84</sup> Additionally, Erdemir’s 2018 Annual Report indicates that OYAK and the TPA continue to have members on Erdemir’s Board of Directors.<sup>85</sup>

We preliminarily determine that the record evidence cited above indicates that the GOT exercises meaningful control over Erdemir and Isdemir such that Erdemir and Isdemir possess, exercise, or are vested with, government authority. This meaningful control is evident from both the role of OYAK as an institution through which the GOT exercises control over Erdemir and Isdemir, and the alignment of Erdemir’s Annual Report with the Medium Term Programme. Therefore, consistent with the *OCTG from Turkey Final Determination*, we preliminarily determine that Erdemir and Isdemir are public bodies and, hence, “authorities,” pursuant to section 771(5)(B) of the Act.<sup>86</sup> Consequently, we find that the HRS supplied by Erdemir and Isdemir to Borusan is a financial contribution in the form of a government provision of a good under section 771(5)(D)(iii) of the Act.

Regarding the specificity of the provision of HRS for LTAR, the GOT provided a list of the industries that purchased HRS in Turkey during the POR: steel pipe and profile, rerolling producers, chain of distribution, machinery manufacturing, automotive, heavy industry, consumer products, pressure purposes (pressure vessels, steam boilers), panel radiator, white appliances, and shipbuilding.<sup>87</sup> Consistent with Commerce’s prior determinations,<sup>88</sup> we preliminarily determine that the financial contribution provided by the GOT under this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, because the number of industries or enterprises using HRS is limited in number. We also preliminarily determine that the financial contribution provided by the GOT under this program is specific within the meaning of section 771(5A)(D)(iii)(II) of the Act, because the Steel Pipe and Profile industry is the predominant user of HRS.<sup>89</sup>

Regarding benefit, Commerce identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services, in accordance with 19 CFR 351.511(a)(2). This section of Commerce’s regulations specifies potential benchmarks in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be

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<sup>83</sup> *Id.* at Exhibit 1, 2019-2021 Medium Term Program at Sections 1.2 and 4.

<sup>84</sup> *Id.* at Erdemir and Isdemir Section II Response Question 2 and Exhibit 4-A, Erdemir’s Articles 21, 22, 27 of Association.

<sup>85</sup> *Id.* at Exhibit 4-C, Erdemir’s 2018 Annual Report at 17.

<sup>86</sup> See *OCTG from Turkey Final Determination*, and accompanying IDM at Comment 1; see also *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States*, 61 F. Supp. 3d 1306, 1324 (sustaining Commerce’s finding that Erdemir and Isdemir are “authorities”).

<sup>87</sup> See GOT IQR at 11-12.

<sup>88</sup> See *OCTG from Turkey Final Determination*, and accompanying IDM at 20-26; see also *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*Welded Line Pipe from Turkey Final Determination*), and accompanying IDM at 11-14.

<sup>89</sup> See GOT IQR at 11-12.

available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided at 19 CFR 351.511(a)(2), the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation,<sup>90</sup> because such prices generally reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving Turkish buyers and sellers that can be used to determine whether Erdemir and Isdemir sold HRS to the respondent for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where Commerce finds that the government owns or controls the majority, or a substantial portion, of the market for the good or service, Commerce will consider such prices to be significantly distorted and not an appropriate basis of comparison for determining whether there is a benefit.<sup>91</sup>

Consistent with Commerce's prior final determinations, we determine that the record evidence does not support a finding that the Turkish HRS market is so distorted that it cannot serve as a source for an appropriate benchmark.<sup>92</sup> The record shows that for 2016, 2017, and 2018, the combined domestic HRS production of Erdemir and Isdemir accounted for 38.44, 36.22, and 38.00 percent of supply, respectively, while imports of HRS accounted for 38.67, 34.15, and 27.74 percent in the same years, respectively.<sup>93</sup> Moreover, the record shows no evidence of market-distortive export restraints on HRS, such as export taxes, quotas or licensing requirements.<sup>94</sup> Given the minority share of government production, the substantial levels of imports, and the lack of other record evidence indicative of distortion, we preliminarily find, consistent with our prior determinations noted above, that the HRS market in Turkey was not distorted by the government's presence for this period. Therefore, we determine that the prices at which Borusan reported for purchasing HRS from domestic HRS producers (other than Erdemir and Isdemir) and for importing HRS from foreign suppliers can serve as tier one benchmarks. Accordingly, pursuant to 19 CFR 351.511(a)(2)(i), we used the respondent's actual domestic and import prices for HRS as the benchmark against which to compare Borusan's purchases of HRS from Erdemir and Isdemir, during the POR.

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

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<sup>90</sup> See, e.g., *Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002), and accompanying IDM at "Market-Based Benchmark."

<sup>91</sup> See *Preamble*, 63 FR at 65377.

<sup>92</sup> See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2013 and Rescission of Countervailing Duty Administrative Review, in Part*, 80 FR 61361 (October 13, 2015), and accompanying IDM at 10-11; see also *Welded Line Pipe from Turkey Final Determination*, and accompanying IDM at 11-14.

<sup>93</sup> See GOT IQR at 15-16.

<sup>94</sup> *Id.* at 22-23.

We then compared the monthly average benchmark prices to Borusan's actual purchase prices on a transaction-specific basis for HRS from Erdemir and Isdemir, including taxes and delivery charges, as appropriate. In instances in which Borusan paid Erdemir and Isdemir a lower unit price than the benchmark unit price, we multiplied the difference by the quantity of HRS purchased to calculate the benefit. Under this methodology, we find that Borusan received a benefit to the extent that the prices paid for HRS produced by Erdemir and Isdemir were for LTAR.<sup>95</sup>

To calculate the net subsidy rate attributable to Borusan, we summed the benefits resulting from purchases that were made at prices below the applicable benchmark price (*i.e.*, for LTAR) and we divided the aggregate of the benefits by Borusan's total sales during the POR. We preliminarily determine a net countervailable subsidy rate of 0.30 percent *ad valorem* for this program.<sup>96</sup>

## **B. Programs Preliminarily Determined Not to Confer a Measurable Benefit During the POR<sup>97</sup>**

Borusan reported receiving benefits under various additional programs. Based on the record evidence, we preliminarily determine that the benefits from certain programs: (1) were less than 0.5 percent of the relevant sales value in the year of receipt, and thus, were fully expensed prior to the POR; or, (2) if allocable to the POR, were less than 0.005 percent *ad valorem* in the POR when attributed to the respondent's applicable sales as discussed above in the "Attribution of Subsidies" section above.<sup>98</sup> Consistent with Commerce's practice,<sup>99</sup> we have not included these programs in our preliminary subsidy rate calculations for Borusan.

1. Investment Encouragement Program (IEP): Customs Exemptions
2. Assistance to Offset Costs Related to AD/CVD Investigations
3. Support for Expositions (Participation in Trade Fairs)
4. Support for Market Research
5. Support for Report and Consultancy Services
6. Intern Salary Support

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

1. Investment Encouragement Program (IEP): VAT Exemptions

In *Quartz Surface Products from Turkey*, we found that Turkey maintains a "normal" VAT system, which does not confer a benefit under our practice in accordance with 19 CFR

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<sup>95</sup> See section 771(5)(E)(iv) of the Act.

<sup>96</sup> See Calculation Memo at 4-5.

<sup>97</sup> See Borusan IQR at 41-43 and Exhibit O-1.

<sup>98</sup> See Calculation Memo.

<sup>99</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.

351.510(a).<sup>100</sup> Specifically, we stated that the VAT paid by the respondent in *Quartz Surface Products from Turkey* is offset in the same month or in the coming months, and that VAT exemptions do not provide a benefit to the recipient of the exemption.<sup>101</sup> We noted, however, that in the next CVD proceeding involving Turkey, we would gather additional information about the operations of Turkey’s VAT system and make appropriate determination based on the facts of that proceeding.<sup>102</sup> More recently, in *Aluminum Sheet from Turkey*,<sup>103</sup> with additional information regarding Turkey’s VAT system, Commerce re-affirmed its *Quartz Surface Products from Turkey* determination, finding no financial contribution, and thus no countervailable subsidy, under the exemption program.<sup>104</sup> In this review, Borusan reported receiving VAT exemptions through investment encouragement certificates during the AUL,<sup>105</sup> and we preliminarily find that the record with regard to the program is consistent with the facts described in *Aluminum Sheet from Turkey*, as elaborated below.

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

Under a normal VAT system, a producer pays input VAT on its purchases from suppliers and collects output VAT on its sales to customers. The producer merely conveys the tax forward and the ultimate tax burden is borne by the final (non-producing) consumer. This is achieved through a reconciliation mechanism in which the input VAT paid is offset against the output VAT collected. Any excess output VAT is remitted by the producer to the government. Any excess input VAT is refunded back to the producer by the government or credited to the producer to offset against future input VAT, as the case may be. Under this mechanism, the producer ultimately keeps no surplus output VAT and pays no excess input VAT. Thus, the net VAT incidence to the producer is ultimately zero, with the actual VAT burden conveyed forward to the final, non-producing consumer.

... 19 CFR 351.510(a)(1) governs the identification and measurement of any benefit that might arise from an indirect tax such as a VAT, under a program other than an export program. Section 351.510(a)(1) states that a benefit exists under a remission or exemption of taxes, “to the extent that the taxes or import charges paid by a firm as a result of the program are less than the taxes the firm would have paid in the absence of the program.” As indicted in the plain text of the

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<sup>100</sup> See *Certain Quartz Surface Products from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, In Part*, 85 FR 25400 (May 1, 2020) (*Quartz Surface Products from Turkey*), and accompanying IDM at 10-13.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> See Memorandum, “Putting Post-Preliminary Analysis of Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the Republic of Turkey on the Record: Countervailing Duty Administrative Review of Oil Country Tubular Good from the Republic of Turkey,” dated January 19, 2021 (*Aluminum Sheet from Turkey*).

<sup>104</sup> See *Quartz Surface Products from Turkey*, and accompanying IDM at 11-14.

<sup>105</sup> See Borusan IQR at 20-21, Exhibit C-8.



regulation . . . section 351.510(a) makes no distinction between a remission of the tax and an exemption of the tax and therefore does not require {Commerce} to apply different means by which to identify and measure benefits that arise from a VAT refund compared to a VAT exemption. Instead, section 351.510(a) directs {Commerce} to determine a benefit by assessing whether the producer pays less under the refund or exemption program than it would normally pay without the program.

In the normal reconciliation mechanism for VAT, in which the input VAT is offset against the output VAT, there is no benefit within the meaning of section 351.510(a), because the net VAT incidence to the producer is ultimately zero both under the program and in the absence of the program. This holds true whether the program involves a refund as part of the reconciliation mechanism or an exemption that obviates the need for a reconciliation in the first place. In other words, section 351.510(a) recognizes no distinction between the producer getting a refund instead of an exemption and the producer getting an exemption instead of a refund.<sup>106</sup>

In examining Turkey's VAT system in this review, record information shows VAT reconciliation procedures consistent with the findings in *Aluminum Sheet from Turkey*.<sup>107</sup> Our review of this documentation leads us to preliminarily conclude that Borusan did not retain an output VAT surplus as a result of being exempt from paying input VAT on their purchases, or that they otherwise were subsidized as a result of the exemptions.<sup>108</sup> Our review of the record also leads us to conclude that the GOT's VAT system allows all non-exempt input VAT (*i.e.*, VAT paid to suppliers) to be offset against output VAT (*i.e.*, VAT collected from domestic customers), to pay down other government debts, or to be refunded, regardless of whether a taxpayer qualifies for any particular exemption program.<sup>109</sup> If the output VAT exceeds the input VAT, the excess output VAT is paid to the government.<sup>110</sup> If the input VAT exceeds the output VAT (which can happen if the company is so heavily reliant on exports that it generates relatively little output VAT), the excess can either be carried forward to offset future output VAT, refunded by the government or, in lieu of refund from the government, applied against other government debts (such as social security contributions).<sup>111</sup>

Accordingly, consistent with the findings in *Quartz Surface Products from Turkey* and *Aluminum Sheet from Turkey*, we find that the VAT exemptions do not provide a financial contribution within the meaning of section 771(5)(D)(ii) or a benefit under 19 CFR 351.510(a), because companies fully recover input VAT, regardless of whether they qualify for VAT exemptions

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<sup>106</sup> See *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) (*Shrimp from Thailand*), and accompanying IDM at Comment 9; see also *Quartz Surface Products from Turkey* IDM at 11-12.

<sup>107</sup> See Borusan's Second SQR; see also Memorandum, "Putting Post-Preliminary Analysis of Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the Republic of Turkey on the Record," dated concurrently with the memorandum, at page 3 of attached memorandum.

<sup>108</sup> See Borusan's Second SQR at 2.

<sup>109</sup> See GOT Second SQR at 3 and at Exhibit 1.

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

(i.e., Turkey maintains a “normal” VAT system). Thus, we preliminarily find that the exemptions under Turkey’s VAT system do not confer a countervailable subsidy.

2. Law 687: Social Security Premium Support Program

Borusan self-reported use of this program.<sup>112</sup> We previously found this program to be not countervailable.<sup>113</sup> There is no new information to change this finding, and, thus, we continue to find it not countervailable.

3. Law 6661: Minimum Wage Incentive Program

Borusan self-reported use of this program.<sup>114</sup> We previously found this program to be not countervailable.<sup>115</sup> There is no new information to change this finding, and, thus, we continue to find it not countervailable.

4. Law 5510: Social Security Premium Support Program

Borusan self-reported use of this program.<sup>116</sup> We previously found this program to be not countervailable.<sup>117</sup> There is no new information to change this finding, and, thus, we continue to find it not countervailable.

5. Assistance received under Law 4857

Borusan self-reported use of this program.<sup>118</sup> We previously found this program to be not countervailable.<sup>119</sup> There is no new information to change this finding, and, thus, we continue to find it not countervailable.

6. Assistance received under Law 6111

Borusan self-reported use of this program.<sup>120</sup> We previously found this program to be not

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<sup>112</sup> See Borusan IQR at 49-50, Exhibit O-1.

<sup>113</sup> See *OCTG 2017 Prelim Results*, and accompanying PDM at 19-20 (unchanged in *OCTG Final Results 2017*); see also *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) (*Large Diameter Welded Pipe Prelim*), and accompanying PDM at “Social Security Premium Support Program,” (unchanged in *Large Diameter Welded Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019) (*Large Diameter Welded Pipe Final*)).

<sup>114</sup> See Borusan IQR at 48-49.

<sup>115</sup> See *Large Diameter Welded Pipe Prelim* and accompanying PDM at 23-24 (unchanged in *Large Diameter Welded Pipe Final*).

<sup>116</sup> See Borusan IQR at 50.

<sup>117</sup> See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013), and accompanying IDM at “Deductions on Social Security Payments Program under Law 5510.”

<sup>118</sup> See Borusan IQR at 50.

<sup>119</sup> See, e.g., *Certain Welded Carbon Steel Standard Pipe from Turkey: Preliminary Results of Countervailing Duty Administrative Review*, 75 FR 16439, 16442 (April 1, 2010) (unchanged in *Certain Welded Carbon Steel Standard Pipe from Turkey: Final Results of Countervailing Duty Administrative Review*, 75 FR 44766 (July 29, 2010)).

<sup>120</sup> See Borusan IQR at 50.

countervailable.<sup>121</sup> There is no new information to change this finding, and, thus, we continue to find it not countervailable.

7. Law 7103: Social Security Premium Support Program

Borusan self-reported use of this program.<sup>122</sup> We previously found this program to be not countervailable.<sup>123</sup> There is no new information to change this finding, and, thus, we continue to find it not countervailable.

**D. Programs Preliminarily Determined to be Not Used During the POR**

1. Inward Processing Certificate (IPC) Exemption Program
2. Strategic Investment Incentives
  - i. Tax Reductions
  - ii. Income Tax Withholding
  - iii. Social Security and Interest Support
  - iv. Land Allocation
3. Large Scale Investment Incentives
  - i. VAT and Customs Duty Exemptions
  - ii. Tax Reductions
  - iii. Income Tax Withholdings
  - iv. Social Security and Interest Support
  - v. Land Allocation
4. Export Insurance Provided by Turk Eximbank-TE
5. Preferential Tax Benefits for Turkish OCTG Producers Located in Free Zones
6. Incentives for Research and Development Activities
  - i. Product Development R&D Support-UFT
  - ii. Tax Breaks
7. Provision of Steam Coal for LTAR
8. Provision of Electricity for LTAR/Law 5084: Energy Support
9. Provision of Land for LTAR
10. Law 5084: Withholding of Income Tax on Wage and Salaries
11. Exemption from Property Tax
12. Law 5084: Incentive for Employers' Share in Insurance Premiums
13. Law 6486: Regional Program for Employer's Share of Social Security Withholding
14. Turk Eximbank-TE Working Capital Loan
15. Export Financing: Pre-Export Credit Program

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<sup>121</sup> See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review*; 2017, 84 FR 48583 (September 16, 2019), and accompanying PDM (unchanged in *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review*; 2017, 85 FR 16056 (March 20, 2020)).

<sup>122</sup> See Borusan IQR at 51, Exhibit O-1.

<sup>123</sup> See *Certain Quartz Surface Products from the Republic of Turkey Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 54841 (October 11, 2019) and accompanying PDM (unchanged in *Quartz Surface Products from Turkey*).

## IX. Recommendation

Based on our analysis, we recommend adopting the preliminary results described above. If this recommendation is accepted, we will publish the preliminary results of review in the *Federal Register*.



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

1/19/2021

X



Signed by: CHRISTIAN MARSH

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Christian Marsh  
Deputy Assistant Secretary  
for Enforcement and Compliance