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Investigation
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February 26, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination in the Countervailing Duty Investigation of Certain
Aluminum Foil from the Republic of Turkey

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain aluminum foil (aluminum foil) from the Republic of Turkey (Turkey), as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On September 29, 2020, the Aluminum Association Trade Enforcement Working Group and its individual members, Granges Americas Inc., JW Aluminum Company, and Novelis Corporation (collectively, the petitioners), filed a petition with Commerce seeking the imposition of countervailing duties on imports of aluminum foil from Turkey.¹ On October 19, 2020, Commerce initiated a countervailable duty (CVD) investigation of aluminum foil from Turkey.²

We stated in the *Initiation Notice* that, if appropriate, we intended to base the selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States subheadings listed in the scope of the

¹ See Petitioners' Letter, "Certain Aluminum Foil from Armenia, Brazil, Oman, Russia, and Turkey Petition for the Imposition of Antidumping and Countervailing Duties," dated September 29, 2020 (the Petition).

² See *Certain Aluminum Foil from the Sultanate of Oman and the Republic of Turkey: Initiation of Countervailing Duty Investigations*, 85 FR 68287 (October 28, 2020) (*Initiation Notice*); see also CVD Investigation Initiation Checklist, "Certain Aluminum Foil from the Republic of Turkey," dated October 19, 2020 (Initiation Checklist).

investigation.³ On October 15, 2020, Commerce released the CBP entry data to all interested parties under an administrative protective order and requested comments regarding the data and respondent selection.⁴ On October 27, 2020, we received comments on the CBP data from Assan Alüminyum Sanayi ve Ticaret A.S. (Assan), Kibar Americas, Inc., Kibar Dis Ticaret A.S. (Kibar Dis), and Ispak Esnek Ambalaj Sanayi A.S. (Ispak).⁵ On October 28, 2020, we received comments on the CBP data on behalf of the petitioners.⁶ We received no requests for voluntary treatment from any party.

On November 4, 2020, we selected Assan and Kibar Dis, the two largest producers/exporters of subject merchandise by volume, for individual examination as mandatory respondents in this investigation.⁷ On November 5, 2020, we issued the initial questionnaire to the Government of Turkey (GOT), and instructed the GOT to forward the questionnaire to the selected mandatory respondents.⁸ Between November 20, 2020, and February 16, 2021, we received timely responses to our initial and supplemental questionnaires from the GOT⁹ and the mandatory respondents.¹⁰

³ *Id.*, 85 FR at 68290.

⁴ See Memorandum, “Release of Customs Data from U.S. Customs and Border Protection Data,” dated October 15, 2020.

⁵ See Assan *et al.*’s Letter, “Comments on CBP Data for Respondent Selection in Countervailing Duty Investigation,” dated October 27, 2020.

⁶ See Petitioners’ Letter, “Countervailing Duty Investigation of Certain Aluminum Foil from the Republic of Turkey –Petitioners’ Comments on CBP Data and Respondent Selection,” dated October 28, 2020.

⁷ See Memorandum, “Countervailing Duty Investigation of Certain Aluminum Foil from the Republic of Turkey: Respondent Selection,” dated November 4, 2020.

⁸ See Commerce’s Letter, “Countervailing Duty Investigation of Certain Aluminum Foil from the Republic of Turkey: Initial Questionnaire,” dated November 5, 2020 (Initial Questionnaire).

⁹ See GOT’s Letter, “Response of the Government of Turkey to Initial Questionnaire in Countervailing Duty Investigation on Certain Aluminum Foil from the Republic of Turkey,” dated December 28, 2020 (GOT December 28, 2020 IQR); GOT’s Letter, “Resubmission of Response of the Government of Turkey to Initial Questionnaire in Countervailing Duty Investigation on Certain Aluminum Foil from the Republic of Turkey,” dated January 8, 2021; GOT’s Letter, “Response of the Government of Turkey to the Supplemental Questionnaire in Countervailing Duty Investigation on Certain Aluminum Foil from the Republic of Turkey,” dated February 5, 2021 (GOT February 5, 2021 SQR); and GOT’s Letter, “Response of the Government of Turkey to the Second Supplemental Questionnaire in Countervailing Duty Investigation on Certain Aluminum Foil from the Republic of Turkey,” dated February 16, 2021 (GOT February 16, 2021 SQR).

¹⁰ Assan’s responses to the initial and supplemental questionnaire were submitted on behalf of Assan and its cross-owned affiliates, Kibar Dis, Kibar Holding, and Ispak. See Assan *et al.*’s Letter, “Section III Affiliation Questionnaire Response,” dated November 16, 2020 (Assan AFFR); Assan *et al.*’s Letter, “Supplemental Section III Affiliation Questionnaire Response,” dated November 30, 2020; Assan *et al.*’s Letter, “Assan’s Second Supplemental Affiliation Questionnaire Response,” dated December 16, 2020; Assan *et al.*’s Letter, “Assan, Ispak, and Kibar’s Response to the Initial Questionnaire,” dated January 5, 2021 (Assan January 5, 2021 IQR); Assan *et al.*’s Letter, “Assan, Ispak, and Kibar’s Response to the Supplemental Questionnaire,” dated February 8, 2021 (Assan February 8, 2021 SQR); and Assan *et al.*’s Letter, “Assan, Ispak, and Kibar’s Response to the Supplemental Questionnaire Question No. 39,” dated February 11, 2021 (Assan February 11, 2021 SQR).

On January 28, 2021, the petitioners submitted benchmark information.¹¹ On February 8, 2021, Assan and Kibar Dis submitted rebuttal benchmark information.¹²

On February 11, 2021, the petitioners requested that we align the final CVD determination of this investigation with the final determination of the companion antidumping duty (AD) investigation of aluminum foil from Turkey.¹³

B. Postponement of the Preliminary Determination

On December 3, 2020, based on a request from the petitioners,¹⁴ Commerce published a notice of postponement of the deadline for issuance of the preliminary determination until February 26, 2021, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(f)(1).¹⁵

C. Period of Investigation

The period of investigation (POI) is January 1, 2019, through December 31, 2019. This period corresponds to the most recently-completed calendar year in accordance with 19 CFR 351.204(b)(2).

D. Injury Test

Because Turkey is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the United States International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Turkey materially injure, or threaten material injury to, a U.S. industry. On November 19, 2020, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of aluminum foil from Turkey.¹⁶

E. Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioners’ request,¹⁷ we are aligning the final CVD determination in this investigation with the

¹¹ See Petitioners’ Letter, “Countervailing Duty Investigation of Certain Aluminum Foil from the Republic of Turkey – Petitioners’ Submission of Factual Information to Measure Adequacy of Remuneration,” dated January 28, 2021.

¹² See Assan *et al.*’s Letter, “Assan Alüminyum Sanayi ve Ticaret A.S. and Kibar Dis Ticaret A.S.’s Rebuttal to Petitioner’s Benchmark Submission for Adequacy of Remuneration,” dated February 8, 2021.

¹³ See Petitioners’ Letter, “Countervailing Duty Investigations of Certain Aluminum Foil from the Sultanate of Oman and the Republic of Turkey – Petitioners’ Request to Align Final Countervailing Duty Determinations With The Companion Antidumping Duty Final Determinations,” dated February 11, 2021 (Alignment Request).

¹⁴ See Petitioners’ Letter, “Countervailing Duty Investigations Concerning Certain Aluminum Foil From the Sultanate of Oman and the Republic of Turkey – Petitioners’ Request to Postpone Preliminary Determinations,” dated November 23, 2020.

¹⁵ See *Certain Aluminum Foil from the Sultanate of Oman and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 85 FR 78121 (December 3, 2020).

¹⁶ See *Aluminum Foil from Armenia, Brazil, Oman, Russia, and Turkey; Determinations*, 85 FR 73748 (November 19, 2020).

¹⁷ See Alignment Request.

final determination in the companion AD investigation of aluminum foil from Turkey. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be due no later than July 12, 2021, unless postponed.

III. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce’s regulations,¹⁸ we set aside a period of time in the *Initiation Notice* for parties to raise issues regarding product coverage (*i.e.*, scope).¹⁹ We received several comments concerning the scope of the concurrent AD and CVD investigations of aluminum foil as it appeared in the *Initiation Notice*. We are currently evaluating the scope comments filed by interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary determinations of the companion AD investigations, the deadline for which is April 27, 2021.²⁰ We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.

IV. SCOPE OF THE INVESTIGATION

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

V. SUBSIDIES VALUATION

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.²¹ In Commerce’s initial questionnaire, we notified the respondents in this proceeding that the AUL period would be 12 years, on the basis of the U.S. Internal Revenue Service Publication 946 (2019).²² We preliminarily determine that a 12-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 divide the amount of the subsidy approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidy is less than 0.5 percent of the relevant sales value, then

¹⁸ *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

¹⁹ *See Initiation Notice*, 85 FR at 68288.

²⁰ *See Certain Aluminum Foil from the Republic of Armenia, Brazil, the Sultanate of Oman, the Russian Federation, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 86 FR 9909 (February 17, 2021).

²¹ *See* 19 CFR 351.524(b).

²² *See* U.S. Internal Revenue Service Publication 946 (2019), “How to Depreciate Property” at Table B-2: Table of Class Lives and Recovery Periods.

the benefits are allocated to the year of receipt rather than across the AUL period. If the amount of the subsidy is greater than 0.5 percent of the relevant sales value, we used the standard grant allocation methodology described under 19 CFR 351.524(d)(1) to determine the amount of the benefit that is attributable to the POI.

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 subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream products; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to the respondent. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company that exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

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 interest between two corporations or through common ownership of two (or more) corporations. The *CVD Preamble*²³ further clarifies Commerce's cross-ownership standard. According to the *CVD 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 ways 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.²⁴

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case in determining 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.²⁵

²³ See *Countervailing Duties*, 63 FR 65348 (November 25, 1998) (*CVD Preamble*).

²⁴ *Id.*, 63 FR at 65401.

²⁵ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

Assan and Kibar Dis

Assan (a subsidiary of Kibar Holding A.S. (Kibar Holding)), a producer of subject merchandise, reported that during the POI, it sold subject merchandise to its affiliated trading company Kibar Dis, which handled the documentation for its sales to international markets, including to the United States.²⁶ Kibar Dis reported that during the POI, the only subject merchandise it sold to the United States was produced by Assan. Assan also reported that Ispak, another subsidiary of Kibar Holding, purchased merchandise under consideration from Assan and further manufactured it.²⁷ Our review of Assan's and Kibar Dis' information regarding the shareholders of their affiliated companies leads us to conclude that Assan, Ispak, Kibar Dis, and Kibar Holding satisfy Commerce's cross-ownership criteria as described at 19 CFR 351.525(b)(6)(vi).²⁸ Because the information leading us to preliminarily determine that Assan, Ispak, Kibar Dis, and Kibar Holding are cross-owned is business proprietary in nature, our cross-ownership analysis is set forth in a separate memorandum.²⁹

Assan and Ispak, producers of subject merchandise, are cross-owned within the definition of 19 CFR 351.525(b)(6)(vi). Therefore, we are preliminarily attributing all subsidies received by these entities to the sales value of the products (net of inter-company transactions) that are produced by Assan and Ispak pursuant to 19 CFR 351.525(b)(6)(ii). With respect to Kibar Dis, Assan's cross-owned affiliated exporter of subject merchandise, we are cumulating benefits from subsidies provided to Kibar Dis with benefits provided to Assan, in accordance with 19 CFR 351.525(c). Finally, regarding Kibar Holding, Assan's parent company, we are attributing any subsidy received by Kibar Holding to the consolidated sales of Kibar Holding and its subsidiaries, excluding inter-company sales, as directed by 19 CFR 351.525(b)(6)(iii).

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales, or portions thereof. As discussed in the "Programs Preliminarily Determined to be Countervailable" section in the respondent's preliminary calculation memorandum, where a program is found to be countervailable as a domestic subsidy, we used total product sales as the denominator. Similarly, where the program has been found to be countervailable as an export subsidy, we used total export sales as the denominator. All sales used in the net subsidy rate calculations are net of inter-company sales.³⁰

²⁶ See Assan AFFR at 2-4.

²⁷ *Id.* at 7.

²⁸ *Id.* at 3 and Exhibit 2.

²⁹ See Memorandum, "Cross Ownership of the Assan Reporting Companies," dated February 26, 2021.

³⁰ See Memorandum, "Countervailing Duty Investigation of Certain Aluminum Foil from the Republic of Turkey: Preliminary Determination Calculations for Alüminyum Sanayi Ve Ticaret A.S. and Kibar Dis Ticaret A.S.," dated February 26, 2021 (Assan Preliminary Calculations Memorandum).

VI. BENCHMARKS AND INTEREST RATES

We are examining export loans and non-recurring, allocable subsidies that the respondents received during the AUL period.³¹ In the section below, we discuss the derivation of the benchmarks and discount rates for the POI and the previous years.

A. Short-Term Benchmarks

To determine whether government-provided loans under investigation conferred a benefit, Commerce uses, where possible, company-specific interest rates for comparable commercial loans.³² 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. Assan and Kibar Dis submitted weighted-average interest rates, along with the underlying data, that they paid on comparable short-term commercial loans.³³ Consistent with 19 CFR 351.505(a)(2)(ii), we are preliminarily using the interest rates that Assan and Kibar Dis submitted on their comparable short-term loans as benchmarks.

B. Long-Term Benchmarks

As discussed above, to determine whether the government-provided loans under investigation conferred a benefit, Commerce uses, where possible, company-specific interest rates for comparable commercial loans.³⁴ Assan and its cross-owned affiliates submitted long-term interest rates that they paid on comparable long-term commercial loans.³⁵ Consistent with 19 CFR 351.505(a)(2)(ii), we are preliminarily using the interest rates that Assan and its cross-owned affiliates submitted on its comparable long-term loans as benchmarks. Where such benchmark rates are unavailable, consistent with 19 CFR 351.505(a)(3)(ii), we are preliminarily using lending data from the International Monetary Fund's International Financial Statistics (IMF Statistics) as our national average benchmark.³⁶

C. Discount Rates

For Assan and its cross-owned affiliates, consistent with 19 CFR 351.524(d)(3)(i)(A), in instances requiring the use of a long-term discount rate, we have used the long-term interest rate calculated according to the methodology described above for the year in which government-approved non-recurring subsidies were received.

³¹ See 19 CFR 351.524(b)(1).

³² See 19 CFR 351.505(a)(2)(ii).

³³ See Assan January 5, 2021 IQR at Exhibit 33 through 35; see also Assan February 9, 2021 SQR at Exhibit S3-7.

³⁴ See 19 CFR 351.505(a)(2)(ii).

³⁵ See Assan January 5, 2021 IQR at Exhibit 39; see also Assan February 9, 2021 SQR at Exhibit S3-7.

³⁶ See, e.g., *Circular Welded Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013), and accompanying Issues and Decision Memorandum (IDM) at 3-4.

VII. USE OF FACTS OTHERWISE AVAILABLE AND APPLICATION OF ADVERSE INFERENCES

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, use the facts otherwise available if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse so "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide {Commerce} with complete and accurate information in a timely manner."³⁷ Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."³⁸ At the same time, section 776(b)(1)(B) of the Act states that Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that, while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."³⁹ Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the Federal Circuit noted that the "best of its ability" standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.⁴⁰ The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant

³⁷ See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

³⁸ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I (1994) (SAA) at 870.

³⁹ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

⁴⁰ *Id.*, 337 F.3d at 1382.

records that refer or relate to the imports in question to the full extent of” its ability to do so.⁴¹ Moreover, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁴²

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.⁴³ Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”⁴⁴ It is Commerce’s practice to consider information to be corroborated if it has probative value.⁴⁵ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.⁴⁶ However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.⁴⁷

In a CVD investigation, Commerce requires information from both the foreign producers and exporters of the merchandise under investigation and the government of the country where those producers and exporters are located. When the government fails to provide requested and necessary information concerning alleged subsidy programs, Commerce uses facts otherwise available and may, if appropriate, apply an adverse inference in selecting from among the facts otherwise available to find that a financial contribution exists under the alleged program and that the program is specific. However, where possible, Commerce will rely on the responsive producer’s or exporter’s records to determine the existence and amount of the benefit conferred, to the extent that those records are useable and verifiable.

Finally, under section 776(d) of the Act, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.⁴⁸

For purposes of this preliminary determination, we are applying AFA in the circumstances outlined below.

⁴¹ *Id.*

⁴² *See, e.g., Preamble*, 62 FR at 27340; *see also Nippon Steel*, 337 F.3d at 1382-83.

⁴³ *See also* 19 CFR 351.308(d).

⁴⁴ *See* SAA at 870.

⁴⁵ *Id.*

⁴⁶ *Id.* at 869.

⁴⁷ *Id.* at 869-870.

⁴⁸ *See* section 776(d)(3) of the Act.

Application of AFA: Financial Contribution and Specificity for Certain “Other” Reported Subsidies

Government of Turkey

In their responses to the Initial Questionnaire, Assan, Ispak, Kibar Dis, and Kibar Holding each self-reported receiving assistance with respect to our question, “{d}id the GOT or any state or local government (or entities owned directly, in whole or in part, by the GOT or a state or local government) provide, directly or indirectly, any *other* form of assistance to your company during the period January 1, 2008, through December 31, 2019?”⁴⁹ We also requested that the GOT provide information on any form of assistance that it (or a state or local government) provided to producers or exporters of aluminum foil, and to coordinate with the respondents to determine if they are reporting the usage of any “other” subsidy programs.⁵⁰ While the GOT provided information for some of Assan and its cross-owned affiliates’ “other” self-reported subsidies in its questionnaire response, it failed to provide any information, such as answers to our questions in the Standard Questions Appendix, on four “other” grants that these companies reported receiving. Specifically, Assan, Ispak, Kibar Dis, and Kibar Holding reported receiving grants for a minimum living allowance, while Assan reported grants related to import transactions and insurance premium support and Kibar Dis reported grants for freight expenses during the POI.⁵¹ In a supplemental questionnaire to the GOT, we again requested that it provide information on additional government assistance as reported by the company respondents.⁵² Again, the GOT provided requested information on some of the other government assistance as reported by these respondents, but it failed to provide any information on the government assistance they reported receiving for the minimum living allowance, for Assan’s import transactions and insurance premium support or Kibar Dis’ reported assistance for freight expenses during the POI.⁵³

Based on the above, we preliminarily determine that the use of facts available pursuant to sections 776(a)(1) and 776(a)(2)(A) and (a)(2)(C) of the Act is warranted in determining the countervailability of this apparent government assistance as reported by Assan and its cross-owned affiliates. The GOT withheld information that was requested of it and significantly impeded the proceeding by not providing information regarding our requests for the information as noted above.⁵⁴ Furthermore, we preliminarily determine that it is appropriate to apply an adverse inference in selecting from among the facts otherwise available pursuant to section 776(b) of the Act because the GOT failed to cooperate to the best of its ability regarding our questions on these other subsidies as reported by these company respondents – *i.e.*, the GOT failed to do the maximum it was able to do.⁵⁵ In applying AFA, for the reported grants, we find that the GOT provided a financial contribution for the cross-owned companies through support

⁴⁹ See Assan January 5, 2021 IQR at IQR-134.

⁵⁰ See Initial Questionnaire at Section II, page 22.

⁵¹ See Assan February 11, 2021 SQR at Exhibits S4-01 and 02.

⁵² See Commerce’s Letter, “Countervailing Duty Investigation of Certain Aluminum Foil from Turkey – Supplemental Questionnaire,” dated January 27, 2021, at Question 14; see also Commerce’s Letter, “Countervailing Duty Investigation of Certain Aluminum Foil from Turkey – Supplemental Questionnaire,” dated February 8, 2021.

⁵³ See GOT February 5, 2021 SQR at 18-19; see also GOT February 16, 2021 SQR at 1; Assan January 5, 2021 IQR at IQR-134 - IQR-155 at Exhibit 73; and Assan February 11, 2021 SQR at Exhibits S4-01 and 02.

⁵⁴ See section 776(a)(2)(A) of the Act; see also Initial Questionnaire at Section II, page 20.

⁵⁵ See *Nippon Steel*, 337 F.3d at 1382.

for the identified import transactions, insurance premium, freight expenses, and minimum living allowance⁵⁶ within the meaning of section 771(5)(D) of the Act. We also determine, as AFA, that each of these programs are specific within the meaning of section 771(5A) of the Act.

Finally, to preliminarily determine whether benefits were provided from the above-referenced subsidy programs, within the meaning of section 771(5)(E) of the Act, we are relying on the usage information as reported by Assan and its cross-owned affiliates.⁵⁷

VIII. ANALYSIS OF PROGRAMS

A. Programs Preliminarily Determined to be Countervailable

1. Exemption from Property Tax

According to the GOT, this program provides an exemption on property tax for buildings in organized industrial zones (OIZs), free zones, industrial zones, technology development zones, and industrial sites.⁵⁸ Article 4(m) of Property Tax Law No. 1319 establishes that buildings in such areas are exempted from property tax permanently as of July 2017.⁵⁹ Assan received an exemption from property tax during the POI under this program.⁶⁰ Commerce has found this program to be countervailable in *QSP from Turkey*.⁶¹

We preliminarily find that this program constitutes a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act, and that Assan benefitted from an exemption from property tax under section 771(5)(E) of the Act in the amount of the property taxes that it did not pay. We preliminarily find that this program is specific under section 771(5A)(D)(iv) of the Act because it is limited to companies located in OIZs, free zones, industrial zones, technology development zones, and industrial sites.⁶²

To calculate the benefit from the tax relief that Assan received under this program, we calculated the total amount of the property tax Assan would have paid during the POI in the absence of this program.⁶³ We then divided Assan's benefit by the appropriate sales value as discussed in the "Denominators" section above to derive the subsidy rates for Assan. On this basis, we preliminarily determine a countervailable subsidy rate of 0.01 percent *ad valorem* for Assan and its cross-owned affiliates.

⁵⁶ See Assan February 11, 2021 SQR at Exhibits S4-01 and 02.

⁵⁷ *Id.*; see also Assan Preliminary Calculations Memorandum.

⁵⁸ See GOT December 28, 2020 IQR at 23-24 and Exhibit 5.

⁵⁹ *Id.*

⁶⁰ See Assan January 5, 2021 IQR at IQR-27.

⁶¹ 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) (*QSP from Turkey Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM) at 16, unchanged in *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) (*QSP from Turkey Final Determination*) (collectively, *QSP from Turkey*).

⁶² See GOT December 28, 2020 IQR at Exhibit 5.

⁶³ See Assan Preliminary Calculations Memorandum.

2. Exemptions on Exchange Tax for Foreign Exchange Transactions

The GOT reported that the Exemption on Exchange Tax for Foreign Exchange Transactions program provides an exemption from the Banking and Insurance Transactions Tax (BITT).⁶⁴ According to the GOT, Turkey's BITT rates are determined by the Annexed Decision of the Cabinet Decree No. 98/11591, dated August 28, 1998. Prior to May 15, 2019, the BITT rate for all foreign exchange sales was zero percent.⁶⁵ To restrict speculative and high frequency foreign exchange transactions,⁶⁶ Presidential Decree No. 1106, dated May 15, 2019, (Decree No. 1106) increased the BITT rate for foreign exchange sales to 0.1 percent.⁶⁷ The following transactions were subject to a zero percent BITT rate pursuant to Decree No. 1106: (1) foreign exchange sales between banks and authorized institutions or among each other; (2) foreign currency sales made to the Ministry of Treasury and Finance; and (3) the payment of foreign currency loans, by the lender banks or banks that act as an intermediary in the use of the foreign currency loans.⁶⁸ As a result, these three types of foreign exchange transactions were exempted from the banking and insurance transaction tax. Presidential Decree No. 1149, dated June 17, 2019, (Decree No. 1149) amended Decree No. 1106 and amended the BITT exemption to include: (1) foreign exchange sales to enterprises that have an industrial registry certificate; and (2) foreign exchange sales to exporters who are members of exporters' unions.⁶⁹ Finally, Law No. 7194, dated December 7, 2019, increased the BITT rate for foreign exchange transactions to 0.2 percent.⁷⁰ The legislation is administered by the Ministry of Treasury and Finance.⁷¹ Assan, Ispak, and Kibar Dis reported receiving benefits under this program during the POI.⁷² Commerce has preliminarily found this program to be countervailable in *Aluminum Sheet from Turkey*.⁷³

We preliminarily determine that this program provides a financial contribution in the form of revenue forgone, pursuant to section 771(5)(D)(ii) of the Act. We further find that this program is specific in accordance with sections 771(5A)(D)(i) and 771(5A)(B) of the Act, because as discussed above, the program is limited to firms that conduct certain types of foreign exchange transactions that were exempted by law in Decree Nos. 1106 and 1149. We also preliminarily find that the zero percent BITT rate on foreign exchange transactions received by Assan and its cross-owned affiliates conferred a benefit equal to the amount of tax savings, pursuant to 19 CFR 351.509(a)(1). For the period between June 17, 2019, and December 7, 2019, this benefit was the difference between the 0.1 percent general BITT rate and the zero percent BITT rate assigned to the respondents, multiplied by the value of the transactions subject to the BITT. For the period starting December 7, 2019, through December 31, 2019, this benefit was the difference

⁶⁴ See GOT December 28, 2020 IQR at 38.

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 39.

⁶⁹ *Id.* at 39 and Exhibit 7.

⁷⁰ *Id.* at 38.

⁷¹ *Id.* at 40.

⁷² See Assan January 5, 2021 IQR at IQR-32 – IQR-35 and Exhibit 16.

⁷³ See *Common Alloy Aluminum Sheet from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances in Part, and Alignment of Final Determination With Final Antidumping Duty Determination*, 85 FR 49629 (August 14, 2020) (*Aluminum Sheet from Turkey*), and accompanying PDM at 23.

between the 0.2 percent general BITT rate and the zero percent BITT rate assigned to the respondents multiplied by the value of the transactions subject to the BITT.

To calculate the benefit, we separately summed the amount of the POI tax exemptions as reported by Assan, Ispak, and Kibar Dis. We then divided each company's benefit by the appropriate sales value as discussed in the "Denominators" section above to derive individual subsidy rates for Assan, Ispak, and Kibar Dis. We then summed each company's individual subsidy rate to calculate the total program subsidy rate. On this basis, we preliminarily determine a countervailable subsidy rate of 0.11 percent *ad valorem* for Assan and its cross-owned affiliates.

3. Regional Investment Incentive Scheme (RIIS)

The GOT reported that the RIIS is one of four separate incentive schemes (*i.e.*, RIIS, Large Scale Investment Incentive Scheme, Strategic Investment Incentive Scheme, and General Investment Incentive Scheme) that fall under the umbrella of the Investment Incentive Program (IEP), which is designed and implemented by the Ministry of Industry and Technology and is based on the provisions of the Council of Ministers' Decree No. 2012/3305 (Decree No. 2012/3305), in force since June 2012.⁷⁴ Investment Incentive Certificates (IICs) are issued to companies that apply and meet the criteria pursuant to Decree No. 2012/3305.⁷⁵ According to the GOT, the purpose of the IEP is to reduce regional development disparities by encouraging regional, large scale, and strategic investments.⁷⁶

The programs available to IIC holders under the RIIS include, *inter alia*, (1) customs duties exemption; (2) value-added tax (VAT) exemption; (3) tax discount; (4) social security premium employer share support; (5) investment land allocation; (6) interest rate support (Regions 3, 4, 5, and 6); (7) income tax stoppage support (Region 6 only); and (8) social security premium support (Region 6 only).⁷⁷ The programs available to IIC holders under the RIIS include, *inter alia*: (1) customs duties exemption; (2) value-added tax (VAT) exemption; (3) tax discount; (4) social security premium employer share support; (5) investment land allocation; (6) interest rate support (Regions 3, 4, 5, and 6); (7) income tax stoppage support (Region 6 only); and (8) social security premium support (Region 6 only).⁷⁸ To be eligible for an IIC, under the RIIS, companies must meet the regional and sectoral criteria outlined in Article 15 of Decree No. 2012/3305.⁷⁹ Under the RIIS, 81 provinces in Turkey were grouped according to their socio-economic development levels and divided into six regions.⁸⁰ The types and the amounts of available incentives vary by region. Annexes 2-A and 2-B of Decree No. 2012/3305 outline the sectors eligible for incentives in each province and the minimum investment required, by region,

⁷⁴ See GOT December 28, 2020 IQR at 52-53 and Exhibit 10.

⁷⁵ *Id.*

⁷⁶ *Id.* at 54.

⁷⁷ *Id.* at 74.

⁷⁸ *Id.*

⁷⁹ *Id.* at Exhibit 10.

⁸⁰ See Assan January 5, 2021 IQR at IQR-57.

for each eligible sector.⁸¹ Assan reported that it was eligible for and received IICs under this program during the AUL period.⁸²

According to the GOT, Assan was eligible to receive (1) customs duties exemptions; (2) VAT exemptions; (3) tax discounts (which the GOT referred to as “tax reductions”); and (4) social security premium employer share support through its IICs.⁸³ As noted below, we preliminarily find that Assan received no measurable benefit through the customs duty exemption and social security premium employer share support incentive schemes. Further, we preliminarily find the VAT exemption not countervailable. For further discussion, see “Programs Preliminarily Determined to Not be Countervailable,” below. Lastly, we find that Assan and its cross-owned affiliates did not use the investment land allocation, interest rate support (Regions 3, 4, 5, and 6), income tax stoppage support (Region 6 only); or social security premium support (Region 6 only) under this scheme.

With respect to the tax reduction portion of the RIIS, a company’s corporate tax rate is reduced by the discount rate indicated in Article 15 of Decree No. 2012/3305.⁸⁴ The IIC holder is eligible to receive this benefit until the total amount of the tax reduction equals the contribution rate cap as specified in Article 15 of Decree No. 2012/3305.⁸⁵ Assan reported that it received a total tax reduction amount for its 2018 tax return that was filed during 2019 (*i.e.*, the POI) as a result of this program.⁸⁶ Commerce has found this tax reduction program to be countervailable in previous CVD investigations regarding Turkey.⁸⁷

We preliminarily find that these tax reductions constitute a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act in the amount of the taxes saved. The reduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. We also preliminarily find that this program is specific under section 771(5A)(D)(i) and (iv) of the Act, because, as discussed above, the program is limited to firms making a specified minimum investment in certain geographic regions.⁸⁸

To calculate the benefit from this program, we calculated the amount of taxes that Assan would have paid on its tax return filed during the POI in the absence of this program and compared that amount with the amount of taxes Assan did pay on the tax return filed during the POI. The difference between the two is the benefit to Assan under this program during the POI. We then divided Assan’s benefit by the appropriate sales value as discussed in the “Denominators” section above to derive individual subsidy rates for Assan. On this basis, we preliminarily determine a countervailable subsidy rate of 0.48 percent *ad valorem* for Assan and its cross-owned affiliates.⁸⁹

⁸¹ See GOT December 28, 2020 IQR at Exhibit 10.

⁸² See Assan January 5, 2021 IQR at IQR-38.

⁸³ See GOT December 28, 2020 IQR at 65.

⁸⁴ See Assan January 5, 2021 IQR at Exhibit 24; see also GOT December 28, 2020 IQR at Exhibit 10.

⁸⁵ See GOT December 28, 2020 IQR at 78.

⁸⁶ See Assan January 5, 2021 IQR at IQR-55 through 56 and Exhibit 28.

⁸⁷ See *QSP from Turkey Final Determination* IDM at 5; see also *Aluminum Sheet from Turkey* PDM at 17-18.

⁸⁸ See GOT December 28, 2020 IQR at Exhibit 10.

⁸⁹ See Assan Preliminary Calculations Memorandum.

4. Loan Programs from Export Credit Bank of Turkey

a. Rediscount Program

The Rediscount Program (formerly known as the Short-Term Pre-Shipment Rediscount Program) was established in October 1999 and is designed to increase the competitive power of manufacturers and exporters producing goods for export.⁹⁰ This program was established within the framework of the Central Bank of the Republic of Turkey's (Central Bank of Turkey's) "Circular on Export and Foreign Exchange Earning Services Rediscount Credits," and is administered by the Export Credit Bank of Turkey (ExIm Bank of Turkey) as well as by commercial banks that apply to be administering banks with the Central Bank of Turkey.⁹¹ Loans issued under this program are short-term in nature and are applied for on an on-going basis.⁹² A loan application is required for each loan obtained.⁹³ Assan and Kibar Dis reported that they had loans outstanding under this program during the POI.⁹⁴ Commerce has found this program to be countervailable in a prior CVD case regarding Turkey.⁹⁵

We preliminarily find that loans from this program constitute a financial contribution in the form of a direct transfer of funds from the government under section 771(5)(D)(i) of the Act. 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 paid by the company for the loans during the POI and the amount the company would have paid on comparable commercial loans. This program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

In calculating the benefit from these loans, pursuant to section 771(5)(E) of the Act and 19 CFR 351.505(a)(1), we applied a discounted benchmark interest rate (as described in the "Benchmarks and Interest Rates" section above) because the interest is due up front when the loan is received.⁹⁶ We then divided each company's benefit by the appropriate sales value as discussed in the "Denominators" section above to derive individual subsidy rates for Assan and Kibar Dis. We then summed each company's individual subsidy rate to calculate the total program subsidy rate. On this basis, we preliminarily determine a countervailable subsidy rate of 0.42 percent *ad valorem* for Assan and its cross-owned affiliates.⁹⁷

b. Export-Oriented Working Capital Credit (also known as Export-Oriented Business Investment Loans)

⁹⁰ See GOT December 28, 2020 IQR at 98-99.

⁹¹ *Id.*

⁹² See Assan January 5, 2021 IQR at IQR-72.

⁹³ *Id.* at IQR-67-IQR-68.

⁹⁴ *Id.* at IQR-67-IQR-73 and Exhibits 30 through 32.

⁹⁵ See *Large Diameter Welded Pipe from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 83 FR 30697 (June 29, 2018), and accompanying PDM at 15, unchanged in *Large Diameter Welded Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019) (*Large Diameter Pipe from Turkey Final Determination*), and accompanying IDM at 4.

⁹⁶ See GOT December 28, 2020 IQR at 104.

⁹⁷ See Assan Preliminary Calculations Memorandum.

According to the GOT, the Export-Oriented Working Capital Credit Program aims to finance raw materials, intermediate goods, machinery, and other financial needs of companies.⁹⁸ Purchases of raw materials and intermediate goods are financed based on the completed procurement within the framework of the purchase invoices. Administered by the ExIm Bank of Turkey, the Export-Oriented Working Capital Credits Implementation Principles state that private companies based in Turkey operating as “manufacturer-exporters” or export-oriented manufacturers engaged in exporting goods shall be eligible for loans under this program against a commitment for final export of goods of Turkish origin.⁹⁹ The GOT reported that “the credited company is obliged to fulfill its export commitment within the credited period and hence, the program is contingent upon export commitment.”¹⁰⁰ The qualification of applicants as exporters is verified through their Taxpayer Identification Numbers, and the qualification of applicants as manufacturers is verified through Capacity Reports.¹⁰¹ Assan reported that it had loans outstanding under this program during the POI.¹⁰² Commerce has found this program to be countervailable in other CVD cases regarding Turkey.¹⁰³

We preliminarily find that loans from this program constitute a financial contribution in the form of a direct transfer of funds from the government under section 771(5)(D)(i) of the Act. 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 paid by the company for the loans during the POI and the amount the company would have paid on comparable commercial loans. This program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

In calculating the benefit from these loans, pursuant to section 771(5)(E) of the Act and 19 CFR 351.505(a)(1), we applied benchmark interest rates as described in the “Benchmarks and Interest Rates” section above. We then divided Assan’s benefit by the appropriate sales value as discussed in the “Denominators” section above to derive individual subsidy rates for Assan. On this basis, we preliminarily determine a countervailable subsidy rate of 0.01 percent *ad valorem* for Assan and its cross-owned affiliates.¹⁰⁴

c. Specific Export Credit Program

According to the GOT, this program provides medium-term pre-shipment financing to contractors that have overseas activities, exporters, or exporter-manufacturers’ foreign currency

⁹⁸ See GOT December 28, 2020 IQR at 113.

⁹⁹ *Id.* at Exhibits 20 and 21.

¹⁰⁰ *Id.* at 119.

¹⁰¹ *Id.* at Exhibit 21.

¹⁰² See Assan January 5, 2021 IQR at IQR-75 and Exhibit-37.

¹⁰³ See *Aluminum Sheet from Turkey* PDM at 20-21; see also *Prestressed Concrete Steel Wire Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part*, 85 FR 59287 (September 21, 2020), and accompanying PDM at 32, unchanged in *Prestressed Concrete Steel Wire Strand Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 85 FR 80005 (December 11, 2020), and accompanying IDM at 16.

¹⁰⁴ See Assan Preliminary Calculations Memorandum.

generating projects which cannot be financed via existing ExIm Bank of Turkey credits.¹⁰⁵ Disbursements under this program are made in accordance to the principles of the Export Oriented Working Capital Program and Investment for Credit Program.¹⁰⁶ Assan and Ispak each self-reported that they applied for and received benefits under this program during the POI.¹⁰⁷

We preliminarily determine that the loans from this program constitute a financial contribution in the form of a direct transfer of funds from the government under section 771(5)(D) (i) of the Act. A benefit exists under 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the amount paid by the company for the loans during the POI and the amount the company would have paid on comparable commercial loans. This program is also specific in accordance with section 771(5)(B) of the Act because receipt of the loans is contingent upon export performance.

In calculating the benefit from these loans, pursuant to section 771(5)(E) of the Act and 19 CFR 351.505(a)(1), we applied benchmark interest rate as described in the “Benchmarks and Interest Rates” section, above. We then divided each company’s benefit by the appropriate sales value as discussed in the “Denominators” section above to derive individual subsidy rates for Assan and Ispak. On this basis, we preliminarily determine a countervailable subsidy rate of 0.04 percent *ad valorem* for Assan and its cross-owned affiliates.¹⁰⁸

5. Foreign Fair Support

Under the Foreign Fair Support program, the Ministry of Trade reimburses companies for certain expenditures related to participation in trade fairs abroad.¹⁰⁹ The purpose of this program is to support Turkish companies’ participation in international trade fairs abroad in order to increase exports and to support the promotional activities of the exhibition organizers.¹¹⁰ The Foreign Fair Support program is regulated by the “Decree on Supporting Participation to Fairs in Abroad” numbered 2017/4, which replaced the Communiqué on Supporting Participation in Fairs Abroad, no. 2009/5, in July 2017.¹¹¹ According to the Decree on Supporting Participation to Fairs in Abroad no. 2017/4, support under the program is provided to Turkish corporations that are members of exporters’ associations and entities that will participate in trade fairs abroad.¹¹² The program provides reimbursement of up to 50 percent of eligible transportation services, exhibition booth fee/rent, and travel tickets of company representatives.¹¹³ Assan and Ispak reported that they benefitted from this program.¹¹⁴ Commerce has found this program to be countervailable in a prior CVD case regarding Turkey.¹¹⁵

¹⁰⁵ See GOT December 28, 2020 IQR at 287.

¹⁰⁶ *Id.* at 289 and Exhibit 21.

¹⁰⁷ See GOT December 28, 2020 IQR at 288-289 and Exhibit 50; *see also* Assan January 5, 2021 IQR at IQR-134 and Exhibit 37 and Exhibit 67.

¹⁰⁸ See Assan Preliminary Calculations Memorandum.

¹⁰⁹ See GOT December 28, 2020 IQR at 173.

¹¹⁰ *Id.*

¹¹¹ *Id.* at 175.

¹¹² See GOT December 28, 2020 IQR at Exhibit 40.

¹¹³ *Id.* at 173.

¹¹⁴ See Assan January 5, 2021 IQR at IQR-95; *see also* Assan February 8, 2021 SQR at S3-19-S3-20.

¹¹⁵ See *QSP from Turkey Preliminary PDM* at 10-11, unchanged in *QSP from Turkey Final IDM* at 4.

We preliminarily determine that this program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act because Assan and Ispak received reimbursement from the Ministry of Trade for expenses covered by this program. This program is export-specific within the meaning of section 771(5A)(B) of the Act because it is provided to Turkish corporations that are members of exporters' associations and entities that will participate in trade fairs abroad.¹¹⁶ We preliminarily determine that Assan and Ispak benefitted from Foreign Fair Support under section 771(5)(E) of the Act in the amount of the reimbursement for expenses incurred related to their participation in international trade fairs.¹¹⁷

We performed the "0.5 percent test," as directed by 19 CFR 351.524 using export sales from the year of approval. We then attributed these benefits to Assan and Ispak as discussed above in the section, "Attribution of Subsidies," and divided each company's benefit by the appropriate sales value as discussed in the "Denominators" section above to derive individual subsidy rates for Assan and Ispak. On this basis, we preliminarily determine a countervailable subsidy rate of 0.02 percent *ad valorem* for Assan and its cross-owned affiliates.

6. Turquality Program

Regulated by Communiqué No. 2006/4 of the Money-Credit and Coordination Council, dated May 11, 2006 (Communiqué No. 2006/4), the "Overseas Branding of Turkish Products, Promotion of Turkish Product Image and Supporting Turquality" (Turquality) program was designed to enhance the branding efforts of companies and to create a positive public opinion for Turkish products.¹¹⁸ Expenses that may be financed (or reimbursed) by the GOT under this program include, but are not limited to, international trademark registration, certification and quality marks, salaries of fashion/industrial designers and product development engineers, and promotional activities.¹¹⁹ While the GOT states that the aim of this program is to support firms during the brand building process in Turkey and abroad, it also states that applicants for grants under this program are evaluated "according to their potential to create an international and positive brand image as a whole."¹²⁰ Assan stated that it received funds from this program during the POI.¹²¹ According to Assan, manufacturers that are members of the Exporters' Association Union can apply to receive benefits under this program.¹²² As part of the application process, Assan stated that the Exporters' Association Union reviewed its documents, and the Ministry of Trade transferred the approved funds to Assan.¹²³ Commerce has preliminarily found this program to be countervailable in an ongoing CVD proceeding regarding Turkey.¹²⁴

We preliminarily find that grants from this program provide a financial contribution pursuant to section 771(5)(D)(i) of the Act and provide a benefit to the recipient in the amount of the grant

¹¹⁶ See Assan January 5, 2021 IQR at Exhibit 52.

¹¹⁷ *Id.* at Exhibit 40.

¹¹⁸ See GOT December 28, 2020 IQR at 218.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 223.

¹²¹ See Assan January 5, 2021 IQR at IQR-97.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ See *Aluminum Sheet from Turkey* PDM at 24.

provided, pursuant to 19 CFR 351.504(a). As the GOT stated that applicants for funds under this program are evaluated according to their potential to create a positive international brand image, and because Assan reported that its application was reviewed by the “Exporters’ Association Union,” we also preliminarily determine that the program is contingent upon export performance and is specific pursuant to section 771(5A)(B) of the Act.

Assan stated that it files a separate application each time it applies for assistance from this program.¹²⁵ Therefore, we find that grants from this program are recurring in nature as described in 19 CFR 351.524(c)(1). To calculate the benefit for Assan, we summed the amount of the grants that Assan received from this program during the POI. We then divided Assan’s benefit by the appropriate sales value as discussed in the “Denominators” section above to derive individual subsidy rates for Assan. On this basis, we preliminarily determine a countervailable subsidy rate of 0.06 percent *ad valorem* for Assan and its cross-owned affiliates.¹²⁶

7. Research and Development (R&D) Incentives Under Turkey’s R&D Law

The GOT reported that R&D incentives are available to support R&D activities (*e.g.*, support for development of technological knowledge and innovation in product and production processes).¹²⁷ Under the Law on Supporting Research, Development and Design Activities (Law No. 5746), support is provided to technology centers, R&D centers, and R&D projects, *inter alia*.¹²⁸ Support elements provided under Law No. 5746 include, but are not limited to, corporate income tax deductions for R&D and design-related expenses; income tax exemptions for the salaries of R&D personnel; and insurance premium support.¹²⁹ Commerce has found government-provided assistance provided under Law No. 5746 to be countervailable in a prior CVD case regarding Turkey.¹³⁰

Assan and Ispak reported qualifying as R&D centers through completing an application process and an on-the-spot verification conducted by representatives assigned by the GOT’s Ministry of Science, Industry and Technology (MoIT).¹³¹ According to Assan and Ispak, they prepare and submit an “R&D Centre Annual Activity Report” to the MoIT for yearly approval.¹³²

Assan and Ispak reported that under Law No. 5746, on their respective 2018 corporate income tax returns that were filed during the POI, each company claimed: (1) income tax exemptions for salaries of R&D personnel; and (2) contributions to social security premiums for R&D and support personnel.¹³³ Assan additionally claimed corporate income tax deductions for R&D

¹²⁵ See Assan January 5, 2021 IQR at IQR-108.

¹²⁶ See Assan Preliminary Calculations Memorandum.

¹²⁷ See GOT December 28, 2020 IQR at 235.

¹²⁸ *Id.*

¹²⁹ *Id.* at Exhibit 45.

¹³⁰ See *QSP from Turkey Preliminary Determination* PDM at 17-19, unchanged in *QSP from Turkey Final Determination*.

¹³¹ See Assan January 5, 2021 IQR at IQR110-IQR-113.

¹³² *Id.* at 112.

¹³³ *Id.* at 110-126.

expenses.¹³⁴ According to Assan and Ispak, they were eligible to receive benefits under these programs by conducting R&D activities in R&D centers.¹³⁵

We preliminarily find that these income tax deductions for R&D expenses and income tax exemptions for salaries of R&D personnel constitute financial contributions in the form of revenue forgone under section 771(5)(D)(ii) of the Act. The income tax deductions and exemptions provide a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. We also preliminarily find that these programs are specific according to section 771(5A)(D)(i) of the Act because the enterprises that are eligible for these programs are limited to enterprises that maintain technology center businesses, R&D centers, and design centers as specified in Article 1(2) of Law No. 5746.¹³⁶

To calculate the benefit from these programs, we calculated the amount of tax that Assan and Ispak would have paid on their respective tax returns filed during the POI in the absence of these programs and compared those amounts with the amount of taxes Assan and Ispak did pay on their respective tax returns filed during the POI. The difference between these amounts is the benefit to Assan and Ispak under the programs during the POI. We then divided each company's benefit by the appropriate sales value as discussed in the "Denominators" section above to derive individual subsidy rates for Assan/Ispak. On this basis, we preliminarily determine a countervailable subsidy rate of 0.04 percent *ad valorem* for Assan and its cross-owned affiliates.¹³⁷

8. Special Consumption Tax Reimbursement

Assan self-reported receiving benefits under this program during the POI.¹³⁸ Administered by the Ministry of Treasury and Finance, the program is based on the provisions of the Council of Ministers' Decree No. 2012/3792 (Decree 2012/3792), in force since October 2012.¹³⁹ Under this program, any manufacturer that: (1) uses the inputs stated in the Decree for the production of goods not included in the List No. I Annexed to Excise Tax Law No. 4760; and (2) has an industrial registry certificate, regardless of its industry, can claim reimbursement of a portion of the special consumption tax paid for inputs, such as rolling oil, Fenella oil, and wyrol, used during the manufacturing process under this program.¹⁴⁰ Assan reported that the company applies for a refund within twelve months after purchasing a relevant input,¹⁴¹ and that the benefit is offset as a refund amount against its tax liability.¹⁴² Commerce has preliminarily found this program to be countervailable in an ongoing CVD proceeding regarding Turkey.¹⁴³

¹³⁴ *Id.* at 110.

¹³⁵ *Id.*

¹³⁶ See GOT December 28, 2020 IQR at 235 and Exhibit 45.

¹³⁷ See Assan Preliminary Calculations Memorandum.

¹³⁸ See Assan January 5, 2021 IQR at IQR-147-IQR-149 and Exhibit 71; see also Assan February 8, 2021 SQR at S3-27-S3-29 and Exhibit S3-22.

¹³⁹ See GOT February 5, 2021 SQR at 29 and Exhibit 12.

¹⁴⁰ *Id.* at 29-33; see also Assan January 5, 2021 IQR at IQR-147.

¹⁴¹ See Assan January 5, 2021 IQR at IQR-148.

¹⁴² *Id.*

¹⁴³ See Memorandum, "Post-Preliminary Analysis of Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the Republic of Turkey," dated December 28, 2020 (Aluminum Sheet Post-Preliminary Analysis Memo).

We preliminarily determine that the special consumption tax exemptions provided by this program constitute a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. The special consumption tax exemption provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act.

With respect to specificity, although any registered company is theoretically eligible for this tax refund, and there is no evidence that the aluminum industry is a predominant or disproportionate user, only companies that purchase the goods in the relevant annex as inputs, and produce finished goods not in the annex, within 12 months, may avail themselves of the refund. As the annex is a list of toxic and hazardous materials, the actual recipients consist of a group of enterprises purchasing toxic or hazardous materials used in the production of nontoxic/hazardous materials within 12 months.¹⁴⁴ Thus, we preliminarily find that the actual recipients of the subsidy are limited to a group of enterprises or industries under section 771(5A)(D)(iii)(I) of the Act.

To calculate the benefit from this program, we calculated the amount of tax that Assan would have paid on its tax return filed during the POI in the absence of this program and compared those amounts with the amount of taxes Assan did pay on the tax return filed during the POI. The difference between these amounts is the benefit to Assan under the programs during the POI. We then divided Assan's benefit by the appropriate sales value as discussed in the "Denominators" section above to derive individual subsidy rates for Assan. On this basis, we preliminarily determine a countervailable subsidy rate of 0.03 percent *ad valorem* for Assan and its cross-owned affiliates.¹⁴⁵

9. Other Subsidy Programs

Assan and its cross-owned affiliates reported that they received benefits from various grants and income tax programs during the AUL period.¹⁴⁶ As stated above in the section "Use of Facts Otherwise Available and Application of Adverse Inferences," we have preliminarily determined that the government grants that Assan and its cross-owned affiliates reported for assistance with import transactions, freight expenses, insurance premiums, and minimum living allowances are countervailable based upon AFA; specifically, and as explained above, we determine, as AFA, that these programs provide a financial contribution and are specific within the meaning of sections 771(5)(D) and 771(5A) of the Act, respectively. Additionally, we determine that Assan and its cross-owned affiliates received a benefit in the amount of the grants that they reported, which is appropriate under 19 CFR 351.504(a).

Our review of these programs further leads us to conclude that they are recurring in nature as described in 19 CFR 351.524(c)(1) and, thus, the grants received prior to the POI are expensed in years prior to the POI.¹⁴⁷ Using the companies' reported usage information for this government assistance, we preliminarily determine for Assan and its cross-owned affiliates countervailable

¹⁴⁴ See GOT February 5, 2021 SQR at 33 and Exhibit 12.

¹⁴⁵ See Assan Preliminary Calculations Memorandum.

¹⁴⁶ See Assan February 8, 2021 SQR at S3-20 and Exhibit 52.

¹⁴⁷ See *generally*, Assan February 11, 2021 SQR.

subsidy rates of 1.42 percent *ad valorem* for the government assistance related to Assan's import transactions, 0.02 percent *ad valorem* for the assistance related to Assan's freight expenses, 0.01 percent *ad valorem* for assistance under the Insurance Premium Support for Employer's Share under Law No. 6111, and 0.12 percent *ad valorem* for assistance under the minimum living allowance.¹⁴⁸

B. Programs Preliminarily Determined to Not Confer a Measurable Benefit During the POI

Tax Programs

1. Deductions from Taxable Income for Export Revenue

Investment Incentive Scheme

2. Investment Incentive Scheme - Customs Duty Exemptions
3. RISS
 1. Custom Duty Exemptions
 2. Social Security Premium Employer Share Support

R&D Incentives

4. Contributions for Social Security Premiums for R&D and Support Personnel
5. Scientific and Technological Research Council of Turkey (TUBITAK) Grants

Grants

6. Foreign Market Research and Market Entry Grants

Other Subsidies

7. Pre-Shipment Export Credits Program
8. Tax and Fee Exemption Under Transfer of Operating Rights of Power Plant
9. BITT Under Transfer of Operating Rights of Power Plant
10. Islamic Development Bank Loans Funded Through the ExIm Bank of Turkey
11. Purchase of Machinery and Equipment Without VAT Under Value Added Tax Law 3065
12. Fee Exemption of Certificate Obtained from Vocational Qualifications Authority
13. Intern Salary Support
14. Support on Environmental Expenses
15. Support on Subscription Fee Paid for e-commerce Website Membership
16. Training Support
17. Trademark Registry Expense Support
18. Minimum Wage Support
19. Social Security Premium Support Under Law 4857
20. Social Security Premium Support Under Law 4447
21. Social Security Premium Support Under Decree 687
22. Retroactive Social Security Premium Support Under Above Listed Support Programs

C. Programs Preliminarily Determined to Not be Countervailable

¹⁴⁸ See Assan Preliminary Calculations Memorandum.

1. RIIS - VAT Exemption

Article 4 of Decree No. 2012/3305 provides that under this program, investment machinery and equipment that are imported and/or locally provided within the scope of the IIC are exempted from customs duties and VAT.¹⁴⁹ Articles 9 and 10 of this decree detail the requirements of these exemptions.¹⁵⁰

Commerce recently investigated this program and determined that VAT exemptions provided by the GOT do not provide a benefit.¹⁵¹ Commerce recently preliminarily found that the GOT maintains a “normal” VAT system such that a producer will fully recover the input VAT paid to its suppliers.¹⁵² 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 consumer bears the ultimate tax burden.¹⁵³ Because a producer, thus, ultimately incurs no VAT absent the exemptions, we determined these exemptions provide no benefit.¹⁵⁴ In *Aluminum Sheet from Turkey*, Commerce preliminarily determined that VAT exemptions in Turkey do not provide a countervailable benefit because companies fully recover input VAT, regardless of whether they qualify for VAT exemptions.¹⁵⁵ For this preliminary determination, the record evidence continues to support the finding on the GOT’s VAT system. Therefore, Commerce preliminarily continues to follow its recent precedent, countervailing the customs duty exemptions, but not the VAT exemptions based on record evidence.

2. Inward Processing Certificates

Commerce initiated an investigation on this program for D-3 certificates only.¹⁵⁶ Commerce has previously determined that D-1 certificates are not countervailable as the GOT has a system in place to determine which inputs are consumed in the production of exported merchandise, in accordance with 19 CFR 351.519(a)(4).¹⁵⁷ Assan and its cross-owned affiliates reported receiving only D-1 certificates under this program.¹⁵⁸ We have no information on the record of this investigation which would cause us to reconsider our decision that D-1 certificates are not countervailable. Therefore, we preliminarily determine that the D-1 certificates issued through this program are not countervailable.

3. Provisional Article 15 of Unemployment Insurance Law No. 4447

¹⁴⁹ *Id.* at Exhibit 10.

¹⁵⁰ *Id.* Commerce has recently examined this program and determined that VAT exemptions provided by the GOT did not provide a benefit. See *QSP from Turkey Final Determination* IDM at Comment 2; see also *Aluminum Sheet from Turkey* PDM at 17-18.

¹⁵¹ See *QSP from Turkey Final Determination* IDM at Comment 2; see also *Aluminum Sheet from Turkey* PDM at 17-18.

¹⁵² See *Aluminum Sheet Post-Preliminary Analysis Memorandum* at 4.

¹⁵³ See *QSP from Turkey Final Determination* IDM at 11-12.

¹⁵⁴ See *Aluminum Sheet from Turkey* PDM at 17.

¹⁵⁵ See *Aluminum Sheet Post-Preliminary Analysis Memorandum* at 4.

¹⁵⁶ See *Initiation Checklist* at 8-9.

¹⁵⁷ See *Large Diameter Pipe from Turkey Final Determination* IDM at 5.

¹⁵⁸ See Assan January 5, 2021 IQR at IQR-20.

Although this program was not alleged by the petitioners, the GOT provided a response regarding this program and reported that Assan and Ispak benefitted from it during the POI.¹⁵⁹ According to the GOT, this program was established by the Unemployment Insurance Law No. 4447, which was amended by Law No. 6645, and entered into force on April 23, 2015.¹⁶⁰ The Social Security Institution (SSI), a national governmental agency under the Ministry of Family, Labor and Social Services, administers this program.¹⁶¹ The program provides reductions in the employer's share of social security insurance premiums for certain workers, specifically men aged 18-29 and women over 18.¹⁶²

Based on the information on the record, we preliminarily find that this program is not specific within the meaning of section 771(5A) of the Act. Specifically, the information on the record indicates that the receipt of the benefit is not limited to any industry or group of industries.¹⁶³ We, therefore, preliminarily find that this program is not countervailable.

4. Payments from the Turkish Employers' Association of Metal Industries (MESS)

Assan and its cross-owned affiliates reported receiving benefits under this program during the AUL period.¹⁶⁴ Commerce has previously determined that this program is not countervailable, as there is no basis to find that MESS is a government authority, or that the GOT entrusts or directs MESS, within the meaning of section 771(5)(B) of the Act.¹⁶⁵ We have no information on the record of this investigation which would cause us to reconsider that decision. Therefore, we preliminarily determine that this program is not countervailable.

5. Insurance Premium Support for Employer's Share Law No. 7103

Assan and its cross-owned affiliates reported receiving benefits under this program during the AUL period.¹⁶⁶ Commerce has previously determined that this program is not countervailable, as it was not specific within the meaning of sections 771(5A)(A)-(D) of the Act.¹⁶⁷ We have no information on the record of this investigation which would cause us to reconsider that decision. Therefore, we preliminarily determine that this program is not countervailable.

6. Social Security Premium Support Act No. 5510

¹⁵⁹ See GOT December 28, 2020 IQR at 273-287 and Exhibits 41 and 49.

¹⁶⁰ *Id.* at 274.

¹⁶¹ *Id.* at 275.

¹⁶² *Id.* at Exhibit 49.

¹⁶³ *Id.* at 284-286.

¹⁶⁴ See Assan February 11, 2021 SQR at Exhibits S4-01 and 02.

¹⁶⁵ See *Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review in Part*; 2016, 83 FR 63472 (December 10, 2018), and accompanying PDM at 23, unchanged in *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review*; 2016, 84 FR 36051 (July 26, 2019).

¹⁶⁶ See Assan February 11, 2021 SQR at Exhibits S4-01 and 02.

¹⁶⁷ See *QSP from Turkey Preliminary Determination* PDM at 20, unchanged in *QSP from Turkey Final Determination*.

Assan and its cross-owned affiliates reported receiving benefits under this program during the AUL period.¹⁶⁸ Commerce has previously determined that this program is not countervailable, as it was not specific within the meaning of sections 771(5A)(A)-(D) of the Act.¹⁶⁹ We have no information on the record of this investigation which would cause us to reconsider that decision. Therefore, we preliminarily determine that this program is not countervailable.

D. Programs Preliminarily Found to be Not Used

We preliminarily determine that Assan and its cross-owned affiliates did not apply for or receive benefits during the AUL period through the POI under the following programs:

Tax Programs

1. Free Zones Law No. 3218: Corporate Income Tax Exemption
2. Free Zones Law No. 3218: Exemption from Income Tax for Workers' Wages
3. Tax and Fee Incentives for Renewable Energy

Investment Incentive Scheme Programs

4. Investment Incentive Scheme
 - a. Income Tax Withholding Support
5. RIIS
 - b. Investment Land Allocation
 - c. Interest Rate Support
 - d. Income Tax Stoppage Support (Region 6 only)
 - e. Social Security Premium Support (Region 6 only)
6. Large Scale Investment Incentive Scheme
7. Strategic Investment Incentive Scheme
8. Project-Based Investment Incentive Program

Export Financing Programs

9. Investment Credit for Export Program
10. Export Buyer's Credits

Provision of Goods & Services for Less Than Adequate Remuneration (LTAR)

11. Provision of Land for LTAR Under Law No. 5084
12. Provision of Land for LTAR Under Law No. 4916
13. Provision of Natural Gas for LTAR

Grant Programs

14. Renewable Energy Support Mechanism

R&D Incentives

¹⁶⁸ See Assan February 11, 2021 SQR at Exhibits S4-01 and 02.

¹⁶⁹ See *QSP from Turkey Preliminary Determination* PDM at 20-21, unchanged in *QSP from Turkey Final Determination*; see also *Pasta from Turkey: Preliminary Results of Countervailing Duty Administrative Review*; 2014, 81 FR 52825 (August 10, 2016), and accompanying PDM at 8, unchanged in *Pasta from Turkey: Final Results of Countervailing Duty Administrative Review*; 2014, 81 FR 90775 (December 15, 2016).

- 15. Stamp Duty Exemptions for Documentation on R&D and Innovation Facilities
- 16. Subsidies for Capital Regarding Technology and Innovation
- 17. Customs Duty Exemptions for Imported Goods Used for R&D

IX. RECOMMENDATION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

2/26/2021

X



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