



C-489-825

Administrative Review

POR: 1/1/2018 – 12/31/2018

Public Document

E&C/VIII: JCM

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:
Administrative Review of the Countervailing Duty Order on
Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes
from the Republic of Turkey; 2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey). The period of review (POR) is January 1, 2018, through December 31, 2018. We preliminarily determine that Ozdemir Boru Profil San. ve Tic. Ltd. Sti. (Ozdemir) received *de minimis* countervailable subsidies during the POR.

II. BACKGROUND

A. Initiation and Case History

On July 21, 2016, Commerce published its final determination in the CVD investigation of HWR pipes and tubes from Turkey.¹ On September 13, 2016, Commerce published an amended final

¹ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016) (*HWR Turkey 2014 Final Determination*), and the accompanying Issues and Decision Memorandum (IDM).



determination and *Order*.² On March 14, 2018, Commerce published a notice regarding the remand redetermination of the amended final determination.³

On September 3, 2019, Commerce published a notice of opportunity to request an administrative review of the *Order*.⁴ On September 30, 2019, we received a request from Ozdemir and Nucor Pipe Mills⁵ to conduct an administrative review of the *Order* with respect to Ozdemir.⁶ On November 12, 2019, Commerce initiated an administrative review of the *Order* for the period January 1, 2018, through December 31, 2018, covering Ozdemir.⁷

On January 10, 2020, Commerce issued the initial questionnaire to Ozdemir and the Government of Turkey (GOT), and on February 28, 2020, we received an initial questionnaire response from the GOT.⁸ On January 31 and March 5, 2020, we received the affiliation questionnaire response and the initial questionnaire response, respectively, from Ozdemir.⁹ On March 19, 2020, we issued supplemental questionnaires to Ozdemir and the GOT.¹⁰ On April 13 and April 16, 2020, we received supplemental questionnaire responses from the GOT and Ozdemir, respectively.¹¹

² See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 81 FR 62874 (September 13, 2016) (*Order*).

³ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Notice of Court Decision Not in Harmony With the Amended Final Determination of the Countervailing Duty Investigation*, 83 FR 11174 (March 14, 2018); see also *Final Results of Remand Redetermination Pursuant to Court Remand, Court No. 16-00206* (December 11, 2017) (*HWR Turkey 2014 Redetermination*).

⁴ See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 84 FR 45949 (September 3, 2019).

⁵ Independence Tube Corporation and Southland Tube, both Nucor companies (collectively, Nucor Pipe Mills).

⁶ See Ozdemir's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Review Request for Ozdemir Boru Profil San. Ve Tic. Ltd. Sti.," dated September 30, 2019; see also Petitioners' Letter, "Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Request for Administrative Review," dated September 30, 2019.

⁷ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 61011 (November 12, 2019).

⁸ See GOT's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (C-489-825): Response to Questionnaire," dated February 28, 2020 (GOT IQR).

⁹ See Ozdemir's Letters, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (C-489-825): Response to Affiliation Section of Questionnaire," dated January 31, 2020 (Ozdemir AQR); and "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (C-489-825): Response to Questionnaire," dated March 5, 2020 (Ozdemir IQR).

¹⁰ See Commerce's Letters, "Countervailing Duty Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Supplemental Questionnaire," dated March 19, 2020.

¹¹ See GOT's Letter, "Response of the Government of Turkey to Supplemental Questionnaire in 2018 in Administrative Review of Countervailing Duty on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey," dated April 13, 2020 (GOT April 13 SQR); see also Ozdemir's Letter, "Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (C-489-825): Response to Supplemental Questionnaire," dated April 16, 2020.

On December 15, 2020, we issued an additional supplemental questionnaire to Ozdemir,¹² and on December 18, 2020, Ozdemir submitted a timely response.¹³

On March, 25, 2020, the petitioners submitted a timely filed new subsidy allegation (NSA) regarding the Super Incentive Scheme program.¹⁴ On May 5, 2020, Commerce initiated an investigation regarding this NSA.¹⁵ On June 8, 2020, we issued questionnaires to the GOT and Ozdemir regarding the Super Incentive Scheme.¹⁶ On June 22, 2020, we received responses regarding the NSA from the GOT and Ozdemir.¹⁷

On August 26, 2020, the petitioners submitted comments urging Commerce to countervail the following programs: Provision of Hot-Rolled Steel (HRS) for Less Than Adequate Remuneration (LTAR), Provision of Land for LTAR, Deductions from Taxable Income for Export Revenue, Rediscount Program, Exemption from Property Tax, and Intern Salary Support.¹⁸ Our decisions regarding the countervailability of these programs are detailed in the “Analysis of Programs” section below.

B. Postponement of Preliminary Results

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for the preliminary results of this review until July 21, 2020.¹⁹ On June 26, 2020, Commerce further postponed the deadline for the preliminary results of this administrative review by 120 days until November 18, 2020, as permitted under section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2).²⁰ On July 21, 2020, Commerce tolled all deadlines in administrative reviews by an additional 60

¹² See Commerce’s Letter, “Countervailing Duty Administrative Review of Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Second Supplemental Questionnaire,” dated December 15, 2020.

¹³ See Ozdemir’s Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (C-489-825): Response to Second Supplemental Questionnaire,” dated December 18, 2020.

¹⁴ See Petitioners’ Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: New Subsidy Allegation,” dated March 25, 2020.

¹⁵ See Memorandum, “Decision Memorandum on New Subsidy Allegation,” dated May 5, 2020.

¹⁶ See Commerce’s Letters, “2018 Administrative Review of the Countervailing Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey (Turkey): New Subsidy Allegation Questionnaire for the GOT,” dated June 8, 2020; and “2018 Administrative Review of the Countervailing Duty Order on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: New Subsidy Allegations Questionnaire for Ozdemir,” dated June 8, 2020.

¹⁷ See GOT’s Letter, “Response of the Government of Turkey to New Subsidy Allegation Questionnaire in 2018 Administrative Review of Countervailing Duty on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey,” dated June 22, 2020; *see also* Ozdemir’s Letter, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey (C-489-825): Response to NSA Questionnaire,” dated June 22, 2020.

¹⁸ See Petitioners’ Letter, “Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from Turkey: Pre-Preliminary Comments,” dated August 26, 2020.

¹⁹ 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.

²⁰ See Memorandum, “Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2018,” dated June 26, 2020.

days.²¹ Accordingly, the deadline for the preliminary results in this administrative review was postponed to January 19, 2021.²²

III. SCOPE OF THE ORDER

The products covered by this order are certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A-500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceed the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

IV. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

²¹ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

²² *Id.* at 2.

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.²³ In the initial questionnaire, we notified the respondents to this proceeding that the AUL period would be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service Publication 946 (2016, “Appendix B - Table of Class Lives and Recovery Periods” (IRS Pub. 946).²⁴ The 15-year period corresponds to IRS Pub. 946 asset class, “33.4 Manufacture of Primary Steel Mill Products.” No party in this proceeding submitted comments challenging the proposed AUL period, and we therefore preliminarily determine that a 15-year period is appropriate to allocate benefits from non-recurring subsidies.

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 divided 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) for the year in which the assistance was approved. If the amount of the subsidies was less than 0.5 percent of the relevant sales value, then the benefits were expensed to the year of receipt rather than allocated over the AUL.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes 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. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (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 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 Commerce’s regulations further clarifies Commerce’s cross-ownership standard. According to the preamble, relationships captured by the cross-ownership definition include those 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

²³ See 19 CFR 351.524(b).

²⁴ See U.S. Internal Revenue Service Publication 946 (2008), “How to Depreciate Property” at Table B-2: Table of Class Lives and Recovery Periods.

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.²⁵

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case to determine whether cross-ownership exists. The U.S. Court of International Trade (CIT) 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.²⁶

Ozdemir

Ozdemir reported that it has no parent companies or subsidiaries and that it had no cross-owned affiliates during the POR or the AUL, nor did it export subject merchandise for other producers or sell subject merchandise to other exporters for export to the United States.²⁷ Accordingly, Ozdemir responded to the initial questionnaire only with regard to itself. Pursuant to 19 CFR 351.525(b)(6)(i), we attributed subsidies received by Ozdemir to the sales of Ozdemir.

C. Denominators

When selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondent’s receipt of benefits under each program. As discussed in further detail below in the “Programs Preliminarily Determined to Be Countervailable” section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient’s total sales as the denominator. Where the program has been found to be contingent upon export activities, we used the recipient’s total export sales as the denominator. For a further discussion of the denominators used, *see* Ozdemir’s Preliminary Calculation Memorandum.²⁸ Furthermore, as Ozdemir received revenue from tolling services during the POR, we included this revenue in the total sales denominator for this review.

V. BENCHMARKS AND INTEREST RATES

Commerce is reviewing non-recurring, allocable subsidies received by Ozdemir.²⁹ The derivation of the benchmark and discount rates used to value these subsidies is discussed below.

A. Discount Rates

In accordance with 19 CFR 352.524(d)(3)(i), Commerce will select the following discount rates in order of preference: (1) the cost of long-term, fixed-rate loans of the firm in question; (2) the average cost of long-term, fixed-rate loans in the country in question; or (3) a rate that

²⁵ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

²⁶ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600 (CIT 2001).

²⁷ See Ozdemir AQR at 2-5.

²⁸ See Memorandum, “Ozdemir Calculations for the Preliminary Results,” dated concurrently with this memorandum (Ozdemir’s Preliminary Calculation Memorandum).

²⁹ See 19 CFR 351.524(b)(1).

Commerce considers to be most appropriate. As the first two options are unavailable, we used the discount rate data from the International Monetary Fund's (IMF's) *International Financial Statistics* as our national discount rate, consistent with 19 CFR 351.524(d)(3)(i)(C). The interest rate benchmarks and discount rates used in our preliminary calculations are provided in Ozdemir's Preliminary Calculation Memorandum.

B. Land Benchmark

For these preliminary results, we relied upon the land benchmark data used in *HWR Turkey 2014 Redetermination*. Specifically, we used as our benchmark publicly available information concerning industrial land prices in Turkey for purposes of calculating a comparable commercial benchmark price for land available in Turkey.³⁰ We find that these land prices serve as comparable commercial benchmarks under 19 CFR 351.511(a)(2)(i).

C. Input Benchmark

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 between private parties, actual imports or actual sales from competitively run government auctions) (tier one); (2) world market prices that would be 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.³¹ This is 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 the government authority 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, in certain circumstances, 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.³²

³⁰ See *HWR Turkey 2014 Redetermination*; see also Ozdemir IQR at Exhibit 1.

³¹ See, *e.g.*, *Notice of Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002), and accompanying Issues and Decision Memorandum (IDM) at "Market Based Benchmark."

³² See *CVD Preamble*, 63 FR at 65277.

Consistent with Commerce's final determinations in *CWP Turkey 2015 AR* and *WLP from Turkey*, 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.³³ The record information shows that for 2016, 2017, and 2018, the combined domestic HRS production of the government authority accounted for 38.44, 36.23, and 37.30 percent of supply, respectively, while imports of HRS accounted for 38.67, 34.15, and 27.22 percent in the same years, respectively.³⁴ Given the minority share of government production, the substantial levels of imports, and the lack of other record evidence indicative of distortion, such as an export tax on or export quota for the input, we preliminarily find, consistent with our prior determinations noted above, that the HRS market in Turkey was not distorted by the government's presence during this period. Therefore, we determine that the respondent's reported prices for domestic HRS (other than that purchased from the government authority) and imported HRS 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 to calculate the benefit from its purchases of HRS from the government authority, where applicable, 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 prices paid by Ozdemir, the benchmark includes the delivery charges, but not value-added tax (VAT), import duties, or stamp fees.³⁵

VI. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following:

Programs Preliminarily Determined to Be Countervailable

1. Rediscount Program

The Rediscount Program was established in 1999 and is administered by the Export Credit Bank of Turkey (Turk Eximbank).³⁶ The Rediscount Program was designed to provide financial

³³ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 47479 (October 12, 2017) (*CWP Turkey 2015 AR*), and accompanying IDM at 15; see also *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) (*WLP from Turkey*), and accompanying IDM at 15 – 16.

³⁴ See GOT IQR at 7 and 9.

³⁵ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2017*, 84 FR 70495 (December 23, 2019) (*HWR Turkey AR 2017 Final Results*), and accompanying IDM at Comment 1.

³⁶ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2017*, 84 FR 43583 (August 21, 2019) (*HWR Turkey AR 2017 Preliminary Results*), and accompanying PDM at 8-9, unchanged in *HWR Turkey AR 2017 Final Results*.

support to Turkish exporters, manufacturer-exporters, and manufacturers supplying exporters.³⁷ This program is contingent upon an export commitment; if a firm fails to meet its export commitment, it must pay interest on the value of the unfulfilled commitment.³⁸ Under the Rediscount Program, there is a minimum loan amount of USD 200,000 per company.³⁹ Loan payments shall be made within the credit period or at maturity to the Turk Eximbank.⁴⁰ Companies can repay either in the foreign currency in which the loan was obtained or in a Turkish-lira equivalent of the principal and interest based on exchange rates determined by the Turk Eximbank.⁴¹

According to the GOT, no changes were introduced to the program during the POR, and the program was not replaced by a successor program.⁴² Ozdemir reported that it received several rediscount loans from Turk Eximbank under this program during the POR.⁴³

In *HWR Turkey AR 2017 Final Results*, Commerce found that Ozdemir received a countervailable subsidy with respect to this program.⁴⁴ Consistent with *HWR Turkey AR 2017 Final Results*, we preliminarily find that this program confers a countervailable subsidy within the meaning of section 771(5) of the Act.⁴⁵ This loan program constitutes a financial contribution in the form of a direct transfer of funds from the GOT under 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amount of interest paid by the company for these loans during the POR and the amount the company would have paid on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans are contingent upon export performance.

In calculating the benefit, pursuant to section 771(6)(A) of the Act and 19 CFR 351.505(a)(1), we applied a discounted benchmark interest rate, calculated using the respondent's short-term weighted-average commercial interest rate, as discussed above at "Benchmarks and Interest Rates." For each loan, we compared the effective interest that Ozdemir paid to the effective interest that Ozdemir would have paid at the appropriate benchmark interest rate. In accordance with section 771(6)(A) of the Act, we subtracted from this benefit amount the fees Ozdemir paid to commercial banks for the required letters of guarantee.

To calculate the countervailable subsidy rate, we divided Ozdemir's adjusted benefit amount by its total export sales value for the POR. On this basis, we preliminarily determine the net countervailable subsidy rate for this program to be 0.04 percent *ad valorem*.⁴⁶

³⁷ *Id.*

³⁸ *Id.*; see also GOT April 13 SQR at 5 and Exhibit 1.

³⁹ See *HWR Turkey AR 2017 Preliminary Results* PDM at 8-9, unchanged in *HWR Turkey AR 2017 Final Results*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² See GOT IQR at 3.

⁴³ See Ozdemir IQR at 10-13 and Exhibit 6.

⁴⁴ See *HWR Turkey AR 2017 Final Results* IDM.

⁴⁵ *Id.*

⁴⁶ See Ozdemir's Preliminary Calculation Memorandum.

2. Deductions from Taxable Income for Export Revenue

Article 40 of the Income Tax Law Number 193, effective June 2, 1995, allows taxpayers engaged in export activities to claim a lump sum deduction from gross income resulting from exports, construction, maintenance, assembly, and transportation activities abroad in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings from such activities.⁴⁷ This deduction is to cover the expenditures without documentation incurred from exports, construction, maintenance, assembly, and transportation activities abroad.⁴⁸ The deduction for export earnings may either be taken as a lump sum on a company's annual income tax return or be shown within the company's marketing, selling and distribution expense account of the income statement.⁴⁹ Under this program, marketing, selling, and distribution expenses are deductible expenditures for tax purposes. The Ministry of Finance is responsible for administering the program.⁵⁰ According to the GOT, no changes were introduced to the program during the POR, and the program was not replaced by a successor program.⁵¹ During the POR, Ozdemir reported receiving the deduction for export earnings with respect to its 2017 income tax return, filed in 2018.⁵²

In prior segments of this proceeding, Commerce found that Ozdemir received countervailable subsidies with respect to its tax returns filed during the periods examined.⁵³ Consistent with our determinations in these prior segments and prior CVD determinations involving Turkey, we preliminarily find that this tax deduction confers a countervailable subsidy.⁵⁴ The income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, because it represents revenue foregone by the GOT. The deduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. It is also specific under section 771(5A)(B) of the Act because its receipt is contingent upon export earnings.

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 in accordance with 19 CFR 351.509(a)(1). To calculate the countervailable subsidy rate for Ozdemir, we divided the company's tax savings by its total export sales value for 2018.

⁴⁷ See *HWR Turkey AR 2017 Preliminary Results* PDM at 9-10, unchanged in *HWR Turkey AR 2017 Final Results*.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See GOT IQR at 9-10.

⁵² See Ozdemir IQR at 14 and Exhibits 3 and 9.

⁵³ See, e.g., *HWR Turkey AR 2017 Preliminary Results* IDM at 9-10, unchanged in *HWR Turkey AR 2017 Final Results*.

⁵⁴ *Id.*; see also *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review*, 77 FR 46713 (August 16, 2012), and accompanying IDM at "Deduction from Taxable Income for Export Revenue"; *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), and accompanying IDM at "Deduction from Taxable Income for Export Revenue"; and *WLP from Turkey* IDM at "Deduction from Taxable Income for Export Revenue."

On this basis, we preliminarily determine the net countervailable subsidy for this program to be 0.04 percent *ad valorem*.⁵⁵

3. Exemption from Property Tax

The Exemption from Property Tax program was established in 1987 by Article 4 of Law No. 3365 with the goal of increasing investment opportunities in organized industrial zones (OIZs).⁵⁶ Originally, the program provided property tax exemptions to buildings in OIZs for the initial five years after the completion of construction.⁵⁷ However, as of June 2017, all buildings located within OIZs receive permanent exemption from property taxes under Articles 4 and 8 of Property Tax Law No. 1319.⁵⁸ In the underlying investigation, Commerce found that Ozdemir failed to report its usage of these tax exemptions; therefore, we selected a program subsidy rate based completely on the application of adverse facts available.⁵⁹ Additionally, and according to the GOT, no changes were introduced to the program during the POR, and the program was not replaced by a successor program.⁶⁰ In the current administrative review, Ozdemir reported the receipt of benefits from this program during the POR.⁶¹

We preliminarily find that this program confers a countervailable subsidy within the meaning of section 771(5) of the Act. This tax exemption constitutes a financial contribution in the form of revenue foregone under 771(5)(D)(ii) of the Act. A benefit exists under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1) equal to the amount of taxes the firm would have paid in the absence of the program. The program is also specific in accordance with section 771(5A)(D)(iv) of the Act because receipt of the loans is limited to an enterprise or industry located within a designated geographical region within the jurisdiction of the authority providing the subsidy.

To calculate the countervailable subsidy rate, we divided the amount of Ozdemir's POR property tax exemptions by its total POR sales value.⁶² On this basis, we preliminarily determine the net countervailable subsidy rate for this program to be 0.01 percent *ad valorem*.⁶³

4. Provision of HRS for LTAR

⁵⁵ See Ozdemir's Preliminary Calculation Memorandum.

⁵⁶ See GOT's Letter, "Placing Information on the Record: Response of the Government of Turkey in Administrative Review of Countervailing Duty on Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey," dated January 28, 2019 at 3-4.

⁵⁷ *Id.*

⁵⁸ *Id.* at 4 and at Exhibit 1.

⁵⁹ See *HWR Turkey 2014 Final Determination* and the accompanying IDM at 5-8.

⁶⁰ See GOT IQR at 4.

⁶¹ See Ozdemir IQR at 15-17 and at Exhibit 10.

⁶² See *HWR Turkey AR 2017 Preliminary Results* and the accompanying IDM at 18, footnote 98, unchanged in *HWR Turkey AR 2017 Final Results*. Although Ozdemir reported eligibility for this exemption in 2017 (*i.e.*, the POR of the previous administrative review), the company did not realize these benefits until 2018 (*i.e.*, the POR of the current administrative review). In our calculations, we divided all the benefits realized in 2018 by the total sales value for 2018. For more details, see Ozdemir's Preliminary Calculation Memorandum.

⁶³ See Ozdemir's Preliminary Calculation Memorandum.

In previous segments of this proceeding, Commerce has found that this program provided countervailable subsidies to Ozdemir.⁶⁴ The information submitted by the GOT with regard to this program remains consistent with our previous findings.

Ozdemir reported purchasing HRS from Eregli Demir ve Celik Fabrikalari T.A.S. (Erdemir) and Iskenderun Iron & Steel Works Co. (Isdemir) during the POR.⁶⁵ In its initial questionnaire response, the GOT responded to the Input Producer Appendix on behalf of Erdemir and Isdemir.⁶⁶

The GOT provided information on Erdemir and Isdemir, suppliers of HRS, as well as Ordu Yardımlaşma Kurumu (OYAK), the Turkish military pension fund that is a shareholder of Erdemir and Isdemir.⁶⁷ According to record evidence, in 2017, OYAK established the OYAK Mining Metallurgy Group as Turkey's largest integrated steel producer, comprised of eight companies, including Erdemir and Isdemir.⁶⁸ During the POR, OYAK owned 49.29 percent of Erdemir's shares through a wholly-owned holding company, Ataer Holding A.S. (ATAER).⁶⁹ Moreover, because 3.08 percent of Erdemir's shares were owned by Erdemir itself in the form of treasury shares, the other shareholders combined accounted for less than 48 percent, thus making OYAK the single largest, and controlling, shareholder of Erdemir.⁷⁰ Also, during the POR, Erdemir owned 94.87 percent of Isdemir.⁷¹

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."⁷² Information in the GOT's questionnaire responses indicates the GOT's significant involvement in OYAK. For example, pursuant to the pension fund law, OYAK's Representative Assembly shall be composed of not less than 50 and not more than 100 members of the Turkish Armed Forces "designated by their respective commanders or superiors."⁷³ The Representative Assembly, in turn, elects 20 of the 40 members, and 10 substitute members of OYAK's General Assembly.⁷⁴ Of the General Assembly's other 20 members, 17 are, by statute, government officials (*i.e.*, Ministers of Finance and National Defense, Commanders of the Land, Naval, and Air Forces, General Commander of the Grandarmierie, President of the Court of Accounts, President of the Board of Audit of the Prime Ministry, Chairman of the Board of the Banks Association, Chairman of the Union Chambers and Commodity Exchanges, General Staff of the Ministry of National Defense, and three private sector individuals appointed by the Minister of National Defense). In accordance with the law,

⁶⁴ See *HWR Turkey 2014 Final Determination*, 81 FR at 47349 and accompanying IDM at 11-14; see also *HWR Turkey AR 2016 Preliminary Results* and accompanying PDM at 8-10, unchanged in *HWR Turkey AR 2016 Final Results*, and *HWR Turkey AR 2017 Final Results* IDM at 4.

⁶⁵ See Ozdemir IQR at 18-20 and at Exhibit 11.

⁶⁶ See GOT IQR at Exhibit 5.

⁶⁷ *Id.* at Exhibits 5, 5A-5C, and 5N-5O.

⁶⁸ *Id.* at Exhibit 5C (OYAK 2017 Annual Report).

⁶⁹ *Id.* at Exhibit 5 (Erdemir's Input Producer's Appendix) and Exhibit 5C (OYAK 2018 Annual Report).

⁷⁰ *Id.*

⁷¹ *Id.* at Exhibit 5C (OYAK 2018 Annual Report).

⁷² *Id.* at Exhibit 5G (Law No. 205).

⁷³ *Id.*

⁷⁴ *Id.*

either the Minister of National Defense or the Minister of Finance presides over the General Assembly.⁷⁵ Members of the General Assembly elect the eight-person Board of Directors.⁷⁶ Also, OYAK's property has, by law, the "same rights and privileges of state property," OYAK is exempt from corporate and other taxes, and members of the armed forces must, by law, contribute part of their salaries to OYAK.⁷⁷

Record evidence indicates that the GOT's significant involvement in OYAK extends to Erdemir and Isdemir. For example, Erdemir's 2016 Annual Report states, "In 2016 . . . flat steel exports increased 29%," and that Erdemir "aims to meet the present and future needs of Turkish industry to the highest level by investing in the production of high value added products."⁷⁸ These policies are in line with the GOT's stated policy in its 2012-2014 Medium Term Programme to improve Turkey's balance of payments.⁷⁹ Also, the GOT explained that the Turkish Privatization Administration (TPA) holds veto power over any decisions related to the closedown, sale, merger, or liquidation of both Erdemir and Isdemir.⁸⁰ Erdemir's 2016 annual report and OYAK Mining Metallurgy Group's 2017 and 2018 annual reports indicate that OYAK and the TPA continue to have representatives on Erdemir and the group's Board of Directors.⁸¹

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 the OYAK Mining Metallurgy Group and in turn Erdemir and Isdemir, as well as the alignment of Erdemir's Annual Report with the Medium Term Programme. Therefore, consistent with the final CVD determination in *OCTG from Turkey*, we determine that Erdemir and Isdemir are public bodies, and hence "authorities," pursuant to section 771(5)(B) of the Act.⁸² Consequently, we find that the HRS supplied by Erdemir and Isdemir to Ozdemir is a financial contribution in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act.

Regarding the specificity of the HRS for LTAR program, the GOT provided a list of the industries that purchased HRS in Turkey during the POI.⁸³ Specifically, the GOT identified the following industries as purchasers of HRS during the POI: steel pipe and profile, rerolling

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.* at Exhibit 5C.

⁷⁹ 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 8-11.

⁸⁰ See GOT IQR at 5A (Erdemir's Articles 10, 21, 22, and 27 of Association).

⁸¹ *Id.* at Exhibit 5C.

⁸² See *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination in the Countervailing Duty Determination and Final Affirmation Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey*), and accompanying IDM at Comment 1; see also *Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. & Borusan Istikbal Ticaret v. United States*, Slip Op. 15-36 (CIT) (April 22, 2015) (Borusan) at 28, in which the Court upheld Commerce's finding that Erdemir and Isdemir are "authorities."

⁸³ See GOT IQR at 13-15.

producers, chain of distribution, machinery manufacturing, automotive, heavy industry, consumer products, pressure purposes (pressure vessels, steam boilers), panel radiator, white appliances, and shipbuilding.⁸⁴ Consistent with Commerce's determination in *OCTG from Turkey* and *WLP from Turkey*, 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.⁸⁵

To measure the benefit during the POR, we compared the monthly benchmark prices, as identified and described above in the "Benchmarks and Interest Rates" section, to Ozdemir's actual purchase prices for HRS from Erdemir and Isdemir during 2018, including taxes and delivery charges, as appropriate. In instances in which Ozdemir paid to 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.⁸⁶ Under this methodology, we find that Ozdemir received a benefit to the extent that the prices it paid for HRS produced by Erdemir and Isdemir were for LTAR.⁸⁷

To calculate the net subsidy rate attributable to Ozdemir, we divided the benefit by the company's total sales during the POR. On this basis, we find that Ozdemir received a countervailable subsidy of 0.25 percent *ad valorem*.⁸⁸

5. Provision of Land for LTAR

According to the GOT, support is provided in the form of allocation of land to firms operating in provinces as set forth in Article 2 of Law No. 5084 (February 6, 2004), including (previously) non-allocated parcels in OIZs in provinces subject to clause (b) of Article 2.⁸⁹ The GOT further states that this program is used to promote investment and to increase employment in selected provinces where the development level is relatively low.⁹⁰ In *HWR Turkey 2014 Final Determination*, Commerce found that the program was administered by the Ministry of Science, Industry and Technology, Directorate General of Industrial Zones, a national government authority, and that it is implemented in each industrial zone by the respective OIZ.⁹¹ The GOT reports that the program was terminated on February 6, 2010.⁹²

⁸⁴ *Id.*

⁸⁵ See *OCTG from Turkey*, 79 FR at 41964, and accompanying IDM at 20-26; see also *WLP from Turkey*, and accompanying IDM at 11-14.

⁸⁶ See Ozdemir's Preliminary Calculation Memorandum.

⁸⁷ See sections 771(5)(D)(iv) and 771(5)(E)(iv) of the Act.

⁸⁸ See Ozdemir's Preliminary Calculation Memorandum.

⁸⁹ See *HWR Turkey 2014 Final Determination*, 81 FR at 47349, and accompanying IDM, at 14-15.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2016*, 83 FR 40228 (August 14, 2018) (*HWR Turkey AR 2016 Preliminary Results*) and accompanying PDM at 10-11, unchanged in *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Affirmative Final Results of Countervailing Duty Administrative Review*, 83 FR 58757 (November 21, 2018) (*HWR Turkey AR 2016 Final Results*).

In *HWR Turkey 2014 Final Determination*, Commerce found that Ozdemir received a countervailable subsidy under this program in 2008, when it purchased land from the Zonguldak OIZ.⁹³ We found that the land sold to Ozdemir in 2008 constituted a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, and that it is specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in provinces designated as priority regions for development.⁹⁴ According to the GOT, Ozdemir has not received further benefits from this program during the POR, and no changes have been made to the program since its termination.⁹⁵ In addition, Ozdemir states that the company did not purchase or lease land-use rights in the Zonguldak OIZ during the POR.⁹⁶ However, under our methodology for land, any benefit from past provisions of land under this program may continue to be allocable to the POR.

To determine whether Ozdemir's acquisition of land from the OIZ entity constitutes the provision of land for LTAR, we multiplied the area of land Ozdemir purchased from the GOT in 2008 by the unit benchmark land price discussed above in the "Benchmarks and Interest Rates" section. Applying the "0.5 percent test," described above in the "Allocation Period" section, we divided the benefit amount received in 2008 by Ozdemir's total sales for 2008 and found that the resulting ratio exceeded 0.5 percent. Therefore, we allocated a portion of the benefit to the POR using Commerce's standard grant allocation formula.⁹⁷

However, we lack either: (1) company-specific information concerning interest rates charged to Ozdemir on long-term, Turkish lira-denominated debt which originated in 2008; or (2) information from the GOT concerning long-term interest rates in Turkey for 2008. Therefore, in accordance with 19 CFR 351.505(a)(3)(ii), we used the national average discount rate in Turkey for 2008 as the long-term discount rate utilized in the grant allocation formula. See the "Benchmarks and Interest Rates" section above for further information regarding this interest rate.

To calculate the net subsidy rate for the POR, we divided the amount of the subsidy allocated to the POR by Ozdemir's POR sales value. On this basis, we determine Ozdemir's net subsidy rate under this program to be 0.05 percent *ad valorem*.⁹⁸

Programs Determined to Be Not Countervailable or to Not Confer a Measurable Benefit

1. Intern Salary Support Program
2. Inward Processing Regime (IPR)⁹⁹

⁹³ *Id.*, at 14-15.

⁹⁴ *Id.*

⁹⁵ See GOT IQR at 20.

⁹⁶ See Ozdemir IQR at 21.

⁹⁷ See 19 CFR 351.524(d).

⁹⁸ See Ozdemir's Preliminary Calculation Memorandum.

⁹⁹ Consistent with case precedent, we preliminarily determine that the tax and duty exemptions that Ozdemir received on imported inputs under D-1 certificates of the IPR program during the POR did not confer countervailable benefits, as the exemptions were applied only to the imported inputs consumed in the production of the exported product, making normal allowance for waste. See, e.g., *Circular Welded Carbon Steel Pipes and Tubes*

Programs Preliminarily Determined to Be Not Used by Ozdemir:

We preliminarily determine that Ozdemir did not apply for, or receive, countervailable benefits during the POR under the programs listed below:

1. Assistance to Offset AD/CVD Costs
2. Law 6486 Social Security Premium Incentive
3. Provision of Lignite for LTAR
4. Tax Benefit for Research and Development (R&D) Activities
5. Product Development R&D Support-UFT
6. Pre-Export Credit Program
7. Export Insurance Provided by Turk Eximbank
8. Incentive for Employer's Share in Insurance Premiums
9. Investment Encouragement Program (IEP) Customs Duty and VAT Exemptions
10. Large Scale Investment Incentives: VAT and Customs Duty Exemptions
11. Large Scale Investment Incentives: Tax Reductions
12. Large Scale Investment Incentives: Income Tax Withholding
13. Large Scale Investment Incentives: Social Security and Interest Support
14. Large Scale Investment Incentives: Land Allocation
15. Large Scale Investment Incentives: Social Security and Interest Support
16. Strategic Investment Incentives: VAT and Customs Duty Exemptions
17. Strategic Investment Incentives: Tax Reductions
18. Strategic Investment Incentives: Income Tax Withholding
19. Strategic Investment Incentives: Land Allocation Super Incentive Scheme (a.k.a Project Based Investment Incentive System)
20. Withholding of Income Tax on Wages and Salaries

from Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2015, 82 FR 16994 (April 7, 2017), and accompanying Preliminary Decision Memorandum (PDM) at 15-16, unchanged in 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); see also HWR Turkey AR 2016 Preliminary Results PDM at 17-19, unchanged in HWR Turkey AR 2016 Final Results; and HWR Turkey AR 2017 Preliminary Results PDM at 16-18, unchanged in HWR Turkey AR 2017 Final Results.

VII. CONCLUSION

We recommend that you approve the preliminary findings described above.



Agree

Disagree

1/19/2021

X



Signed by: CHRISTIAN MARSH
Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance