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Investigation
POI: 01/01/2019 – 12/31/2019
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E&C/OVII: Team

March 1, 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: Issues and Decision Memorandum for the Final Determination in the
Countervailing Duty Investigation of Common Alloy Aluminum
Sheet from the Republic of Turkey

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of common alloy aluminum sheet (aluminum sheet) from the Republic of Turkey (Turkey), as provided in section 705 of the Tariff Act of 1930, as amended (the Act). The mandatory respondents subject to this investigation are Assan Aluminyum Sanayi ve Ticaret A.S. (Assan) and Teknik Aluminyum Sanayi A.S. (Teknik). The period of investigation (POI) is January 1, 2019, through December 31, 2019.

After analyzing the comments submitted by interested parties, we have made certain changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the “Discussion of Issues” section of this memorandum. Below is the complete list of issues in this investigation for which we received comments from interested parties:

- Comment 1: Whether to Determine That Teknik Failed to Comply with Verification Requests and Apply Facts Available with Adverse Inferences
- Comment 2: Whether the Value-Added Tax (VAT) Exemption on Assan’s Acquisition of the Operating Rights for a Hydroelectric Power Plant is a Countervailable Subsidy
- Comment 3: The Provision of Land for Less Than Adequate Remuneration (LTAR)
- Comment 4: Whether to Revise Certain of Assan’s Sales Denominators
- Comment 5: Whether Commerce Should Deduct Commissions Paid by Assan Regarding the Rediscount Loan Program and the Export-Oriented Working Capital Credit Program

¹ 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 with Final Antidumping Duty Determination*, 85 FR 49629 (August 14, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



Comment 6: Whether Commerce Should Correct Certain Calculation Errors Regarding Assan

II. BACKGROUND

A. Case History

On August 14, 2020, Commerce published the *Preliminary Determination*. On December 28, 2020, we issued a Post-Preliminary Analysis.² Commerce was unable to conduct on-site verification in this investigation for reasons beyond its control. However, Commerce took additional steps in lieu of an on-site verification and, on January 14, 2021, Commerce issued questionnaires to Assan and Teknik.³ On January 22, 2021, we received verification questionnaire responses from Assan and from Teknik.⁴ On February 1, 2021, the petitioners and Assan submitted case briefs.⁵ On February 9, 2021, the petitioners, Assan, and Teknik each submitted rebuttal briefs.⁶ Because Assan, the only party that requested a hearing, withdrew its request, we did not hold a hearing in this investigation.⁷

B. Period of Investigation (POI)

The POI is January 1, 2019, through December 31, 2019.

III. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES

Section 705(a)(2) of the Act provides that Commerce will determine that critical circumstances exist if: (A) the alleged countervailable subsidy is inconsistent with the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement);⁸ and (B) there

² See Memorandum, “Post-Preliminary Analysis of Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the Republic of Turkey,” dated December 28, 2020 (Post-Preliminary Analysis).

³ See Commerce’s Letter, “Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Turkey: In Lieu of Verification Questionnaire,” dated January 14, 2021 (Assan ILV Questionnaire); *see also* Commerce’s Letter, “Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Turkey: In Lieu of Verification Questionnaire,” dated January 14, 2021 (Teknik ILV Questionnaire).

⁴ See Assan’s Letter, “Common Alloy Aluminum Sheet from Turkey: Response to Questions in Lieu of Verification,” dated January 22, 2021 (Assan’s VR); *see also* Teknik’s Letter, “Common Alloy Aluminum Sheet from Turkey: Teknik Alüminyum Sanayi A.S.’s Response to the Questionnaire in Lieu of Verification,” dated January 22, 2021 (Teknik’s VR).

⁵ See Petitioners’ Letter, “Common Alloy Aluminum Sheet from Turkey; Petitioners’ Case Brief,” dated February 1, 2021 (Petitioners’ Case Brief); *see also* Assan’s Letter, “Common Alloy Aluminum Sheet from Turkey: Case Brief,” dated February 1, 2021 (Assan’s Case Brief). The petitioners are the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members: Aleris Rolled Products, Inc.; Arconic, Inc.; Constellium Rolled Products Ravenswood, LLC; JW Aluminum Company; Novelis Corporation; and Texarkana Aluminum, Inc.

⁶ See Petitioners’ Letter, “Common Alloy Aluminum Sheet from Turkey; Petitioners’ Rebuttal Brief,” dated February 9, 2021 (Petitioners’ Rebuttal Brief); *see also* Assan’s Letter, “Common Alloy Aluminum Sheet from Turkey: Rebuttal Case Brief,” dated February 9, 2021 (Assan’s Rebuttal Brief); and Teknik’s Letter, “Common Alloy Aluminum Sheet from Turkey: Teknik Alüminyum Sanayi A.S.’s Rebuttal Case Brief,” dated February 9, 2021 (Teknik’s Rebuttal Brief).

⁷ See Assan’s Letter, “Common Alloy Aluminum Sheet from Turkey: Withdrawal Request for Hearing,” dated February 12, 2021.

⁸ Commerce limits its critical circumstances findings to those subsidies contingent upon export performance or use of domestic over imported goods (*i.e.*, those prohibited under Article 3 of the SCM Agreement). *See, e.g., Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire from Germany*, 67 FR 55808, 55809-10 (August 30, 2002).

have been massive imports of the subject merchandise over a relatively short period. A final determination with respect to critical circumstances may be affirmative even if critical circumstances were found not to exist in the preliminary determination.⁹ In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 705(a)(2)(B) of the Act and 19 CFR 351.206(h) and (i), Commerce normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the base period) to a comparable period of at least three months following the filing of the petition (*i.e.*, the comparison period). However, the regulations also provide that if Commerce finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, Commerce may consider a period of not less than three months from the earlier time.¹⁰ Imports must increase by at least 15 percent during the comparison period to be considered massive.¹¹

As explained in the *Preliminary Determination*, we determined that Assan and Teknik each received countervailable subsidies under certain programs that are contingent upon export performance.¹² Therefore, for this final determination, we continue to find that there is a reasonable basis to believe or suspect that there are programs in this CVD investigation that are inconsistent with the SCM Agreement. Use of an export subsidy program is sufficient to meet the inconsistent-with-the-SCM-Agreement criterion under section 703(e)(1)(A) of the Act.¹³

For this final determination, we revised our “massive imports” analysis to expand the base and comparison periods to incorporate updated import information provided by Assan and by Teknik.¹⁴ With respect to Teknik, our analysis of this expanded dataset does not indicate a massive increase in shipments of subject merchandise to the United States.¹⁵ As a result, we find that critical circumstances do not exist for Teknik. Regarding Assan, the company’s shipment data indicate a massive increase in shipments of subject merchandise to the United States,¹⁶ and we also determine that Assan received countervailable benefits that are contingent upon export performance as noted below.¹⁷ Accordingly, we find that critical circumstances exist with respect to Assan.

Finally, for “all other” producers and exporters of aluminum sheet from Turkey, we compared data from the Global Trade Atlas for the base and comparison period, excluding shipments for these time periods as reported by Assan and by Teknik, and we determine that all other producers and

⁹ See section 705(a)(2) of the Act.

¹⁰ See 19 CFR 351.206(i).

¹¹ See 19 CFR 351.206(h)(2).

¹² See *Preliminary Determination* PDM at 5, 19, 23, and 25-26.

¹³ See, e.g., *Certain Quartz Surface Products from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 54841 (October 11, 2019), and accompanying PDM at 5-7, 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), and accompanying IDM at 2-3.

¹⁴ See Memorandum, “Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the Republic of Turkey: Final Critical Circumstances Analysis,” dated concurrently with this memorandum (Final Critical Circumstances Memorandum).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ For example, Assan received countervailable benefits under the Rediscount Loan Program and the Export-Oriented Working Capital Credit Program (also known as Export-Oriented Business Investment Loans), *inter alia*.

exporters of aluminum sheet from Turkey did not have massive imports over a relatively short period.¹⁸ As a result, we determine that critical circumstances do not exist for all other producers and exporters of aluminum sheet from Turkey.

IV. USE OF ADVERSE FACTS AVAILABLE

Commerce relied on “facts otherwise available” including the application of an adverse inference (AFA) for certain findings in the *Preliminary Determination*.¹⁹ For this final determination, Commerce has revised its use of facts otherwise available and AFA, as applied in the *Preliminary Determination*. Those revisions are discussed in detail below.

A. Legal Standard

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

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an AFA rate from among the possible sources of information, Commerce’s practice is to ensure that the rate is sufficiently adverse “as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide Commerce with complete and accurate information in a timely manner.”²⁰ 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.”²¹

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.”²² 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

¹⁸ See Final Critical Circumstances Memorandum.

¹⁹ See *Preliminary Determination* PDM at 12-15, 25-26.

²⁰ 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).

²¹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) (SAA) at 870.

²² See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

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.²³ 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 records that refer or relate to the imports in question to the full extent of” its ability to do so.²⁴ Moreover, further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.²⁵

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”²⁶ It is Commerce’s practice to consider information to be corroborated if it has probative value.²⁷ In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used.²⁸ However, the SAA emphasizes the Commerce need not prove that the selected facts available are the best alternative information.²⁹

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 may, in selecting from among the facts otherwise available with an adverse inference, 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 a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that Commerce considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of 776(c), or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.³⁰ For purposes of this final determination, in addition to continuing to apply AFA to the Government of the Republic of Turkey (GOT) for two programs applicable to

²³ *Id.* at 1382.

²⁴ *Id.*

²⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); see also *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel*, 337 F.3d at 1382-83.

²⁶ See SAA at 870.

²⁷ *Id.*

²⁸ *Id.* at 869.

²⁹ *Id.* at 869-870.

³⁰ See Section 776(d)(3) of the Act.

Assan and to Teknik,³¹ we are also applying AFA to Teknik for four programs for which Teknik did not cooperate to the best of its ability.³²

B. Application of Facts Available and Partial AFA: Teknik

As discussed in Comment 1 below, we find that Teknik withheld information, failed to provide requested necessary information in the form and manner requested by Commerce, or failed to provide verifiable information, pursuant to sections 776(a)(2)(A), (B), and (D) for the following programs:

- Deduction of Taxable Income for Exports
- Foreign Market Research and Market Entry Grants Program
- Foreign Fair Support Program
- Exemption from Property Tax Program

Further, as discussed in Comment 1 below, due to forces beyond our control, we were unable to conduct on-site verification of the information relied upon in making our final determination in this investigation, pursuant to section 782(i) of the Act. Accordingly, we took additional steps in lieu of on-site verification and requested additional documentation and information.³³ Thus, in reaching a final determination, pursuant to sections 776(a)(1) and (a)(2)(A), (B), and (D) of the Act, we determined the benefits for these programs by applying facts available.

Moreover, we determine that the use of an adverse inference in selecting from among the facts otherwise available on the record is warranted regarding certain programs for Teknik, pursuant to section 776(b) of the Act, because the company failed to provide requested information in the form and manner requested by Commerce with respect to its reported sales information and its non-use of certain programs under review. Specifically, Teknik failed to provide many of the screen shots from its accounting ledgers in its in lieu of on-site verification response that Commerce requested in order to examine the completeness and accuracy of reported information.³⁴

For example, Question 1 of the Teknik ILV Questionnaire asks Teknik to provide a reconciliation to its total and export sales as reported in its June 15, 2020 questionnaire response and its 2019 accounting records and year-end financial statement. Question 1 also asks Teknik to provide screen shots to support all reported amounts used in the reconciliation. Although Teknik provided worksheets in an attempt to reconcile the sales information as requested by Commerce, the worksheets do not contain screen shots for all of the accounting adjustments that are included in the spreadsheets, and the worksheets refer to other worksheets that reference account ledgers but do not contain screen shots of the actual account ledgers.³⁵

³¹ See PDM at 14 and 25-26.

³² See Comment 1, below.

³³ See Assan ILV Questionnaire; and Teknik ILV Questionnaire.

³⁴ See Teknik ILV Questionnaire 3-4.

³⁵ See, e.g., Teknik's VR at Exhibit V-2 (*i.e.*, sales turnover during 2019) which references Exhibit V-6 (*i.e.*, listing export sales freight during 2019), Exhibit V-8 (*i.e.*, summary of sales returns during 2019), and Exhibit V-9 (*i.e.*, details of sales discounts and other discounts during 2019). Exhibits V-6, V-8, and V-9 contain no screen shots from their actual accounting ledgers.

Questions 4 and 5 of the Teknik ILV Questionnaire ask Teknik to provide screen shots from the relevant accounts in which it records benefits that it received from the GOT regarding the Exemption from Property Tax Program, for its deduction of taxable income and for accounts where it reports assistance from the GOT. Teknik provided a screen shot of the accounting entry for this assistance at Exhibit V-12 and stated that this assistance can be tied to its accounting ledger submitted as Exhibit V-14.³⁶ However, Exhibit V-14, which shows the income received from the GOT, is a worksheet that does not contain screen shots from the actual account ledger that contains the underlying information.³⁷

Thus, we find that Teknik did not cooperate to the best of its ability to comply with Commerce's request for information by not submitting requested information in the manner as requested by Commerce.³⁸ Accordingly, we determine that the use of an adverse inference in selecting from among the facts otherwise available is warranted to ensure that Teknik does not obtain a more favorable result by failing to cooperate than if it had complied with our request for information.³⁹ With respect to the Deduction of Taxable Income for Exports Program, Teknik self-reported this subsidy and in the *Preliminary Determination* we found this program to be countervailable based upon AFA because the GOT failed to provide information regarding financial contribution and specificity, and we relied on information reported by Teknik with respect to the benefit it received.⁴⁰ The GOT provided necessary information for financial contribution and specificity for the Foreign Market Research and Market Entry Grants Program and the Foreign Fair Support Program.⁴¹ Because we now find that we cannot verify the amount of the benefit that Teknik received for the four programs referenced above, we are now applying AFA to assign a program rate based on Commerce's CVD AFA methodology, as discussed below.

Selection of the AFA Rate

It is Commerce's practice in CVD proceedings to compute an AFA rate using the highest calculated program-specific rates determined for the cooperating respondents in the instant investigation or, if not available, rates calculated in prior CVD cases involving the same country.⁴² When selecting AFA rates, section 776(d) of the Act provides that Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a

³⁶ See Teknik VR at 6.

³⁷ See Teknik VR at Exhibit V-14.

³⁸ See Teknik VR. While Teknik provided spreadsheets to calculate values to reconcile information reported in its questionnaire responses to its accounting system, it failed to provide most of the screen shots from its accounting system that Commerce would have required to conduct a full verification.

³⁹ See SAA at 870.

⁴⁰ See *Preliminary Determination* PDM at 14-15, 25-26.

⁴¹ See GOT's Letter, "Response of the Government of Turkey to Initial Questionnaire in Countervailing Duty Investigation on Common Alloy Aluminum Sheet from the Republic of Turkey," dated June 15, 2020 at 156-183 (for the Foreign Market Research and Market Entry Grants Program), and 139-156 (for the Foreign Fair Support Program).

⁴² See, e.g., *Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Affirmative Countervailing Duty (CVD) Determination, Alignment of Final CVD Determination with Final Affirmative Duty Determination, and Preliminary CVD Determination of Critical Circumstances*, 83 FR 17651 (April 23, 2018), and accompanying PDM at 19-24 ("A. Application of Total AFA: Chalco Ruimin and Chalco-SWA"), unchanged in *Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the People's Republic of China: Final Affirmative Determination*, 83 FR 57427 (November 15, 2018), and accompanying Issues and Decision Memorandum (IDM).

proceeding that the administering authority considers reasonable to use, including the highest of such rates.⁴³ Accordingly, when selecting AFA rates, if we have cooperating respondents in the investigation, we first determine if there is an identical program in the instant investigation and use the highest calculated rate for the identical program. If there is no identical program that resulted in a subsidy rate above *de minimis* for a cooperating respondent in the investigation, we then determine if an identical program was countervailed in another CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the identical program.⁴⁴ If no such rate exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) countervailed in any CVD proceeding involving the same country and apply the highest calculated above-*de minimis* rate for the similar/comparable program. Finally, where no such rate is available, we apply the highest calculated above-*de minimis* rate from any non-company-specific program in a CVD case involving the same country that the company's industry could conceivably use.⁴⁵

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

Section 776(d)(2) of the Act authorizes Commerce to rely on the highest prior rate under certain circumstances. In deriving an AFA rate under section 776(d)(1)(A) of the Act described above, the provision states that Commerce "may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available." No legislative history accompanied this provision. Accordingly, Commerce is left to interpret this "evaluation by the administering authority of the situation" language in light of existing agency practice and the structure and provisions of section 776(d) of the Act itself.

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

⁴³ See *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013) (*Shrimp from China*), and accompanying IDM at 12-14; see also *Essar Steel, Ltd. v. United States*, 753 F.3d 1368, 1373-74 (Fed. Cir. 2014) (upholding use of a "hierarchical methodology for selecting an AFA rate").

⁴⁴ For purposes of selecting AFA program rates, we normally consider rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at 12-13 ("E. Various Grant Programs: 1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund").

⁴⁵ See *Shrimp from China* IDM at 13-14.

determines that the situation warrants a rate different than the rate derived from the hierarchy be applied.⁴⁶

In applying the AFA rate provision, it is well established that when selecting the rate from among possible sources, Commerce seeks to use a rate that is sufficiently adverse to effectuate the statutory purpose of section 776(b) of the Act to induce respondents to provide Commerce with complete and accurate information in a timely manner. This ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁷ Further, “in the case of an uncooperative respondent, Commerce is in the best position, based on its expert knowledge of the market and the individual respondent, to select adverse facts that will create the proper deterrent to non-cooperation with its investigations and assure a reasonable margin.”⁴⁸ It is pursuant to this knowledge and experience that Commerce has implemented its AFA hierarchy in CVD cases to select an appropriate AFA rate.⁴⁹

In applying its AFA hierarchy in CVD investigations, Commerce’s goal is as follows: in the absence of necessary information from cooperative respondents, Commerce is seeking to find a rate that is a relevant indicator of how much the government of the country under investigation is likely to subsidize the industry at issue, through the program at issue, while inducing cooperation. Accordingly, in sum, the three factors that Commerce takes into account in selecting a rate are: (1) the need to induce cooperation, (2) the relevance of a rate to the industry in the country under investigation (*i.e.*, can the industry use the program from which the rate is derived), and (3) the relevance of a rate to a particular program, though not necessarily in that order of importance.

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

⁴⁶ This differs from AD proceedings, for which no hierarchy applies, under section 776(d)(1)(B) of the Act. Under that provision, “any dumping margin from any segment of the proceeding under the applicable {AD} order” may be applied, which suggests an adverse rate could be derived from different available margins, given the facts on the record.

⁴⁷ See SAA at 870; *see also* *Essar Steel*, 678 F.3d at 1276 (finding that “{t}he purpose of the adverse facts statute is ‘to provide respondents with an incentive to cooperate’ with Commerce’s investigation, not to impose punitive damages.”) (quoting *F. Lii De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F.3d 1027, 1032 (Fed. Cir. 2000) (*De Cecco*)).

⁴⁸ See *De Cecco*, 216 F.3d at 1032.

⁴⁹ Commerce has adopted a practice of applying its hierarchy in CVD cases. *See, e.g., Finished Carbon Steel Flanges from India: Final Affirmative Countervailing Duty Determination*, 82 FR 29479 (June 29, 2017), and accompanying IDM at Comment 4 (applying the AFA hierarchical methodology within the context of a CVD investigation); *see also* *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People’s Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 80 FR 41003 (July 14, 2015), and accompanying IDM at 11-15 (applying the AFA hierarchical methodology within the context of a CVD administrative review). However, depending on the type of program, Commerce may not always apply its AFA hierarchy. *See, e.g., Certain Uncoated Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 81 FR 3104 (January 20, 2016), and accompanying IDM at 7-8 (applying, outside of the AFA hierarchical context, the highest combined standard income tax rate for corporations in Indonesia).

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

Finally, if no such rate exists, under the third step of Commerce’s investigation hierarchy, Commerce applies the highest rate calculated for a cooperating company from any non-company-specific program that the industry subject to the investigation could have used for the production or exportation of subject merchandise.⁵⁰

In all three steps of Commerce’s AFA investigation hierarchy, if Commerce were to choose low AFA rates consistently, the result could be a negative determination with no order (or a company-specific exclusion from an order) and a lost opportunity to correct future subsidized behavior. In other words, the “reward” for a lack of cooperation would be no order discipline in the future for all or some producers and exporters. Thus, in selecting the highest rate available in each step of Commerce’s investigation AFA hierarchy (which is different from selecting the highest possible rate in the “pool” of all available rates), Commerce strikes a balance between the three necessary variables: inducement, industry relevancy, and program relevancy.⁵¹

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

In the instant investigation, we calculated a rate of 0.01 percent for Assan for the Exemption of Property Tax Program. Therefore, in accordance with our hierarchy, we are assigning that rate to Teknik for this program, pursuant to section 776(d) of the Act.

⁵⁰ In an investigation, unlike an administrative review, Commerce is just beginning to achieve an understanding of how the industry under investigation uses subsidies. Commerce may have no prior understanding of the industry and no final calculated and verified rates for the industry.

⁵¹ It is significant that all interested parties, since at least 2007, that choose not to provide requested information have been put on notice that Commerce, in the application of facts available with an adverse inference, may apply its hierarchy methodology and select the highest rate in accordance with that hierarchy. See, e.g., *Coated Free Sheet Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying IDM at 2 (“As AFA in the instant case, {Commerce} is relying on the highest calculated final subsidy rates for income taxes, VAT and policy lending programs of the other producer/exporter in this investigation, Gold East Paper (Jiangsu) Co., Ltd. (GE). GE did not receive any countervailable grants, so for all grant programs, we are applying the highest subsidy rate for any program otherwise listed.”). Therefore, when an interested party is making a decision as to whether or not to cooperate and respond to a request for information by Commerce, it does not make this decision in a vacuum; instead, the interested party makes this decision in an environment in which Commerce may apply the highest rate as AFA under its hierarchy.

In the instant investigation, we are unable to find a non-zero or non-*de minimis* rate for an identical or similar program calculated for Assan, the other respondent in this investigation, for which to assign to Teknik as the AFA rate for any of the two grant programs and one tax program in question. Therefore, as instructed in step three of Commerce’s AFA CVD hierarchical methodology, we are applying the highest above-*de minimis* subsidy rate calculated for the same or comparable programs in a Turkey CVD investigation or administrative review as AFA for Teknik for the specific programs mentioned in Comment 1, below. For this final determination, we are able to match, based on program names, descriptions, and benefit treatments, the following programs to the same or similar programs from other Turkey CVD proceedings: (1) Deduction of Taxable Income for Exports; (2) Foreign Market Research and Market Entry Grants Program and; (3) the Foreign Fair Support Program. Based on the methodology described above, we determine the combined AFA countervailable subsidy rate for these three programs for which Commerce is applying AFA for Teknik to be 4.33 percent *ad valorem*. The Appendix to this memorandum contains a chart summarizing the calculation of this rate.

Corroboration of the AFA Rate

Section 776(c)(1) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that 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.”⁵² The SAA provides that, to “corroborate” secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.⁵³

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

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

In the absence of record evidence concerning the reliability of Teknik’s usage of the subsidy programs at issue, Commerce reviewed the information concerning Turkish subsidy programs in other cases. Where we have a program-type match, we find that, because these are the same or

⁵² See SAA at 870.

⁵³ *Id.*

similar programs, they are relevant to the programs in this case. The relevance of these rates is that they are actual calculated CVD rates for Turkish programs, from which Teknik could actually receive a benefit. Specifically, Teknik reported that it received subsidies from the Deduction of Taxable Income for Exports Program, the Foreign Market Research and Market Entry Grants Program, and the Foreign Fair Support Program during the AUL.⁵⁴ However, as discussed below in Comment 1, we were not able to verify Teknik’s actual usage for these programs because Teknik failed to provide requested information in the form and manner requested by Commerce.

V. SUBSIDIES VALUATION

Allocation Period

We made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation period and methodology that we used in the *Preliminary Determination*.⁵⁵

Cross-Ownership and Attribution of Subsidies

Interested parties submitted comments regarding the attribution of subsidies that we used in the *Preliminary Determination* regarding the Provision of Land for LTAR program regarding Assan. We address those comments in Comment 3, below.

Denominators

Interested parties submitted comments regarding the selection of appropriate denominators to use regarding respondent Assan for these final results. We address those comments in Comment 4, below.

Benchmarks and Discount Rates

Interested parties submitted comments regarding the benchmark used to examine the provision of land for less than adequate remuneration (LTAR). We address those comments Comment 3, below.

VI. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

1. Tax Program: Exemption from Property Tax

We made no changes to the *Preliminary Determination* regarding the methodology for calculating the subsidy rate for Assan. As discussed below in Comment 1, we are now applying AFA to Teknik and assigning Teknik the rate calculated for Assan for this program. The final subsidy rate for this program is 0.01 percent *ad valorem* for Assan, and 0.01 percent *ad valorem* for Teknik.

⁵⁴ See Teknik’s Letter, “Common Alloy Aluminum Sheet from Turkey: Teknik Alüminyum Sanayi A.Ş. – Section III of CVD Questionnaire Response,” dated June 15, 2020 (Teknik’s June 15, 2020 QR) at Exhibit CVD-39 (for the Foreign Market Research and Market Entry Grants Program) and Exhibit CVD-38 (for the Foreign Fair Support Program).

⁵⁵ For a description of the allocation period and the methodology used for this final determination, see *Preliminary Determination* PDM at 7.

2. Investment Incentive Scheme Program: Regional Investment Incentive Scheme

As discussed below in Comment 6, we revised the calculation for this program to correct a ministerial error regarding the import duty to calculate the import duties that would have been paid by Assan in the absence of this program. The final subsidy rate for this program is 0.52 percent *ad valorem* for Assan.

3. Export Financing: Rediscount Loan Program

As discussed below in Comment 5, we revised the calculation for this program to correct an error by removing fees paid by Assan when acquiring these loans. We also corrected an error regarding calculations for the benefit on the principal balance at the time of the interest payment rather than on the initial amount of the loans. The final subsidy rate for this program is 0.24 percent *ad valorem* for Assan.

4. Export Financing: Export-Oriented Working Capital Credit (also known as Export-Oriented Business Investment Loans)

Also as discussed below in Comment 5, we revised the calculation for this program to correct an error by removing fees paid by Assan when acquiring these loans. We also corrected an error regarding calculations for the benefit on the principal balance at the time of the interest payment rather than on the initial amount of the loans. The final subsidy rate for this program is 0.00 percent *ad valorem* for Assan.

5. Research and Development (R&D) Incentives Under Turkey's R&D Law

We made no changes to the *Preliminary Determination* regarding the methodology for calculating the subsidy rate for Assan. As a result, Assan's final subsidy rate for this program is 0.02 percent *ad valorem* for the Corporate Income Tax Deductions for R&D Expenses component of this program, and 0.01 percent *ad valorem* for the Income Tax Exemptions for Salaries of R&D Personnel component of this program.

6. Exemption of Exchange Tax for Foreign Exchange Transactions

We made no changes to the *Preliminary Determination* regarding the methodology for calculating the subsidy rate for Assan. As a result, Assan's final subsidy rate for this program is 0.08 percent *ad valorem*.

7. Turquality Program

We made no changes to the *Preliminary Determination* regarding the methodology for calculating the subsidy rate for Assan. As a result, Assan's final subsidy rate for this program is 0.07 percent *ad valorem*.

8. Provision of Land Provided Under Law No. 4916

As discussed below in Comment 3, for this final determination, we revised the land benchmark used to calculate Assan's benefit for this program. As a result, the final subsidy rate for Assan is 0.02 percent *ad valorem*.

9. Special Consumption Tax Refund

In the Post-Preliminary Analysis, we determined that this program provides countervailable subsidies and calculated a subsidy rate of 0.03 percent *ad valorem* for Assan. No interested parties commented on this issue, and we made no changes to Assan's *ad valorem* subsidy rate for this program for this final determination.

10. Other Subsidy Programs

As discussed below at Comment 6, we revised Assan's calculation to remove an error that results in double-counting benefits Assan received regarding the Foreign Fair Support Program. As a result of this correction, Assan's subsidy rate for its reported "other" subsidy programs is 1.56 percent *ad valorem* for this final determination. With respect to Teknik, as discussed below in Comment 1, we are now relying on adverse facts available in assigning Teknik a rate of 0.11 percent for the government assistance Teknik received for certain of its exports.

Programs Determined Not to Confer a Measurable Benefit During the POI

1. Regional Investment Incentive Scheme – Social Security Premium Support (Employer's Share)
2. Specific Export Credit Program
3. Islamic Development Bank Loans Funded Through the ExIm Bank of Turkey
4. Export-Oriented Working Capital Credit Program (also known as Export-Oriented Business Investment Loans)
5. Foreign Fair Support Program
6. Contributions for Social Security Premiums for R&D and Support Personnel
7. Scientific and Technological Research Council of Turkey (TUBITAK) Grants
8. Stamp Tax Exemption Under Transfer of Operating Rights of Power Plant
9. Banking and Insurance Transaction Tax Exemption Under Transfer of Operating Rights of Power Plant
10. Intern Salary Support

Programs Determined to be Not Used

1. Deductions from Taxable Income for Export Revenue
2. Inward Processing Certificates (Excluding Aspects Regarding "D-1" Certificates)
3. Free Zones Law No. 3218: Corporate Income Tax Exemption
4. Free Zones Law No. 3218: Exemption from Income Tax for Workers' Wages
5. Tax and Fee Incentives for Renewable Energy
6. Large Scale Investment Incentive Scheme
7. Strategic Investment Incentive Scheme

8. Project-Based Investment Incentive Program
9. Investment Credit for Export Program
10. Export Buyer's Credits
11. Provision of Natural Gas for LTAR
12. Renewable Energy Support Mechanism
13. Provision of Land for LTAR in OIZ Locations Pursuant to Law No. 5084

Programs Determined to be Not Countervailable

1. VAT Exemptions Regarding Investment Incentive Scheme
2. VAT Exemptions Regarding Regional Investment Incentive Scheme
3. VAT Exemptions Regarding Under Transfer of Operating Rights of Power Plant

In the Post-Preliminary Analysis, we found that VAT exemptions in Turkey do not provide a financial contribution (*i.e.*, Turkey maintains a “normal” VAT system), because the exemptions have no effect on a company’s total tax liabilities.⁵⁶ Interested parties submitted comments on whether Assan’s exemption from VAT payments regarding its acquisition of rights to operate a hydroelectric power plan is countervailable. We address these comments in Comment 2, below.

VII. ANALYSIS OF COMMENTS

Comment 1: Whether to Determine That Teknik Failed to Comply with Verification Requests and Apply Facts Available with Adverse Inferences

Petitioners’ Case Brief:

- In lieu of an on-site verification, Commerce issued a questionnaire to Teknik seeking additional information and supporting documentation to confirm the accuracy of its questionnaire responses. Teknik’s inadequate response failed to provide the direct reconciliation required by Commerce for definitive verification of its previously reported sales data and program benefits.⁵⁷
- Commerce cannot calculate a company-specific *ad valorem* rate reliable information on either benefits received or sales revenue.⁵⁸ Given Commerce’s inability to verify the record evidence for these elements, for the final determination Commerce must apply AFA to determine Teknik’s countervailable benefits from the programs regarding the Exemption from Property Tax, and the Deduction of Taxable Income.
- Section 776(a)(2) of the Act requires Commerce to resort to facts available if an interested party: (1) withholds information that has been requested by Commerce; (2) fails to provide such information by the deadlines established, or in the form and manner requested; (3) significantly impedes a proceeding; or (4) provides information that cannot be verified.⁵⁹
- Section 776(b)(1) of the Act states that if Commerce determines that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information,

⁵⁶ See Post-Preliminary Analysis.

⁵⁷ See Petitioners’ Case Brief at 3.

⁵⁸ *Id.*

⁵⁹ *Id.* at 4.

Commerce may use an inference that is adverse to the interest of that party in selecting from among the facts otherwise available.⁶⁰

- The statutory purpose of the AFA provision is to ensure “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁶¹
- To achieve this end, Commerce is authorized under the statute to apply the highest countervailable subsidy rate from among the available sources. In applying an adverse inference, Commerce is “not required to determine, or make 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.”⁶²
- Commerce’s questionnaire in lieu of verification focused on three main topics; sales information, program benefits, and reported non-use, and requested Teknik to reconcile the amounts it reported to its accounting records and financial statements.⁶³
- For each item, Commerce instructed Teknik to provide “screen shots” of its accounting records in order to tie the amounts Teknik reported to its general ledger.⁶⁴ Commerce indicated that supplemental worksheets required to reconcile the reported amounts between Teknik’s general ledger and its financial statement should also be provided.
- Teknik repeatedly failed to tie its figures to its general ledger and, instead, relied on supplemental worksheets to manipulate the reported amounts in order to “reconcile” these values to its financial statements. Teknik’s secondary presentation of data does not meet the evidentiary standard for actual verification.⁶⁵
- Accordingly, Teknik’s information is unreliable, and thus, unusable in the final determination.⁶⁶
- To reconcile 2019 total sales, Commerce requested Teknik to provide a reconciliation of those sales to its 2019 accounting record and year-end financial statement and provide screen shots to support all reported amounts used in the reconciliation.⁶⁷
- Although Teknik submitted a single screen shot tying the starting value for domestic sales to its accounting system, it did not provide any screen shots for the other amounts used in the reconciliation, as explicitly requested by Commerce.⁶⁸
- Teknik’s reconciliation between its accounting system and financial statement is not substantiated through any direct evidence.⁶⁹
- Teknik’s response to the derivation of the 2019 FOB sales value also lacked the required supporting documentation.⁷⁰
- The reconciliation worksheet for domestic freight expenses itemize general ledger and trial balance valuations without the specifically-requested underlying support.⁷¹
- Unreliable information undermines Commerce’s ability to accurately assess countervailable assistance provided to Teknik.⁷²

⁶⁰ *Id.*

⁶¹ *Id.* at 5 (citing SAA at 870).

⁶² *Id.* at 5 (citing section 776(b)(1)(B) of the Act).

⁶³ *Id.* at 6 (citing Teknik’s ILV Questionnaire).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* (citing Teknik’s ILV Questionnaire).

⁶⁸ *Id.* at 7 (citing Teknik’s VR at Exhibit V-4).

⁶⁹ *Id.*

⁷⁰ *Id.* (citing Teknik’s ILV Questionnaire at 3 and Teknik’s VR at 4); *Id.* at 8 (citing Teknik’s VR at Exhibits V-4 and V-5).

⁷¹ *Id.* at 8 (citing Teknik’s VR at Exhibit V-11.c).

⁷² *Id.* at 9.

- Commerce requested that Teknik provide a narrative description and screen shots to show all accounting entries related to the programs regarding the Exemption of Property Tax, and the Deduction of Taxable Income, during the POI.⁷³
- Regarding the Exemption of Property Tax Program, Teknik stated that nothing is shown in its accounting system because there is an absence of payment.⁷⁴ However, at a minimum, Teknik should have confirmed the accuracy of the valuation for this exemption as provided in its initial questionnaire response. The information in Teknik's verification response does not comport with the valuation provided in its initial questionnaire response.
- For the Deduction of Taxable Income Program, although Commerce requested a screen shot showing the entry of these funds in Teknik's general ledger accounts, Teknik submitted an off-setting receipt that equaled the reported amount, but it did not submit an actual screen shot of the accounting entry in its chart of accounts.⁷⁵
- Teknik's contention that the amount that it received under the Deduction of Taxable Income Program as provided at Exhibit V-14 is unsuccessful because Exhibit V-14 does not contain official screen shots of Teknik's accounting database and, instead, is a compilation of entries extracted from the actual accounts.⁷⁶ Teknik's response, therefore, means the information it previously submitted is unverified.
- To confirm that Teknik did not receive other grants from the GOT, Commerce requested that Teknik provide: (1) screen shots of all accounts where government assistance would be recorded; (2) relevant excerpts from the Turkish Generally Accepted Accounting Principles establishing that government grants and tax and fee rebates would be included in the reported accounts; and (3) a reconciliation between the accounts and the Teknik's year-end financial statements, including screen shots for each step of the reconciliation.⁷⁷
- Although Teknik claimed that Exhibit V-14 of its verification response represented the account ledger that contains any government assistance, the provided documentation was not the actual accounting screen shots as explicitly requested by Commerce.⁷⁸ Teknik also failed to explain any inconsistencies between any inconsistencies between the reconciliation of this account ledger and its financial statement.
- Given that Teknik was unable to confirm the accuracy of its questionnaire response, the information that it submitted has not been verified and Commerce should find facts available in the final determination. Further, Commerce should determine that an adverse inference is warranted because Teknik failed to act "to the best of its ability" in complying with Commerce's direct request for information and supporting documentation regarding Teknik's in lieu of verification response.⁷⁹
- Commerce has repeatedly found reporting failures brought to light by verification warrant the application of AFA.⁸⁰

⁷³ *Id.* (citing Teknik's ILV Questionnaire at 3-4).

⁷⁴ *Id.* at 10 (citing Teknik's VR at 5).

⁷⁵ *Id.* (citing Teknik's ILV Questionnaire at 3-4 and Teknik's VR at Exhibit V-12).

⁷⁶ *Id.* (citing Teknik's VR at 6 and at Exhibit V-14).

⁷⁷ *Id.* at 11 (citing Teknik's ILV Questionnaire at 4).

⁷⁸ *Id.* (citing Teknik's VR at 6 and at Exhibit V-14).

⁷⁹ *Id.* at 12.

⁸⁰ *Id.* (citing *Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 85 FR 80005 (December 11, 2020) (*PC Wire Strand from Turkey*), and accompanying IDM at 5-11; *Aluminum Wire and Cable from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 84 FR 58137 (October 30, 2019) (*Aluminum Wire from China*), and accompanying IDM at 5-6; and *Countervailing Duty Investigation of Certain Hot-Rolled Steel*

- Because information required to accurately calculate Teknik's program benefit rates is missing from the record, Commerce should select AFA rates consistent with its AFA hierarchy and established practice.⁸¹
- Although respondent Assan also was preliminarily found to benefit from the Exemption of Property Tax Program, Assan's preliminary *ad valorem* program rate was lower than Teknik's rate.⁸² Accordingly, Commerce should not apply Assan's program rate to Teknik as AFA as the use of this lower rate would undermine Congress's intent "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁸³
- Commerce should use the highest above-*de minimis* subsidy rate calculated for the same or a comparable program in a prior proceeding involving Turkey as the AFA rate for Teknik's Exemption from Property Tax, and assign an AFA rate to Teknik for its Deduction of Taxable Income, in accordance with its established hierarchy.

Teknik's Rebuttal Brief:

- The petitioners' allegations that Teknik failed to reconcile sales reported to Commerce is both false and an unreasonable misrepresentation of the record.⁸⁴
- Commerce instructed Teknik to provide a reconciliation of its 2019 accounting records and year-end financial statement and to provide screen shots to support all reported amounts used in the reconciliation.⁸⁵ In response, Teknik submitted several exhibits concerning its POI quantity and value of sales showing how the reported quantity and value of sales reconcile with Teknik's audited financial statements.⁸⁶ Teknik also submitted a screen shot from its accounting system which ties to the starting amount in Exhibit V-4 (*i.e.*, the export sales amount reported in Teknik's financial accounting system).⁸⁷
- The adjustments made between the export/domestic sales values as per Teknik's accounting system and its financial system are not accounted for in the financial system and, therefore, no screen shots can be provided for these adjustments. These adjustments are made by Teknik's auditors when preparing the audited financial statements in accordance with the International Financial and Accounting Standards (IFRS).⁸⁸
- Because Teknik prepares its audited financial statements in USD, which is the company's functional currency, and its financial records are prepared in TRY, the auditor converts the TRY financial accounting values to USD and then again to TRY to prepare Teknik's audited financial statements. These adjustments do not render the sales values reported by Teknik unreconciled and unverifiable.⁸⁹
- The petitioners also incorrectly claim that Teknik did not provide an explanation for alleged discrepancies between Teknik's original and new reconciliation.⁹⁰ Teknik believes that the

Flat Products from the Republic of Korea: Final Affirmative Determination, 81 FR 53439 (August 12, 2016), and accompanying IDM at 9-10).

⁸¹ *Id.* at 13.

⁸² *Id.* at 15 (citing *Preliminary Determination PDM* at 15-16.)

⁸³ *Id.* (citing SAS at 870).

⁸⁴ See Teknik's Rebuttal Brief at 5.

⁸⁵ *Id.*

⁸⁶ *Id.* (citing Teknik's VR at Exhibits V-1, V-2, V-4, and V-5).

⁸⁷ *Id.* at 6 (citing Teknik's VR at Exhibit V-4).

⁸⁸ *Id.*

⁸⁹ *Id.* at 6-7.

⁹⁰ *Id.* at 7 (citing Petitioners' Case Brief at 7).

petitioners are not comparing Teknik's verification reconciliation to the most recent sales reconciliation that Teknik submitted.⁹¹

- The petitioners' claim that Teknik's reported FOB sales values in its verification response lacked the required supporting documentation. Teknik submitted the invoice wise list of all sales for its domestic and export markets. The relevant exhibits show that to arrive at the FOB value, Teknik appropriately reduced the freight amount from the sales value based on the terms of sale.⁹²
- Commerce instructed to provide documentation to demonstrate that the reported sales values are on an FOB factory basis for domestic sales and an FOB port basis for export sales and to explain any adjustments that were made to arrive at FOB values.⁹³ In response, Teknik demonstrated that the reported sales values are on an FOB basis and in support, Teknik also provided the worksheet along with sample supporting documents.
- The purpose of verification is to check the accuracy of information already submitted. Commerce's questionnaire in lieu of verification was issued with the same intent – to check the accuracy of the information submitted. Commerce's intention was to check whether Teknik reported FOB values of sales or not, which Teknik demonstrated. Providing the screen shot is not conclusive evidence.⁹⁴
- During an on-site verification, if Commerce is not satisfied with certain information already included in part of the verification package, Commerce always requests additional information, which the respondents have the opportunity to provide. Therefore, on-site verifications are an on-going and live process with active participation by Commerce and the respondents. The questionnaire in lieu of on-site verification cannot substitute for an actual verification.⁹⁵
- Teknik demonstrated that it reported its sales on an FOB basis and provided supporting worksheets and documents. Therefore, the application of AFA is not required or appropriate.⁹⁶
- Teknik also reconciled the freight with accounts which show a minor difference between freight adjusted and freight per accounts. Freight accounts can be different due to various reasons such as the freight of a previous period being booked during the POI and freight for sales other than finished goods accounted for in the freight ledger.⁹⁷
- If Commerce is not satisfied with the freight reported by Teknik on a transaction-specific basis, Commerce can use the total freight as per Teknik's ledger. However, Teknik accurately reported transaction-specific freight costs do not warrant the application of AFA and, therefore, Commerce should reject the petitioners' claims.⁹⁸
- Teknik demonstrated the lack of payment regarding the Exemption of Property Tax, and for the Deduction of Taxable Income programs.⁹⁹
- In its verification response and in its June 15, 2020 questionnaire response, Teknik explained that the exemption from property tax is not shown in Teknik's accounting system because there was no gain, but rather an absence of payment.¹⁰⁰ Teknik does not file anything to receive

⁹¹ *Id.* at 7.

⁹² *Id.* at 7-8 (referencing Teknik's VR at Exhibits V-6 and V-10).

⁹³ *Id.* at 8 (referencing Teknik's ILV Questionnaire at 3).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 8-9.

⁹⁷ *Id.* at 9.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* (citing Teknik's June 15, 2020 QR at 20 and Teknik's VR at 5).

benefits under this program, and provided an exhibit with documentation showing the fair value for the property in question.¹⁰¹

- Regarding Teknik's deduction of taxable income, Teknik provided the account entry that demonstrates receipt of this benefit in a verification exhibit.¹⁰² The first two pages from this verification exhibit are printouts of the vouchers that were used to record the income into Teknik's accounting system. The other pages in this exhibit are documents in support of the accounting voucher.¹⁰³
- Teknik provided the complete ledger in which the deduction of taxable income was accounted. Providing multiple screen shots of a large ledger would not have presented the information in any meaningful sense. Teknik tied the amount received under the assistance received under the Deduction of Taxable Income Program to the relevant account in its accounting system.¹⁰⁴
- Teknik provided information demonstrating non-use of government grants, and tax rebates and fees.¹⁰⁵ Petitioners' claim that Teknik failed to demonstrate non-use of other grants has no merit.¹⁰⁶
- Teknik reported that any subsidy received from the GOT would be credited to the appropriate account ledger. Teknik submitted an exhibit that demonstrates that income from the GOT under "Deduction of taxable income" was credited to this account.¹⁰⁷
- Teknik also demonstrated that the year-end balance from this account ledger tied to Teknik's audited financial statements.¹⁰⁸
- There is no legal basis for the application of AFA, and the statute establishes strict guidelines for its application.¹⁰⁹
- The statute directs that Commerce may apply AFA where necessary information is not on the record or an interested party: (A) withholds requested information; (B) fails to provide information within the deadlines established or in the form or manner requested by Commerce; (C) significantly impedes a proceeding; or (D) provides information that may not be verified.¹¹⁰
- The statute further provides that Commerce may apply adverse inferences in selecting among facts otherwise available where a party fails to cooperate by not acting to the best of its ability to comply with a request for information.¹¹¹ At no time during this proceeding did Teknik withhold or fail to provide information to Commerce.
- Teknik fully responded to each request for information within the time period requested by Commerce and in the requested format. Nor did Teknik impede the proceeding. All of the information provided to Commerce was fully verifiable as explained in Teknik's Rebuttal Brief.¹¹²
- The case law relied upon by the petitioners is distinguishable to the facts in this proceeding. In *PC Wire Strand from Turkey*, Commerce applied AFA to respondent Guney Celek Hasir ve Demir after finding the company "failed to provide a full and complete initial questionnaire response, failed to provide additional requested information within the deadlines established

¹⁰¹ See Teknik's Rebuttal Brief at 9 (citing Teknik's June 15, 2020 QR at Exhibit CVD-16.a).

¹⁰² See Teknik's Rebuttal Brief at 9 (citing Teknik's VR at Exhibit V-12).

¹⁰³ *Id.*

¹⁰⁴ See Teknik's Rebuttal Brief at 10 (citing Teknik's VR at 6, Exhibit V-12, and Exhibit V-14).

¹⁰⁵ See Teknik's Rebuttal Brief at 10 (citing Teknik's VR at 5-6).

¹⁰⁶ See Teknik's Rebuttal Brief at 10-11 (citing Petitioners' Case Brief at 11-12).

¹⁰⁷ See Teknik's Rebuttal Brief at 11 (citing Teknik's VR at 5 and Exhibit V-12).

¹⁰⁸ See Teknik's Rebuttal Brief at 11 (citing Teknik's June 15, 2020 QR at Exhibit CVD-10).

¹⁰⁹ See Teknik's Rebuttal Brief at 12.

¹¹⁰ *Id.* (citing sections 776(a)(1) and (2) of the Act).

¹¹¹ See Teknik's Rebuttal Brief at 13 (citing section 776(b) of the Act).

¹¹² *Id.*

(sic) information related to those programs and failed to provide accurate information regarding its purchases of wire rod.”¹¹³ The facts are different in the instant investigation where Teknik fully and timely responded to all requests for information, including its initial questionnaire response.

- In *Aluminum Wire from China*, respondent Huatong was asked on multiple occasions to address issues with its databases and failed to do so.¹¹⁴ It is not surprising that Commerce applied AFA in *Aluminum Wire from China* as the respondent failed to cooperate to the best of its ability despite being given multiple opportunities to do so. This is not the case in the instant investigation where Teknik has provided fully verifiable information and fully cooperated.
- The record contains no gaps that need to be filled as the record is complete and Commerce should affirm its preliminary findings. Commerce may only use facts otherwise available “to fill gaps when Commerce must rely on other sources of information to complete the factual record.”¹¹⁵

No other party commented on this issue.

Commerce’s Position: Section 776(a) of the Act requires that Commerce shall use facts otherwise available in reaching a determination if necessary information is missing from the record, or if an interested party: (1) withholds information that has been requested by Commerce; (2) fails to provide such information by the deadlines established, or in the form and manner requested; (3) significantly impedes a proceeding; or (4) provides information that cannot be verified. Section 776(b)(1) of the Act states that if Commerce determines that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference that is adverse to the interest of that party in selecting from among the facts otherwise available. The statutory purpose of the AFA provision is to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.¹¹⁶

Due to circumstances surrounding the COVID-19 epidemic, Commerce was unable to conduct on-site verifications in this investigation. Accordingly, we issued questionnaires in lieu of on-site verifications to Assan and Teknik,¹¹⁷ and we are now relying on additional documentation and information, submitted on the record in response to these questionnaires as a method for conducting verification *i.e.*, in lieu of on-site verification responses.¹¹⁸ To verify whether the information respondents reported is accurate and complete, we requested that the respondent companies submit information such as, but not limited to, sales reconciliations that tie to source documentation such as audited financial statements and/or financial accounting system screen shots, and screen shots of ledgers and trial balance information from the actual financial accounting systems that support the sales reconciliations and reports of non-use.

With respect to Teknik, Commerce specifically requested screen shots from its accounting systems relating to the Exemption from Property Tax Program and for Teknik’s Deduction of Taxable

¹¹³ *Id.* (citing *PC Wire Strand from Turkey* IDM at 5).

¹¹⁴ *Id.* at 14 (citing *Aluminum Wire from China* IDM at 16).

¹¹⁵ *Id.* at 15 (citing *Zhejiang DunAn Heitan Metal Co. v. United States*, 652 F.3d 1333, 1346 (Fed. Cir. 2011)).

¹¹⁶ See SAA at 870.

¹¹⁷ See Assan ILV Questionnaire; see also Teknik ILV Questionnaire.

¹¹⁸ See Assan’s VR; see also Teknik’s VR.

Income for Exports that Commerce countervailed during the *Preliminary Determination*,¹¹⁹ and we also specifically requested screen shots from Teknik's accounting systems for programs that Commerce determined Teknik did not use during the POI.¹²⁰ Although Teknik submitted numerous spreadsheets in an attempt to reconcile its reported sales and export costs,¹²¹ it failed to submit screen shots from its accounting systems that would allow us to confirm whether the reconciliations corroborated entries in Teknik's financial systems or financial statements.¹²² Generally, instead of the requested screen shots from the accounting systems, Teknik attempted to draw connections between information in its reconciliation worksheets that it submitted in its questionnaire responses and the worksheets that it submitted for purposes of responding to the in lieu of on-site verification questionnaire.¹²³ However, many of the values in the submitted reconciliations do not tie directly to source documentation such as to screen shots that we requested from Teknik's accounting ledgers, or to Teknik's audited financial statements or tax forms. Teknik itself acknowledged that it did not submit screen shots from its accounting systems as requested by Commerce. For example, in explaining why it submitted a spreadsheet instead of screen shots from the accounts in its financial accounting system that record the receipt of government assistance, Teknik stated that “{s}ince the ledger for the POI was big, multiple screen shots for the POI would have not presented any meaningful information.”¹²⁴

Leaving aside the issue that it is Commerce, and not respondents, that determine what information is necessary to conduct its CVD analysis,¹²⁵ Commerce specifically requested screen shots from Teknik's accounting system to confirm whether Teknik's reported sales and non-use of programs are accurate and complete. This information was necessary for Commerce's analysis to contextualize and validate the information Teknik submitted in its questionnaire responses (*i.e.*, Commerce would have been able to see the actual information as portrayed in Teknik's financial accounts and ledgers).

As a result, we find that Teknik provided requested information, but the information cannot be verified as provided in section 782(i) of the Act, pursuant to section 776(a)(2)(D). More specifically, we determine that information submitted by Teknik regarding its sales and usage cannot be verified because Teknik did not submit necessary information requested by Commerce according to its verification procedures. Teknik acknowledges that it could have submitted screen shots of its accounting ledgers but stated that it would not have provided any meaningful information to Commerce.¹²⁶ Similarly, Commerce also determines that Teknik withheld information that Commerce requested and failed to provide information in the form and manner requested by Commerce within the meaning of sections 776(a)(2)(A) and (B). Further, because Teknik specifically acknowledged that it could have provided screen shots from its accounting

¹¹⁹ See *Preliminary Determination* PDM at 15-16 (Exemption of Property Tax) and at 25-26 (Teknik's government assistance related to certain of its exports).

¹²⁰ See *Preliminary Determination* PDM at 26-27; see also Teknik ILV Questionnaire.

¹²¹ See Teknik's VR.

¹²² See Teknik's VR at Exhibits V-2, V-8, V-9, V-10, and V-14.

¹²³ *Id.*

¹²⁴ See Teknik's Rebuttal Brief at 11.

¹²⁵ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 79163 (December 9, 2020) (*Solar Cells from China 2017 AR Final*), and accompanying IDM at 9.

¹²⁶ See Teknik's Rebuttal Brief at 11.

system and did not, we find that Teknik failed to cooperate by not acting to the best of its ability in complying with our request for information, pursuant to section 776(b) of the Act.

Teknik's verification response failed to confirm Teknik's reported sales and the benefit of money transferred to Teknik by the GOT regarding Teknik's government assistance related to some of its exports, and for the non-use of two grant programs, the Foreign Market Research and Market Entry Grants Program, and the Foreign Fair Support Program during the AUL. The GOT and Teknik each reported that Teknik received assistance from these two grant programs during the AUL, but stated that the GOT did not provide a benefit to Teknik during the POI.¹²⁷

According to the GOT, the Foreign Market Research and Market Entry Grants Program supports the expenses of Turkish companies engaged in industrial and/or commercial activities in Turkey for their market access researches and activities.¹²⁸ Under the subprogram titled the "Support for Foreign Market Research Program," 70 percent of a company's employees transportation and accommodation expenses during market research trips abroad are supported by the GOT's Ministry of Trade, up to a maximum of USD 5,000 for every foreign market research trip. The purpose of this subprogram is to support Turkish companies' participation in market research trips abroad.¹²⁹ Under the subprogram titled the "Support for Memberships to E-Business/Commerce/Websites Program," the expenses for individual memberships to e-business/commerce websites are supported by the Ministry of Trade. The purpose of this program is to improve the firms' competitiveness level across e-commerce websites.¹³⁰

With respect to the Foreign Fair Support Program, the GOT stated that this program supports 50 percent of certain expenditures for companies to participate in trade fairs abroad, up to a maximum of TL 77,000. The expenditures eligible for support are transportation services, fees or rent for exhibition booths, travel tickets of company representatives, *etc.*¹³¹

Based on the information provided by the GOT, we find that these two grant programs provided a financial contribution to Teknik pursuant to section 771(5)(D)(i) of the Act. Because the GOT stated that funds from these two grants can be used to support companies conducting foreign market research and attending trade fairs abroad, we determine that these two grant programs are contingent upon export performance and are specific pursuant to section 771(5A)(B) of the Act.

The GOT and Teknik each reported that Teknik received funds from these two programs during the AUL, but not during the POI. Generally, Commerce relies on usage information from the companies to confirm whether a benefit was received during the period under examination.¹³² As explained above, Teknik failed to provide the requested screen shots identifying that it did not

¹²⁷ See GOT's June 15, 2020 QR at 156-183 (for the Foreign Market Research and Market Entry Grants Program) and 139-156 (for the Foreign Fair Support Program); see also Teknik's June 15, 2020 QR at Exhibit CVD-39 (for the Foreign Market Research and Market Entry Grants Program) and Exhibit CVD-38 (for the Foreign Fair Support Program).

¹²⁸ *Id.* at 156-183.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.* at 139-156.

¹³² See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part*; 2017, 85 FR 7727 (February 11, 2020), and accompanying PDM at 41, unchanged in *Solar Cells from China 2017 AR Final*.

receive any benefits under these grant programs from the GOT during the POI, which prevented Commerce from verifying whether Teknik received a benefit during the POI, and whether the benefit received during the AUL is allocable during the POI. Therefore, based on facts available with the application of an adverse inference in accordance with sections 776(a) and (b) of the Act, we find that Teknik benefitted from these grants during the POI.

We also continue to find that AFA is warranted regarding the Deduction of Taxable Income for Exports Program for Teknik, for which we found to be countervailable in the *Preliminary Determination* because the GOT failed to provide any information on this program.¹³³ Because the GOT did not provide any information regarding this tax deduction, we are making no change from our specificity and financial contribution findings in the *Preliminary Determination*.¹³⁴ Further, based on the information that Teknik provided for how it qualified for this assistance,¹³⁵ we determine that this government assistance was dependent on Teknik's export performance, pursuant to section 771(5A)(B) of the Act.

In the *Preliminary Determination* we relied on the usage of this program as reported by Teknik and explained that such findings were subject to verification. However, we cannot verify the amount of support Teknik received under this program, because of its failure to provide screen shots of its accounting ledgers from its financial systems as we requested (as explained above); therefore, we find that Teknik benefitted from this program during the POI, in accordance with sections 776(a)(2)(B) and (D) and section 776(b) of the Act and, therefore, must assign an AFA rate to Teknik for this program. Because the other respondent in this investigation did not report using this program, we are assigning Teknik the highest non-*de minimis* rate calculated in a CVD proceeding on Turkey for the identical program, in accordance with section 776(d) of the Act.¹³⁶

For Teknik's reported program Exemption of Property Tax, which we found to be countervailable in the *Preliminary Determination*,¹³⁷ we continue to make no change to our findings with respect to specificity and financial contribution. However, because we cannot verify the amount of support Teknik received under this program, because of its failure to provide screen shots of its accounting ledgers from its financial systems as we requested (as explained above), we find that Teknik benefitted from this program during the POI, in accordance with sections 776(a)(2)(B) and (D) and section 776(b) of the Act. Because the other respondent in this investigation, Assan, also used this program, we are assigning to Teknik the program rate calculated for Assan, in accordance with our AFA hierarchy and section 776(d) of the Act.

With respect to the petitioners' argument that Commerce should not apply Assan's calculated program rate to Teknik as AFA for the Exemption of Property Tax and, instead, apply the highest above-*de minimis* subsidy rate calculated for the same or a comparable program in a prior proceeding involving Turkey as the AFA rate, we disagree. In developing and applying its hierarchies, Commerce seeks a rate that serves its dual goal of relevancy and inducing cooperation from respondents, and Commerce seeks to achieve relevancy by attempting to select an AFA rate that best approximates how the non-cooperating respondent likely used the subsidy program.

¹³³ See *Preliminary Determination* PDM at 12-15, 25-26.

¹³⁴ *Id.*

¹³⁵ See Teknik's June 15, 2020 QR at Exhibits CVD-41 and CVD-42.

¹³⁶ See Appendix.

¹³⁷ See *Preliminary Determination* PDM at 15-16.

Accepting the petitioners' argument and selecting a different rate from another proceeding would upset the balance between relevancy and inducement that Commerce seeks when it applies its CVD AFA hierarchy to non-cooperating respondents. Furthermore, consistently applying our CVD AFA hierarchies provides predictability and administrative transparency to parties involved in administrative proceedings before Commerce. There is a suitable rate that can be applied under step one of Commerce's hierarchy, (*i.e.*, the 0.01 percent rate calculated for Assan in this investigation for the identical program), and there is no reason for Commerce to continue to step two of its hierarchy. Accordingly, we decline to step outside of our CVD AFA investigation hierarchy in this proceeding.

Comment 2: Whether the VAT Exemption on Assan's Acquisition of the Operating Rights for a Hydroelectric Power Plant is a Countervailable Subsidy

Petitioners' Case Brief:

- In its Post-Preliminary Analysis, Commerce noted that the VAT system in Turkey allows companies to offset the VAT paid to suppliers (*i.e.*, "input VAT") against the VAT collected from domestic customers that is due to the GOT (*i.e.*, "output VAT").¹³⁸
- Based on its understanding of the operation of Turkey's VAT system, Commerce concluded that neither the VAT exemption for machinery and equipment purchases that were authorized under the investment incentive certificate programs nor Assan's VAT exemption on its purchase of operating rights of a hydroelectric plant conferred countervailable benefits on the respondents.¹³⁹
- The record evidence fails to establish that Assan's purchase of the operating rights is considered a transaction for which VAT can be offset. Therefore, Commerce should revise its initial finding and countervail the exemption on Assan's acquisition of the operating rights in the final determination.¹⁴⁰
- Commerce's error is based on conflating the GOT's responses in regard to the VAT exemption of the purchase of the operating rights with its responses on the VAT exemptions provided under the investment incentive certificate programs.¹⁴¹
- The GOT reported that Assan was exempted from VAT and stamp tax on this transaction pursuant to Provisional Article 12 of Value Added Tax Law No. 3065. This Provision states that the "{d}elivery and lease transactions of the economic assets included in the scope of privatization by the paragraph (A) of Article 1 of Law No. 4046 are excluded from tax within the scope of the provisions of the same Law."¹⁴²
- In a supplemental response, the GOT stated that Assan's tax and fee exemptions were provided in accordance with Article 27 of Law No. 4046 and the Provisional Article 12 of Law No. 3056. According to the GOT, Assan's exemptions were "extinguished" in 2016, the year the operating rights agreement was signed.¹⁴³ However, the GOT did not claim that Assan's VAT exemption

¹³⁸ See Petitioners' Case Brief at 15 (citing Post-Preliminary Analysis at 3-4).

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 16.

¹⁴¹ *Id.*

¹⁴² *Id.* (citing GOT's June 15, 2020 QR at Exhibit 7).

¹⁴³ *Id.* at 16-17 (citing GOT's Letter, "Response of the Government of Turkey to Supplemental Questionnaire in the Countervailing Duty Investigation on Common Alloy Aluminum Sheet from the Republic of Turkey," dated July 20, 2020 (GOT's July 20, 2020 QR) at 22, and Exhibits 13 and 14).

did not provide a benefit to the company because the VAT paid on asset sales were eligible for a VAT input credit.¹⁴⁴

- The GOT stated that Article 29 of the VAT Law No. 3065 authorized taxpayers to deduct VAT arising from certain expenses (*i.e.*, input VAT) from the VAT amount due to be remitted to the GOT (*i.e.* output VAT). The GOT noted that input VAT is related to purchases of “goods or services,” but the GOT did not include “fixed assets” in its description of the goods and services covered by Article 29.¹⁴⁵
- In a subsequent supplemental questionnaire response regarding the normal operation of Turkey’s VAT system and VAT exemptions, the GOT stated that VAT is collected at each stage of the production and distribution process and that the amount of tax payable is the difference between the total amount of VAT charged to the taxpayer (*i.e.*, input VAT) and the total amount of VAT charged by the taxpayer to consumers (*i.e.*, output VAT) during the same period of time.¹⁴⁶
- The GOT again cited the specific provisions of Article 29 of Law No. 3065 to identify the goods and services subject to the allowable offset as input VAT but again made no mention of the standard VAT treatment for the acquisition of operating rights or fixed asset transactions.¹⁴⁷
- In another supplemental questionnaire response, the GOT reported that sales (*e.g.*, the transfer of fixed assets) within the scope of commercial and industrial activities are subject to VAT according to Article 1/1 of VAT Law No. 3065. Article 1/1 of VAT Law No. 3065 states that deliveries and services performed under commercial, industrial, agricultural, and self-employment activities are subject to VAT.¹⁴⁸
- While the GOT stated that Assan’s acquisition of the operating rights was subject to Provisional Article 12 of Law No. 3065, which states that the transfer and lease transactions of the economic assets in the scope of privatization shall be exemption from VAT, the GOT did not contend that the sales involving the transfer of fixed assets fell under the categories of deductible VAT authorized under Article 29 of the VAT Law No. 3065.¹⁴⁹
- Despite these facts, Commerce’s *Post-Preliminary Analysis* applied an identical analysis to VAT exemptions under the investment incentive certificate programs and the VAT exemption authorized through privatization transactions.¹⁵⁰
- Commerce’s reasoning is only valid if the VAT exemption is provided on transactions that are subject to the input VAT credit. The GOT never stated that fixed asset sales such as Assan’s acquisition of operating rights are considered part of the “goods and services” for which a company may deduct VAT under Article 29 of VAT Law No. 3065. By contrast, the GOT argued that the VAT exemptions provided by the investment certificate programs did not relieve Turkish taxpayers of any tax liability because companies are allowed to offset the VAT paid on input purchases.¹⁵¹

¹⁴⁴ *Id.* at 17 (citing GOT’s July 20, 2020 QR at 22-31).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 18 (citing GOT’s Letter, “Response of the Government of Turkey to Supplemental Questionnaire in Countervailing Duty Investigation on Common Alloy Aluminum Sheet from the Republic of Turkey,” dated (September 8, 2020) (GOT’s September 8, 2020 QR) at 1).

¹⁴⁷ *Id.* at 18 (citing GOT’s September 8, 2020 QR at 1-3).

¹⁴⁸ *Id.* at 19 (citing GOT’s Letter, “Response of the Government of Turkey to Supplemental Questionnaire in Countervailing Duty Investigation on Common Alloy Aluminum Sheet from the Republic of Turkey,” dated October 14, 2020 at 3).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* (citing *Post-Preliminary Analysis* at 3-4).

¹⁵¹ *Id.* at 20 (citing GOT’s July 20, 2020 QR at 3-4; and GOT’s September 8, 2020 QR at 5, 9-10, and 15-16).

- Commerce erroneously conflated information on input VAT provided for purchases of equipment and machinery with all taxable transactions in Turkey. Assan reported that it paid for the rights to operate the hydroelectric plant. Absent the VAT exemption, Assan would have owed the GOT for VAT payable on this transaction.¹⁵²
- Assan's VAT filing would have to account for a fixed asset transaction resulting in a VAT payment due to the GOT during the POI. The GOT, however, exempted companies involved in privatization transactions from VAT, relieving Assan of a tax obligation that it would otherwise incur and, thereby, conferring a benefit.¹⁵³
- Accordingly, Commerce should revise its Post-Preliminary Analysis and find that the GOT's exemption of VAT on Assan's acquisition of the rights to operate the hydroelectric power plant is countervailable.¹⁵⁴

Assan's Rebuttal Brief:

- Commerce correctly found that the VAT exemption on Assan's acquisition of the operating rights of a power plant is not a countervailable subsidy. The petitioners argue that Commerce's findings are incorrect and allege that the record evidence fails to establish that Assan's purchase of the operating rights is considered a transaction for which VAT is allowed to be offset.¹⁵⁵
- The record is clear that input VAT related to the delivery of goods and services, including VAT related to Assan's purchase of the operating rights, can be offset against output VAT under Turkey's normal VAT system.¹⁵⁶
- The Article 29 of the VAT Law No. 3065 states that taxpayers may deduct the following taxes with respect to their activities, unless otherwise required by this law, from the VAT calculated over taxable transactions they have performed: (1) VAT calculated for the delivery of goods and services; (2) VAT paid for the import of goods and services; and (3) VAT on the invoice of goods at the beginning of the account period according to the inventory taken, for those taxed on the lump sum or compensatory basis who have switched to taxation on a real basis.¹⁵⁷
- Article 29 acts as the general rule for which input VAT can be offset against output VAT, which broadly includes any VAT owed due to the delivery of goods and services as shown on invoices and similar documents.¹⁵⁸
- Article 30 of the VAT Tax No. 3065, on the other hand, provides exceptions to the general rule of Article 29, specifying a limited number of instances where input VAT credit is not available. Neither the transfer of operating rights nor fixed assets are listed under Article 30, and the petitioners make no claim that they are.¹⁵⁹
- When asked about the normal operations of Turkey's VAT system, the GOT stated that taxpayers may deduct VAT arising from expenses from VAT on transactions subject to taxation, as appropriate to their activities, unless otherwise stated in Article 29 of Law No. 3065. The GOT's response applied to all VAT program under investigation including Assan's VAT exemptions regarding the acquisition of the operating rights.¹⁶⁰

¹⁵² *Id.* (citing Assan's Letter, "Common Alloy Aluminum Sheet from Turkey: 1st Supplemental Questionnaire Response," dated July 20, 2020 (Assan's July 20, 2020 QR) at Exhibit S1-Q20.a).

¹⁵³ *Id.* at 20-21.

¹⁵⁴ *Id.* at 21.

¹⁵⁵ *See* Assan's Case Brief at 2-3 (citing Petitioners' Case Brief at 15).

¹⁵⁶ *Id.* at 3.

¹⁵⁷ *Id.* (citing GOT's September 8, 2020 QR at Exhibit 1 (*i.e.*, Article 29 of Law No. 3065)).

¹⁵⁸ *Id.* at 3-4 (citing GOT's July 20, 2020 QR at 3-4 and GOT's September 8, 2020 QR at Exhibit 1).

¹⁵⁹ *Id.* at 4 (citing GOT's September 8, 2020 QR at Exhibit 1).

¹⁶⁰ *Id.* at 5 (citing GOT's September 8, 2020 QR at 2).

- Exhibits 17 and 55 of Assan’s June 18, 2020 QR demonstrate that VAT paid on the delivery of fixed assets are deductible as input VAT.¹⁶¹ Exhibit 17 of Assan’s June 18, 2020 QR shows that Assan paid input VAT on non-exempt equipment and machinery purchases was used to offset the output VAT. The same items are included in the list of fixed assets that were transferred to Assan as part of the transfer of the operating rights.¹⁶²
- Thus, the record contains evidence that Article 29 authorizes that input VAT credits cover the delivery of fixed assets.¹⁶³
- The petitioners’ argument that the GOC never stated that fixed assets such as Assan’s acquisition of its operating rights are considered part of the “goods and services” for which a company may deduct input VAT under Article 29 of the VAT Law No. 3065 rests on irrelevant parts of the GOT’s questionnaire responses and the petitioners’ misinterpretation of the record.¹⁶⁴
- The GOT responded that in this case that all goods and services fall within the scope of Article 29 of Law No. 3065 except as provided under Article 30 of the same law. Fixed assets are not covered in the exceptions listed in Article 30.¹⁶⁵
- The record in this investigation demonstrates that there is no financial contribution and, thus, no countervailable subsidy involved in the VAT programs at issue. Commerce should continue to find that the VAT exemption associated with Assan’s purchase of operational rights of the power plant did not confer a benefit on Assan.¹⁶⁶

No other party commented on this issue.

Commerce’s Position: In the Post-Preliminary Analysis, Commerce determined that Turkey maintains a “normal” VAT system, which did not confer a benefit on Assan or Teknik, under our practice in accordance with 19 CFR 351.510(a), because neither respondent retained an output VAT surplus as a result of being exempt from paying input VAT on their purchases, and they were not otherwise subsidized as a result of exemptions.¹⁶⁷ Turkey’s VAT Law No. 3065, under Article 29, states that taxpayers in Turkey may deduct VAT for the deliveries of goods and services from the VAT calculated over the taxable transactions they have performed.¹⁶⁸ In other words, non-exempt input VAT (*i.e.*, VAT paid to suppliers) may be offset against output VAT (*i.e.*, VAT collected from domestic customers).¹⁶⁹ Article 30 of VAT Law No. 3065 provides a list of exceptions when VAT may not be deducted from VAT “calculated over the taxable transaction of a taxpayer.”¹⁷⁰ In other words, Article 30 lists instances where an input VAT credit is not available to be offset against output VAT, and this article does not list the payment for operating rights for fixed assets such as hydroelectric power plants. The exceptions at Article 30 include purchases of documents of passenger cars owned by enterprises, goods that have been lost other than by earthquake, flood, or fire, where the GOT’s Ministry of Finance declared *force majeure*, and for depreciated assets that

¹⁶¹ *Id.* at 5-6 (citing Assan’s Letter, “Common Alloy Aluminum Sheet from Turkey: Section III Questionnaire Response,” dated June 18, 2020 (Assan’s June 18, 2020 QR) at Exhibits 17 and 55).

¹⁶² *Id.*

¹⁶³ *Id.* at 6.

¹⁶⁴ *Id.* (citing Petitioners’ Case Brief at 20).

¹⁶⁵ *Id.* at 7 (citing GOT’s September 8, 2020 QR at Exhibit 1).

¹⁶⁶ *Id.* at 10-11.

¹⁶⁷ See Post-Preliminary Analysis at 2-4.

¹⁶⁸ See GOT’s September 8, 2020 QR at Exhibit 1.

¹⁶⁹ See Post-Preliminary Analysis.

¹⁷⁰ See GOT’s September 8, 2020 QR at Exhibit 1.

have been lost or delivered under the exemption after the expiry of their service life, but make no mention to transactions such as the transaction under investigation. Our examination of the record leads us to conclude that the exceptions noted at Article 30 make no reference to operating rights regarding fixed assets such as a hydroelectric plant. As a result, and consistent with our finding in the Post-Preliminary Analysis,¹⁷¹ we continue to find that, pursuant to 19 CFR 351.510(a), Assan did not receive a VAT exemption for its purchase of the operating rights of a hydroelectric plant. Therefore, the GOT did not provide a financial contribution and, the alleged program is not countervailable.

Petitioners argue that, due to a VAT exemption, Assan's purchase of operating rights to a hydroelectric plant provided Assan with a countervailable subsidy and that the record does not indicate that operating rights are subject to the GOT's standard VAT treatment.¹⁷² We do not see in the petitioners' case brief where they dispute the exceptions noted under Article 30 or argue that Article 30 provides an exception for excluding the purchase of operating rights for fixed assets.¹⁷³

Comment 3: The Provision of Land for LTAR

The Petitioners' Case Brief:

- Assan provided land sale notices in Sakarya Province from a Turkish website, www.sahibinden.com, as a land benchmark, while the petitioners' provided two reports prepared by Colliers International Group, Inc. (Colliers Report), which a global commercial real estate consulting firm.¹⁷⁴
- Because there were no actual contemporaneous land transactions on the record, Commerce preliminarily calculated a simple average of information submitted by the petitioners and by Assan for the market-determined benchmark to compare with land provided by the GOT to Assan's parent company, Kibar Holding, in 2007.¹⁷⁵ For the final determination, Commerce should revise the preliminary benchmark and rely solely on the Colliers Report.
- Section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(2)(i) provide that Commerce will typically compare the government price to a market-determined price based upon prevailing market conditions that affect comparability. According the Act, prevailing market conditions include "quality, availability, marketability . . . and other conditions of purchase or sale."¹⁷⁶ An analysis of the relevant factors that affect comparability demonstrates that the land information submitted by Assan is not suitable to be used as a benchmark.
- Assan's land notices were listed for sale between June 10, 2020, and July 5, 2020, during a global pandemic that has caused economic hardship around the world.¹⁷⁷ Due to financial uncertainty and economic difficulties, land prices are currently depressed, and thus, are not reflective of the market conditions at the time of Kibar Holding's purchase in 2007.¹⁷⁸

¹⁷¹ See Post-Preliminary Analysis.

¹⁷² See Petitioner's Case Brief at 15-21.

¹⁷³ See Petitioners' Case Brief at 15-21.

¹⁷⁴ See Petitioners' Case Brief at 21-22 (citing Petitioners' Letter, "Petitioners' Submission of New Factual Information to Rebut, Clarify, or Correct Respondents' Supplemental Questionnaire Responses," dated July 27, 2020 (Petitioners' Land Benchmark) at Attachments 1 and 2; and Assan's July 20, 2020 QR at 16-17 and Exhibit S1-Q19.3).

¹⁷⁵ *Id.* at 22 (citing *Preliminary Determination* PDM at 11).

¹⁷⁶ *Id.* at 22.

¹⁷⁷ *Id.* (citing Assan's July 20, 2020 QR at Exhibit S1.Q19.3).

¹⁷⁸ *Id.* at 22-23.

- Commerce has no method to quantify the negative effect of COVID-19 on real estate offer prices in 2020 as any adjustment to these listings would be speculative.¹⁷⁹ Assan’s land pricing data, therefore, reflects unmeasurable price distortions that render it unreliable for benchmark purposes.
- Another factor to consider in assessing the comparability between real estate transactions is the future usage for the land, *i.e.*, whether the land is zoned for residential, agricultural, or industrial uses.¹⁸⁰ The land listings submitted by Assan are not for industrial land.¹⁸¹ Based on the photographs that cover Assan’s information, the majority of the parcels offered for sale appear to represent rural land in remote and/or mountainous areas that are not suitable for industrial development.¹⁸²
- The Colliers Report specifically analyzed the industrial market in eight distinct sub-regions around Istanbul in order to report an average sale price for land. As industrial land, these prices are more comparable to the land purchased by Kibar Holding than the land offerings provided by Assan.¹⁸³
- While Assan indicated that the property tax for the land purchased from the GOT is collected by Karasu Municipality, none of the offerings provided by Assan appear to be located in Karasu Municipality, but appear to identify the Sub Provinces for the underlying listings as Geyve, Adapazari, Sogutlu, and Pamukova).¹⁸⁴
- Karasu is located on the coast of the Black Sea, not far from Istanbul.¹⁸⁵ Coastal locations offer better access to transport for export markets. Moreover, Kibar Holding would likely purchase land with similar features to Assan’s production facilities (Assan currently has a production facility in the Istanbul area, in Tuzla and Dilovasi – Kocaeli).¹⁸⁶ The listings submitted by Assan do not appear to be in locations suitable for industrial development.
- Although Commerce typically will average prices when there is more than one price available, as it did in the *Preliminary Determination*, Commerce’s regulations note that it will make “due allowance for factors affecting comparability.”¹⁸⁷ Further, Commerce has considerable discretion under the Act and its regulations in developing benchmarks for various purposes, and it approaches this task on a case-by-case basis in light of the individual facts presented in each investigation.¹⁸⁸
- The instant record shows that the listings submitted by Assan are not appropriate benchmarks and, accordingly, Commerce should not use this information for the benchmark to evaluate the adequacy of remuneration for Kibar Holding’s land purchase. Instead, for the final determination Commerce should rely solely on the land benchmark submitted by the petitioners.

¹⁷⁹ *Id.* at 23.

¹⁸⁰ *Id.* (citing *Certain Quartz Surface Products from India: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, In Part*, 85 FR 25398 (May 1, 2020) (*Quartz Surface Products from India*), and accompanying IDM at Comment 10; and *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), and accompanying IDM at 15 and Comment 2).

¹⁸¹ *Id.* (citing Assan’s July 20, 2020 QR at Exhibit S1-Q19.3).

¹⁸² *Id.*

¹⁸³ *Id.* at 23 (citing Petitioners’ Land Benchmark at Attachment 1 at 13 and 16, and Attachment 2 at 11 and 14).

¹⁸⁴ *Id.* at 24 (citing Assan’s July 20, 2020 QR at 16 and at Exhibit S1-Q19.3).

¹⁸⁵ *Id.* (citing Petitioners’ Land Benchmark at Attachment 3).

¹⁸⁶ *Id.* (citing Assan’s June 18, 2020 QR at 5).

¹⁸⁷ *Id.* (citing 19 CFR 351.511(a)(2)(ii)).

¹⁸⁸ *Id.* (citing *Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015), and accompanying IDM at Comment 10).

Assan's Case Brief:

- When calculating the subsidy benefit received by Kibar Holding, Commerce incorrectly did not consolidate Kibar Holding's sales with those of its affiliates when applying the "0.5 percent test," despite having stated an intent to do so.¹⁸⁹
- When calculating the subsidy rate, Commerce inadvertently used Assan's sales denominator for this program, even though it found that the countervailable benefit was received by Kibar Holding and, hence, should be allocated over the parent company's (*i.e.*, Kibar Holding's) sales.¹⁹⁰
- Commerce stated that it was attributing any subsidy received by Kibar Holding to the consolidated sales of Kibar Holding and its affiliates, excluding intercompany sales, as directed by 19 CFR 351.525(b)(6)(iii).¹⁹¹ Commerce also applied the 0.5 percent test for the land purchase by dividing the benefit amount received in 2007 by Kibar Holding to Kibar Holding's consolidated 2007 sales. However, Commerce inadvertently used only Kibar Holding's sales as the denominator for the 0.5 percent test instead of the consolidated sales of Kibar Holding and its affiliates.¹⁹² Commerce's true intent was stated in the *Preliminary Determination* and, hence, is an unintentional ministerial error under 19 CFR 351.224(f). Commerce must correct this error in the final determination.
- Commerce made a similar error in the subsidy rate calculation. Rather than using the consolidated sales of Kibar Holding as the denominator, Commerce instead used Assan's 2019 total sales. However, Commerce found that this countervailable benefit was received by Kibar Holding and not Assan.
- In *PVLT Tires from China*, Commerce found that it should not countervail the inputs supplied by any of the companies found to be cross-owned with the respondent company.¹⁹³ In the instant case, the subsequent transfer of land was also between cross-owned affiliates, Kibar Holding and Assan.
- The fact that Commerce is countervailing the land purchase in 2007 proves that Kibar Holding is not an "authority" and there is no evidence that the GOT was involved in the later transfer of land between Kibar Holding and Assan.
- The Provision of Land Provided Under Law NO. 4916 Program was terminated in 2009, and the transaction at issue was in 2007. The subsequent transfer between cross-owned affiliates is irrelevant to this investigation pursuant to Commerce's practice.¹⁹⁴
- The land parcel purchased by Kibar Holding from the GOT in 2007 was located in Karasu, a locality in the Sakarya Province in Turkey.¹⁹⁵ In the *Preliminary Determination*, Commerce relied on a simple average of the land benchmarks submitted by the petitioners and by Assan.¹⁹⁶
- The petitioners' benchmark information is not for comparable land and results in a distorted benchmark. In addition, Commerce used an averaging methodology that disproportionately favors the petitioners' benchmark.¹⁹⁷

¹⁸⁹ See Assan's Case Brief at 10 (citing *Preliminary Determination* PDM at 25).

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 11 (citing *Preliminary Determination* PDM at 9).

¹⁹² *Id.*

¹⁹³ *Id.* (citing *Countervailing Duty Investigation of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 80 FR 34888 (June 18, 2015) (*PVLT Tires from China*) at Comment 4).

¹⁹⁴ *Id.* at 13-14.

¹⁹⁵ *Id.* at 14 (citing *Preliminary Determination* PDM at 24; and GOT's July 20, 2020 QR at 53-54).

¹⁹⁶ *Id.* (citing *Preliminary Determination* PDM at 11).

¹⁹⁷ *Id.* at 14-15.

- Consistent with its regulation, Commerce’s policy for LTAR programs prefers a benchmark that “generally reflect{s} most closely the commercial environment of the purchaser under investigation.”¹⁹⁸ Thus, revising a preliminarily combined benchmark to be on a factor-specific basis in the final determination is proper if the record provides a reliable basis for doing so.
- In determining LTAR benchmarks, Commerce has recognized product grade, form, and species as among factors affecting comparability. For example, in *CWASPP from China*, Commerce calculated grade-specific benchmark prices for the LTAR input at issue to calculate by benefit of the input by comparing prices within each grade.¹⁹⁹
- In *Steel Wheels from China*, Commerce explained that where possible its practice is to compute benefit calculations for input for LTAR programs using benchmark pricing data for the particular input under examination.²⁰⁰ In that case, Commerce preliminarily calculated benchmark prices that were a simple average of plate and coil prices.²⁰¹ However, in the final determination, where the respondent’s purchase data permitted a product-to-product product price comparison (*i.e.*, plate to plate or coils to coils), Commerce applied a product-specific benchmark for calculating a benefit.²⁰²
- In *Circular Welded Carbon Steel Pipes and Tubes from Turkey 2018*, Commerce recently rejected an argument that it should use a combined LTAR benchmark for incorporating both X-70 series and non-X series hot-rolled steel prices. The respondent in that case had purchased only non-X series hot-rolled steel from the government authorities.²⁰³
- Commerce’s focus on “comparability” is to ensure apples-to-apples comparisons and to avoid distortions by factors irrelevant to subsidy concerns. In determining LTAR benchmarks, it is also Commerce’s practice to exclude aberrational data points that distort the benchmark.²⁰⁴ In *Ozdemir Boru Final Remand*, Commerce removed two land parcels from its benchmark after determining the prices were outliers.²⁰⁵
- The CIT has upheld Commerce’s practice regarding both specific benchmarks and aberrational data.²⁰⁶ Also, the CIT stated that pursuant to 19 CFR 351.511(a)(2), Commerce must consider “the relevance of the locations, and the level of land development” of land parcels used in benchmarks.²⁰⁷
- In the instant case, the land parcels submitted by Assan for land benchmarks are comparable to the land at issue, which is located in Karasu, Sakarya. Assan submitted price information for

¹⁹⁸ *Id.* at 15 (citing *Countervailing Duty Investigation of Glycine from India: Affirmative Final Determination*, 84 FR 18482 (May 1, 2019), and accompanying IDM at Comment 3).

¹⁹⁹ *Id.* at 15-16 (citing *Circular Welded Austenitic Stainless Pressure Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 4936 (January 28, 2009) (*CWASPP from China*) at 21).

²⁰⁰ *Id.* at 16 (citing *Certain Steel Wheels from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March, 23, 2012) (*Steel Wheels from China*), and accompanying IDM at Comment 15).

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.* at 16-17 (citing *Circular Welded Carbon Steel Pipes and Tubes from The Republic of Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2018 (Circular Welded Carbon Steel Pipes and Tubes from Turkey 2018)*, 86 FR 6866 (January 25, 2021), and accompanying IDM at Comment 1).

²⁰⁴ *Id.* at 17.

²⁰⁵ *Id.* (citing *Final Results of Redetermination Pursuant to Court Remand in Ozdemir Boru San. Ve Tic. Ltd. Sti. v. United States*, Slip Op. 17-142, No. 16-00206 (CIT October 16, 2017) (*Ozdemir Boru Final Remand*) at 5-6).

²⁰⁶ *Id.* at 18 (citing *Toscelik Profil Ve Sac Endustrisi A.S. v. United States*, No. 13-00371, Slip Op. 14-126 at *6 and *6n. 14 (CIT 2014)).

²⁰⁷ *Id.* (citing *Ozdemir Boru San. ve Tic. Ltd. STI. v. United States*, 273 F. Supp 3d 1225, 1252 (CIT 2017)).

both industrial and forest/agricultural land parcels located in Sakarya Province.²⁰⁸ The land at issue consists of six parcels, three of which are “private forest” (*i.e.*, not industrial land) and three of which are “fields” (*i.e.*, industrial land).²⁰⁹

- By contrast, the land price submitted by the petitioners is specific to four locations in the Kocaeli and Tekirdag provinces and are not comparable to the land at issue. The land purchased by Kibar Holding consists of industrial and agricultural/forest land. Assan submitted parcel prices for both types of land while the petitioners submitted land prices only for industrial land.²¹⁰ By doing so, the petitioners submitted data that ignored the level of land development for three of the six parcels at issue. Thus, the petitioners’ prices are not comparable to the land transaction at issue.
- With respect to the land benchmarks provided by the petitioners’ Karasu, Sakarya is geographically distant from the Greater Istanbul Area Industrial Market, including the four locations in Kocaeli and Tekirdag. Karasu (where the land in question is located) is within a three-hour drive from Istanbul, while Kocaeli and Tekirdag are approximately a one-hour, and 1.5-hour drives from Istanbul, respectively.²¹¹
- As reflected on page nine of the Colliers Report submitted by the petitioners, the Greater Istanbul Industrial Market generally extends into the south from Istanbul, while Karasu is northeast of Istanbul. Assan cannot even mark Karasu on the map on page nine of the Colliers Report as it is outside of the depicted area.²¹²
- There is a significant difference in socioeconomic status between Karasu, Sakarya (the location of the land in question) and the four locations in the Greater Istanbul Area Industrial Market presented in the petitioners’ Colliers Report, which impacts land prices. The Colliers Report acknowledge a direct link between an area’s socioeconomic status and its land value.²¹³ By the same measurement, according to official data released by the Turkish Statistical Institute, Sakarya’s GDP is approximately 30 percent the size of Kocaeli and approximately 75 percent the size of Tekirdag.²¹⁴
- The GOT’s Decree No. 2012/3305 (related to the Regional Investment Incentive Scheme) divided Turkey into six regions, taking socioeconomic development levels into consideration.²¹⁵ Istanbul and Kocaeli are both in the First Region, while Tekirdag and Sakarya are both in the Second Region, indicating differences in socioeconomic development.²¹⁶
- Regarding provincial income levels, Kocaeli is ranked first in Turkey while Tekirdag is ranked 16th. Sakarya Province (the location of the land under examination) is ranked 33rd.²¹⁷ Other record evidence supports that the Greater Istanbul Area Industrial Market is Turkey’s largest, most populated, and most expensive area,²¹⁸ and is not a comparable to a much less developed and area like Karasu, Sakarya.

²⁰⁸ *Id.* at 19 (citing Assan’s Letter, “Rebuttal to Petitioners’ Submission of New Factual Information to Rebut Clarify, or Correct Respondents’ Supplemental Questionnaire Responses,” dated (August 3, 2020) (Assan’s Land Rebuttal Submission) at Exhibit 2).

²⁰⁹ *Id.* (citing Assan’s Land Rebuttal Submission at Exhibit 1).

²¹⁰ *Id.* at 19-20 (citing Petitioners’ Land Benchmark Submission at Attachment 4).

²¹¹ *Id.* at 20 (citing Assan’s Land Rebuttal Submission at Exhibit 3).

²¹² *Id.* (citing Petitioners’ Land Benchmark Submission at Attachment 1, page 9).

²¹³ *Id.* (citing Petitioners’ Land Benchmark Submission at Attachment 1, pages 3-6).

²¹⁴ *Id.* at 21 (citing Assan’s Land Rebuttal Submission at Exhibit 5).

²¹⁵ *Id.* (citing Assan’s June 18, 2020 QR at 52 and at Exhibit 19).

²¹⁶ *Id.* (citing Assan’s Land Rebuttal Submission at Exhibit 6).

²¹⁷ *Id.* at Exhibit 7.

²¹⁸ *Id.* at Exhibit 4.

- The land values in the Colliers Report regarding the Greater Istanbul Area Industrial Market are distortive when applied to the land in Karasu, Sakarya, due to the land-use, geographic, and socioeconomic differences, and Commerce’s averaging methodology improperly assigned different weights to the petitioners’ and Assan’s data points.²¹⁹ Even if Commerce does not exclude the Greater Istanbul Area Industrial Market from the land for LTAR benchmark, Commerce should at least exclude prices from Kocaeli Province and revise its averaging methodology.

Petitioners’ Rebuttal Brief:

- Assan claims that Commerce actually intended to cumulate the sales of Kibar Holding, Assan, and Kibar Dis Ticaret A.S. (Kibar Dis) when performing the 0.5 percent test and is mistaken because the preliminary calculation comported with Commerce’s intention.
- Pursuant to 19 CFR 351.524(b)(2), Commerce will determine whether the non-recurring benefit received from a particular subsidy is less than 0.5 percent of the relevant sales of the firm in question during the year in which the subsidy was approved.²²⁰ Here, the firm in question that received the subsidy was Kibar Holding.
- Commerce relied on Kibar Holding’s 2007 sales data as reported by Assan. Assan’s assertion that this value did not include any affiliate sales and, therefore, needs to be revised to reflect Kibar Holding’s consolidated sales is not on the record. Moreover, Commerce would not be able to aggregate 2007 sales for Assan, Kibar Dis, and Kibar Holding, excluding intercompany sales (as suggested by Assan) because there is no information on intercompany sales in the provided data.²²¹
- Commerce’s preliminary determination that Kibar Holding’s 2007 purchase of land from the GOT met the allocation threshold was consistent with Commerce’s regulation and the record evidence and, thus, should be affirmed.
- Assan similarly contends that Commerce made a second ministerial error by using Assan’s 2019 total sales instead of Kibar Holdings consolidated sales to determine the POI benefit. Assan also attempts to preemptively refute the petitioners’ rebuttal by arguing that the subsequent transfer of the land to Assan should not impact the benefit calculation.²²² Assan is in error because the land transfer to Assan is central to Commerce’s analysis.
- Commerce’s use of Assan’s sales is consistent with Commerce’s regulations and past practice. Under 19 CFR 351.524(b)(6)(v), when a company has received a subsidy and then transferred that subsidy to a cross-owned company, Commerce will attribute the subsidy to the products sold by the recipient of the transferred subsidy.²²³
- In *Aluminum Extrusions from China 2012 AR*, Commerce found that certain subsidies had been transferred to the subject producer from its parent company. To attribute the benefit from the

²¹⁹ *Id.* at 21-22.

²²⁰ *Id.* at 8.

²²¹ *Id.* (citing Assan’s July 20, 2020 QR at Exhibit S1-6.a).

²²² *See* Petitioners’ Rebuttal Brief at 9 (citing Assan’s Case Brief at 12-13).

²²³ *Id.* at 10.

subsidy initially received by the parent company and then transferred to the subject producer, Commerce used the subject producer's sales as the denominator.²²⁴

- Commerce's attribution to Assan during the POI is not predicated on finding Kibar Holding to be an "authority" as Assan suggests, but rather, that Kibar Holding acted as a conduit for the subsidy.²²⁵
- Commerce's finding in *PVLT Tires from China* is not relevant to this investigation. The facts in *PVLT Tires from China* do not represent the transfer of a countervailable subsidy between cross-owned entities within the meaning of 19 CFR 351.524(b)(6)(v), but rather, the provision of a raw material input in accordance with 19 CFR 351.524(b)(6)(iv). Commerce should continue to attribute the POI benefit from the GOT's provision of land to Assan's total sales in the final determination.²²⁶
- Contrary to Assan's assertions, the petitioners' land prices are the most appropriate benchmarks on the record. Assan argues that Commerce should exclude the land prices the petitioners submitted in the Colliers Report because the prices are not comparable to the land Kibar Holding purchased in Karasu, Sakarya, and instead, are aberrational.²²⁷
- While the petitioners concur with Assan's assessment that Commerce's practice in selecting benchmarks focuses on the factors that affect comparability within the meaning of 19 CFR 351.511(a), Assan's application of this analytical framework to the record evidence misses the mark.²²⁸
- As explained in Petitioners' Case Brief at 21-24 and for the additional reasons explained in Petitioners' Rebuttal Brief, Commerce should reject Assan's logic and rely solely on the industrial land prices published in the Colliers Report for the final determination.²²⁹
- Assan contends that its land parcel listing is comparable to the land purchased in Karasu, Sakarya because the land at issue consists of six parcels, three of which are private forests (*i.e.*, not industrial land) and three of which are fields (*i.e.*, industrial land).²³⁰
- In order to purchase the land in question, Kibar Holding had to commit to invest at least USD 10 million, and to employ at least 50 people.²³¹ The land, therefore, was being sold for industrial purposes and not for its private forests. With respect to the appraisal report provided by Assan, the three fields in the land parcel account for a large portion of the total acreage of the land parcel.²³² The land listings portrayed by Assan as "comparable" are predominantly comprised of non-industrial land, with nine of the 11 parcels zoned for agricultural use.²³³ Assan's average price, therefore, is artificially lowered by land that is not comparable to the land at issue.
- Assan criticizes the four locations in Kocaeli and Tekirdag for the lack of geographic proximity to Karasu.²³⁴ However, none of Assan's land listings are in Karasu and are instead, located in Geyve, Adapazari, Sogutlu, and Pamukova. There is no factual information in the record to establish that the locations selected by Assan are geographically closer to Karasu than the four

²²⁴ *Id.* (citing *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 7877 (December 31, 2014) (*Aluminum Extrusions from China 2012 AR*), and accompanying IDM at 8-9).

²²⁵ *Id.* at 11 (citing Assan's Case Brief at 13).

²²⁶ *Id.* at 11-12.

²²⁷ *Id.* at 12 (citing Assan's Case Brief at 19-25).

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.* (citing Assan's Case Brief at 19).

²³¹ *Id.* (citing Assan's July 20, 2020 QR at 12-13).

²³² *Id.* at 13 (citing Assan's Land Rebuttal Submission at Exhibit 1, page 2).

²³³ *Id.* (citing Assan's Land Rebuttal Submission at Exhibit 2).

²³⁴ *Id.* (citing Assan's Case Brief at 20).

locations in Kocaeli and Tekirdag. The sole location visible on the map submitted by Assan (*i.e.*, Geyve) is distant from Karasu and is inland, not a prime location for any industry that seeks to export its production.²³⁵

- Assan overstates the correlation between socioeconomic development and land prices. Assan notes that Decree No. 2012/3305, which divided Turkey into six regions in consideration of socioeconomic development assigned Istanbul and Kocaeli to Region 1 and Tekirdag and Sakarya to Region 2²³⁶ However, the Colliers Report shows that there is substantial variation within Istanbul, ranging from USD 319 per square meter in Silivri to USD 728 per square meter in Esenyurt-Kirac in the first half of 2017, with a similar gap in the second half of the year.²³⁷ Other factors, therefore, have a more significant impact on land prices than the broad level of socioeconomic development within a region.
- Contrary to Assan's contentions, the prices that are aberrational and distortive are the prices that it submitted and not the prices derived from the Colliers Report.²³⁸
- Assan's reliance on the appraisal report for a benchmark valuation is misplaced. Although the report was prepared by a third-party, the purpose of the appraisal report was to provide a valuation for Assan's 2019 year-end financial statements (*i.e.*, book value).²³⁹ As such, the third party had a vested interest in serving its client and book value is not the same as market value. Because book value is not the same as market value, the appraisal is not suitable for Commerce's benchmark analysis.
- Assan's contention that Commerce should not use a simple average of data submitted by the petitioners and by Assan, but should aggregate using each price as a separate data point and then dividing that value by the total should be rejected.²⁴⁰

Assan's Rebuttal Brief:

- The petitioners' comparability arguments regarding the land benchmark are contradicted by the record and otherwise lack merit.²⁴¹
- The petitioners provide no support for its claim that the land prices Assan submitted were suppressed as a result of a global pandemic.²⁴² Instead, the petitioners ask Commerce to make assumptions about the state of the real estate market in Turkey and to assume that every region in Turkey was affected equally.
- Regarding the petitioners' arguments that the land listings by Assan are not comparable, the record establishes that the subject land consists of parcels that are not industrial land. In its June 18, 2020 QR, Assan explained that it does not have any production or any other facility on the land in question and that the land is vacant.²⁴³ The appraisal report by the independent third party corroborates Assan's response. The petitioners' benchmark information, which is sourced from highly developed industrial regions in Turkey is not comparable to the land in question.²⁴⁴

²³⁵ *Id.* (citing Assan's Land Rebuttal Submission at Exhibit 3).

²³⁶ *Id.* at 13-14 (citing Assan's Case Brief at 20-21).

²³⁷ *See* Petitioners' Case Brief at 14 (citing Petitioners' Land Benchmark Submission at Attachment 1, page 16, and Attachment 2, page 14).

²³⁸ *Id.* at 15 (citing Assan's Case Brief at 22-24).

²³⁹ *Id.* (citing Assan's Land Rebuttal Submission at Exhibit 1, page 4).

²⁴⁰ *Id.* at 16-17 (citing Assan's Case Brief at 25-26).

²⁴¹ *See* Assan's Rebuttal Brief at 11.

²⁴² *Id.* at 11-12 (citing Petitioners' Case Brief at 22).

²⁴³ *Id.* at 12 (citing Assan's June 18, 2020 QR at 131).

²⁴⁴ *Id.* at 13-14.

- There is no record evidence on the record to support a finding that land prices in Karasu are similar to those found in the Istanbul area. Karasu is located in a separate region from Istanbul and is separated by an entire province.²⁴⁵
- The petitioner's claim, without providing any supporting evidence, that coastal locations offer better access to transport for export markets.²⁴⁶ This statement requires Commerce to speculate and ignore evidence on the record. The land appraisal submitted by Assan states that the negative criteria of the subject land demonstrates that it does not have better access to transport for export markets.²⁴⁷
- The petitioners' statement that Kibar Holding would likely purchase land with similar features to Assan's production facilities that are located in the Istanbul area was made without any supporting evidence and asks Commerce to speculate and to ignore record evidence.²⁴⁸

No other party commented on this issue.

Commerce's Position: Assan reported that in 2007, its parent holding company Kibar Holding purchased a parcel of land from the GOT, under the GOT's Law No. 4916, and subsequently transferred this land to Assan during the AUL.²⁴⁹ In the *Preliminary Determination*, we found that this land sale to Kibar Holding constituted a countervailable subsidy.²⁵⁰ The GOT reported that this program was terminated in 2009.²⁵¹ To determine the adequacy of remuneration for this government provided land, pursuant to 19 CFR 351.511(a)(2), in the *Preliminary Determination* we relied on a simple average of the land prices provided by the petitioners and Assan.²⁵² Specifically, the petitioners provided two reports by Colliers International Group, Inc., the Colliers Report (*i.e.*, "Turkey Real Estate Review: First Half 2017" and "Turkey Real Estate Review: Second Half 2017") that it indexed to 2007 prices.²⁵³ The Colliers Report was generated by an independent third party and provides values for industrial land sales for four locations within the Greater Istanbul Industrial Area, excluding prices for locations identified as metropolitan Istanbul: Gebze, Dilovasi, Cerkezkoy, and Corlu. Assan provided 2020 land prices in Sakarya Province, which is where the undeveloped land under examination is located, that it obtained from www.sahibinden.com which, Assan explained, is a frequently used property website in Turkey.²⁵⁴

For the final determination, based on record information we find Assan's benchmark information to be a more comparable and appropriate price to use. Specifically, Assan's benchmark information is for the same geographic region where the land under examination is located (the same province) and is for the same type of land (industrial, forest/agricultural). We also find that petitioner's land prices are for the Greater Istanbul Area, which includes developed and urban land prices that are not comparable to the undeveloped land under examination. The record also contains information that there are significant socioeconomic differences between the Greater Istanbul Area and Sakarya Province where the land under examination is located. Commerce has generally taken these types

²⁴⁵ *Id.* at 14 (citing Assan's Rebuttal Land Submission at Exhibit 3).

²⁴⁶ *Id.* at 14.

²⁴⁷ *Id.* (citing Assan's Rebuttal Land Submission at Exhibit 1, page 19).

²⁴⁸ *Id.* at 14 (citing Petitioners' Case Brief at 24).

²⁴⁹ See Assan's June 18, 2020 QR at 131.

²⁵⁰ See *Preliminary Determination* PDM at 24-25.

²⁵¹ See GOT's July 20, 2020 QR at 53-54.

²⁵² See *Preliminary Determination* PDM at 11.

²⁵³ See Petitioners' Land Benchmark Submission at Attachments 1 and 2.

²⁵⁴ See Assan's July 20, 2020 QR at Exhibit S1-Q19.3; see also Assan's Land Rebuttal Submission.

of factors, where record information exists, into consideration when determining land benchmarks in prior cases.²⁵⁵

Regarding the petitioners' argument that we cannot rely on the 2020 Turkish land prices provided by Assan because, petitioners claim, Turkish land prices are depressed because of the COVID-19 pandemic, we do not find record information to support the petitioners' claim. And with respect to the petitioners' argument that we cannot rely on Assan's land appraisal that was conducted by an independent third party, we disagree. The petitioners' claim Assan's land appraisal is not suitable because it represents book value rather than market value. However, the petitioners do not point to any prior cases where Commerce declined to use the book value of land for purposes of a land for LTAR benchmark.

To determine the benefit in the *Preliminary Determination*, we multiplied the area of land that Kibar Holding purchased from the GOT by the simple average of the unit benchmark land prices submitted by the petitioners and by Assan. We then applied the "0.5 percent test," as described at 19 CFR 351.524(b)(2) by dividing the benefit that Kibar Holding (*i.e.*, Assan's affiliated holding company that purchased the land) received by Kibar Holding's consolidated 2007 total sales and found that the resulting amount exceeded 0.5 percent. Because Assan reported that Kibar Holding subsequently transferred this land to Assan during the POI,²⁵⁶ we allocated the POI benefit to Assan.²⁵⁷

Assan argues that we incorrectly performed the 0.5 percent test when evaluating whether Kibar Holding's land purchase provided allocable benefits across the AUL. It contends that we should have combined Kibar Holding's sales with those of its affiliated companies and, that we committed a ministerial error under 19 CFR 351.224(f) by not doing so. Our examination of the record leads us to conclude that even if we applied the 0.5 percent test to the combined reported 2007 sales denominators for Kibar Holding, Assan, and Kibar Dis the result would still be an amount that exceeds 0.5 percent, and we still would have allocated the 2007 benefit over the AUL and to the POI.²⁵⁸ Thus, we find Assan's argument on this issue moot. We also find that this 2007 land transaction took place within the 14-year AUL period and, contrary to Assan's argument, is relevant to this investigation.

Finally, regarding Assan's argument that Commerce made an error in the subsidy rate calculation by using Assan's 2019 total sales instead of the consolidated sales of Kibar Holding, Assan reported that Kibar Holding purchased this land from the GOT and then transferred it to Assan.²⁵⁹ Based on Assan's statement, we find that Assan's holding company, Kibar Holding, merely served as a conduit for the transfer of a subsidy from the GOT to its subsidiary, Assan. As a result, we find that we correctly attributed the subsidy to the products sold by Assan during the POI, pursuant to 19 CFR 351.525(b)(vi)(iii).

²⁵⁵ See, e.g., *Solar Cells from China 2017 AR Final IDM* at Comment 8 (where Commerce declined to use a respondent's proposed land benchmark because it did not include information that would allow Commerce to examine the proposed benchmark's factors of comparability such as national income levels and population density).

²⁵⁶ See Assan's June 18, 2020 QR at 131.

²⁵⁷ See *Preliminary Determination PDM* at 24-25.

²⁵⁸ See Memorandum, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from the Republic of Turkey; Final Analysis Memorandum for Assan Alüminyum ve Sanayi Ticaret A.Ş.," dated concurrently with this memorandum (Assan's Final Analysis Memorandum) and spreadsheet at the work tab "LandLaw4916."

²⁵⁹ See Assan's June 18, 2020 QR at 131.

Comment 4: Whether to Revise Certain of Assan's Sales Denominators

The Petitioners' Case Brief:

- Assan's sales affiliate Kibar Dis' sales denominator should be corrected to reflect its actual corporate sales during the POI. In the *Preliminary Determination*, Commerce attributed subsidies received by Kibar Dis using the combined sales value of Kibar Dis and Assan to calculate the *ad valorem* program benefit in accordance with 19 CFR 351.525(c).²⁶⁰
- The record shows that Kibar Dis' sales data include sales that should be attributed to Kibar Dis' affiliated companies, which not part of this investigation. The inclusion of these companies' sales in the denominator without accounting for potential subsidies received by these companies in the numerator understates the countervailable benefit attributable to Kibar Dis.²⁶¹
- Assan reported that Kibar Dis' consolidated financial statement included information on a certain Kibar Dis affiliate (the identity of the company is business proprietary and will be referred to as "Company X") and that Company X's sale revenue is excluded from Kibar Dis' consolidated sales revenue.²⁶² Given the lack of reporting for all possible subsidies received by Company X, Company X's sales revenue should not be included in Kibar Dis' sales data.
- Regarding the issue of Assan's reported by-pass sales transactions, after the *Preliminary Determination*, Assan clarified that its initially reported data included "by-pass transactions, *i.e.*, transactions made on behalf of affiliated companies." Assan claimed that for by-pass transactions, there is a *bona fide* sale between Kibar Dis and one of its affiliates, followed by a *bona fide* sale between Kibar Dis and an unaffiliated customer.²⁶³
- That such sales are not included in Kibar Dis' consolidated financial statements undermines Assan's contention (*i.e.*, if by-pass transactions were *bona fide* sales for Kibar Dis, Kibar Dis' consolidated financial statements would reflect these sales).²⁶⁴
- Assan's in lieu of verification response confirmed that its by-pass transactions are not truly Kibar Dis' sales. Assan reported that for by-pass transactions made on behalf of other group companies, Kibar Dis does not keep records regarding the expenses incurred during exportation because the group companies bear such costs, and that Kibar Dis' accounting system does not show FOB and per book amounts for these export sales in the sales report.²⁶⁵
- In other words, Kibar Dis does not record expenses related to by-pass transactions because these sales belong to other companies and the group companies themselves bear such costs.²⁶⁶
- Kibar Dis's consolidated sales data does not include its reported by-pass transactions and, thus, validate the exclusion of these sales in the final determination. Accordingly, Commerce should deduct all by-pass transactions from Kibar Dis' FOB sales data for the final determination.²⁶⁷

Assan's Case Brief:

- In the *Preliminary Determination*, Commerce did not cumulate Assan's sales with those of its sales affiliate Kibar Dis in determining the sales denominators for Assan. This approach ignores

²⁶⁰ *Id.* at 25 (citing *Preliminary Determination* PDM at 8-9).

²⁶¹ *Id.*

²⁶² *Id.* (citing Assan's Letter, "Common Alloy Aluminum Sheet from Turkey: Third Supplemental Questionnaire Response," dated September 21, 2020 (Assan's September 21, 2020 QR) at 2 and at Exhibit S3-Q2).

²⁶³ *Id.* at 26 (citing Assan's September 21, 2020 QR at 2).

²⁶⁴ *Id.*

²⁶⁵ *Id.* at 27-28 (citing Assan's VR at 6).

²⁶⁶ *Id.* at 28.

²⁶⁷ *Id.* at 29.

- the fact that during the POI, certain sales by Assan were made through Kibar Dis. This is inconsistent with Commerce's practice and should be corrected in the final determination.²⁶⁸
- Assan reported that it is part of the Kibar Holding group with includes Kibar Dis. During the POI, Assan sold products to Kibar Dis for exportation, which then sold them to unaffiliated parties. Therefore, Assan made certain of its sales through Kibar Dis and Commerce should cumulate Assan's and Kibar Dis' sales (net of intercompany sales) when calculating sales denominators for Assan.²⁶⁹
 - Commerce has adopted this methodology, which takes into account external revenues realized by the respondent in numerous prior CVD cases involving Turkey products. For example, in *Circular Welded Carbon Steel Pipes and Tubes from Turkey 2015*, the respondent, Toscelik Profil, made domestic and export sales, and also made domestic and export sales through TDT its cross-owned affiliated trading company. In the final results in that case, Commerce combined the total sales of Toscelik Profil and TDT (net of intercompany sales) when calculating subsidy rates for certain programs.²⁷⁰
 - The same reasoning applies to Assan and to Kibar Dis in the instant case, and the methodology used in the *Preliminary Determination* failed to properly attribute the respective benefit for each program to all products produced or exported by the Assan companies based on 19 CFR 351.525(b)(6)(i) in combination with 19 CFR 351.525(b)(2) and (3). Hence, Commerce should follow its precedent and revise Assan's sales denominators to include sales by its affiliated trading company Kibar Dis for the final determination.²⁷¹

Petitioners' Rebuttal Brief:

- To support its position on its cumulation argument, Assan contends that Commerce has adopted this methodology in "numerous" other CVD proceedings involving Turkey, but only cites to one case.²⁷² Given that Commerce's attribution methodology is consistent with its regulations and case precedent, Assan's argument should be rejected.²⁷³
- Although not explicitly stated, Assan appears to be arguing that its total sales denominator is understated because a portion of Assan's export sales are made through its sales affiliate, Kibar Dis.²⁷⁴
- In other words, according to Assan, the reported value of Assan's exports that are sold to Kibar Dis and then resold by Kibar Dis to an unaffiliated third party does not reflect Kibar Dis' mark-up to the final customer. Commerce's Entered Value Adjustment (EVA) is Commerce's practice to account for such scenarios.²⁷⁵

²⁶⁸ *Id.* at 2.

²⁶⁹ *Id.* at 3.

²⁷⁰ *Id.* at 3-4 (citing *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) (*Circular Welded Carbon Steel Pipes and Tubes from Turkey 2015*), and accompanying IDM at 11-12).

²⁷¹ *Id.* at 4-5.

²⁷² See Petitioners' Rebuttal Brief at 3 (citing Assan's Case Brief at 3-4).

²⁷³ *Id.* (citing *Countervailing Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (March 5, 2018), and accompanying IDM at 4-5 and at Comment 9; and *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Preliminary Affirmative Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 21316 (April 11, 2016), and accompanying PDM at 8-9, unchanged in *Countervailing Duty Investigation of Certain Iron Mechanical Transfer Drive Components from the People's Republic of China: Final Affirmative Determination*, 81 FR 75037 (October 28, 2016)).

²⁷⁴ *Id.* at 4 (citing Assan's Case Brief at 3).

²⁷⁵ *Id.* at 4-5.

- If Assan believed that an EVA was warranted, it should have requested and EVA and supplied the required supporting documentation instead of raising this issue for the first time in its case brief.
- Assan's reliance on *Circular Welded Carbon Steel Pipes and Tubes from Turkey 2015* is misplaced. In that proceeding, when detailing the relationship between the subject producer, Toscelik Profil, and its cross-owned trading company, TDT, Commerce noted that in addition to being responsible for its export sales to the United States, Toscelik Profil also sold to its domestic and export markets through TDT.
- The implication is that TDT was responsible for all of Toscelik Profil's sales and not just a subset.²⁷⁶ Assan does not sell any product domestically through Kibar Dis.²⁷⁷
- Commerce revised its attribution methodology in regard to Toscelik Profil and TDT in the 2017 administrative review and attributed subsidies received by Toscelik Profil to its total or export sales as provided by 19 CFR 351.525(b)(6)(i) and (b)(2). For subsidies received by TDT, Commerce applied the trading company rule at 19 CFR 351.525(c) by cumulating TDT's benefits with those of Toscelik Profil and dividing any benefits received by the two companies' combined total sales or export sales, net of intercompany sales.²⁷⁸
- In its case brief, Assan essentially seeks an EVA without documenting its fulfillment of any of the requisite criteria. Commerce should reject Assan's proposed revision and affirm its preliminary attribution methodology in regard to countervailable subsidies received by Assan for the final determination.²⁷⁹

Assan's Rebuttal Brief:

- The petitioners' arguments that Commerce should exclude sales by Kibar Dis' affiliated Company X from Kibar Dis' sales data and that Commerce should also exclude by-pass transactions related to resales of products purchased from affiliates from Kibar Dis' sales data should be rejected by Commerce.²⁸⁰
- With regard to the petitioners' first argument regarding excluding the sales from Company X from Kibar Dis's reported sales, this is a non-issue because Kibar Dis did not include Company X's sales in the sales data reported to Commerce.²⁸¹
- Assan reported that Kibar Dis' reported sales data to Commerce is based on Kibar Dis' official financial statements (specifically the income statements) attached to its annual corporate tax returns, which tie to the company's statutory books and did not include Company X's sales.
- The sales Exhibit S3-Q2 of Assan's September 21, 2020 QR specifies the net revenue noted in Kibar Dis' internal financial statements that were submitted at Exhibit 4 of Assan's June 18, 2020 QR. Assan then subtracted Company X's sales revenue from that number, which resulted in an adjusted sales revenue.²⁸²

²⁷⁶ *Id.* at 6.

²⁷⁷ *Id.* (citing Assan's June 18, 2020 QR at Exhibit 7).

²⁷⁸ *Id.* at 6 (citing *Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review, in Part, Calendar Year 2017*, 84 FR 21327 (May 14, 2019), and accompanying PDM at 8, unchanged in *Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part; Calendar Year 2017*, 84 FR 56173 (October 21, 2019) (*Circular Welded Carbon Steel Pipe and Tubes from Turkey*), and accompanying IDM at 4-5).

²⁷⁹ *Id.* at 6-7.

²⁸⁰ See Assan's Rebuttal Brief at 15-16.

²⁸¹ *Id.* at 16.

²⁸² *Id.* at 17.

- When additional reconciling items were taken into account, Kibar Dis' sales template, which ties to its statutory books, was reconciled with its internal financial statements. Therefore, Kibar Dis never included the sales of its affiliate Company X in the sales data reported to Commerce, which renders the petitioners' argument on this issue moot.²⁸³
- With respect to the petitioners' argument that by-pass arguments should be excluded from Kibar Dis' reported sales data, Kibar Dis' by-pass transactions are properly recorded in Kibar Dis' SAP accounting system as well as in its official financial statements, which were prepared to the standards under Turkish Tax Procedural Law.²⁸⁴
- The official financial statements are attached to Kibar Dis' corporate tax returns and, thus, by-pass transaction revenues are approved by the GOT as revenues of Kibar Dis. It is apparent that Commerce relied on Kibar Dis' official financial statements, which include by-pass transactions, in the *Preliminary Determination*.²⁸⁵
- Kibar Dis submitted a screen shot from its own SAP accounting system that shows by-pass transactions are recorded in its accounts. Thus, it is clear that Kibar Dis is responsible for the official accounting of these transactions.²⁸⁶
- By-pass transactions are sales by Kibar Dis, which are properly recorded in its accounting system as well as in its official financial statements. As such, they must be included in the sales denominators for the company.²⁸⁷

No other party commented on this issue.

Commerce's Position: The petitioners and Assan raise several arguments regarding Commerce's calculation of sales denominators in their case briefs. The petitioners argue that Assan's affiliate Kibar Dis' sales denominator should be revised for the final determination to exclude sales from its subsidiary, Company X.²⁸⁸ The petitioners also argue that Commerce should deduct "by-pass" sales from Kibar Dis' denominator for the final determination. Assan contends that for the final determination, Commerce should cumulate Assan's sales with Kibar Dis' sales to derive Assan's sales denominator.

With respect to the petitioners' first argument that Commerce should remove Company X's sales from Kibar Dis' sales denominator, Assan provided Commerce with a reconciliation of Kibar Dis' sales values in its statutory books, which tie to the company's tax returns, with its sales revenues in its internal consolidated financial statements.²⁸⁹ Assan reported that one of the differences between the sales revenues in its statutory books and the sales revenues in its internal financial statements is that the sales revenue reported in the internal financial statements includes the sales revenue of Kibar Dis and its subsidiary, Company X.²⁹⁰ Assan explained that to reconcile the sales in Kibar Dis' internal financial statements with its statutory books, Kibar Dis excluded Company X's sales from the sales revenue in its consolidated financial statement.²⁹¹ In reviewing the reconciliation of

²⁸³ *Id.*

²⁸⁴ *Id.* at 20.

²⁸⁵ *Id.*

²⁸⁶ *Id.* at 22 (citing Assan's VR at Exhibit VE-1).

²⁸⁷ *Id.* at 23.

²⁸⁸ "Company X" is identified in Assan's May 14, 2020 QR at Exhibit 1, Sequence No. 14 (business proprietary submission).

²⁸⁹ See Assan's September 21, 2020 QR at Exhibit S3-Q2.

²⁹⁰ See Assan's September 21, 2020 QR at 1-2.

²⁹¹ *Id.*

Kibar Dis' sales values in its statutory books, which were used to derive the sales values submitted to Commerce, with the sales revenues in its consolidated financial statements at Exhibit S3-Q2 of its September 21, 2020 QR, we conclude that Company X's revenues were not included in Kibar Dis' sales values that Assan submitted to Commerce for this investigation. As such, we agree with Assan on this issue and find that it is not necessary to revise Kibar Dis' sales denominator for the final determination with respect to this issue.

Regarding the petitioners' second argument that Commerce should deduct "by-pass" sales from Kibar Dis' denominator for the final determination, the record includes a pivot table of sales from Kibar Dis' SAP accounting system for the account that records by-pass sales, along with a screen shot of Kibar Dis' SAP accounting system that records by-pass sales that ties to the pivot table.²⁹² This evidence indicates that these types of sales are, indeed, sales that Kibar Dis booked as sales revenue in its financial systems and, therefore, we see no reason to remove these sales from Kibar Dis' reported sales for the final determination.

Finally, we disagree that we should cumulate Assan's and Kibar Dis' sales in determining Assan's sales denominators for the final determination. Assan relies on *Circular Welded Carbon Steel Pipe and Tubes from Turkey*, but we find that the fact pattern is distinct in the instant case. Assan notes that in *Circular Welded Carbon Steel Pipe and Tubes from Turkey*, the respondent company, Toscelik Profil ve Sac Endustrisi A.S., made both domestic and export sales through its cross-owned trading company, Tosityali Dis Ticaret A.S.²⁹³ In this instant case, the record demonstrates that, while Assan made export sales through its affiliated trading company, Kibar Dis, Assan does not claim to have made domestic sales through Kibar Dis.²⁹⁴ The record also does not demonstrate that Assan made domestic sales through Kibar Dis.²⁹⁵ As such, because the facts are different between the instant case and the case cited by Assan, we find no reason to deviate from the *Preliminary Determination* and revise Assan's sales denominators by cumulating the sales of Assan and Kibar Dis.

If, as the petitioners contend, Assan is requesting an EVA regarding its sales, it should have requested such treatment earlier in the investigation. Commerce's practice is to use the FOB sales value for the denominator in its subsidy calculations.²⁹⁶ However, in limited circumstances, Commerce has adjusted the calculation of the subsidy rate when the sales value used to calculate that subsidy rate does not match the value of the subject merchandise, *e.g.*, where subject merchandise is exported to the United States with a mark-up from an affiliated company, and where the respondent can demonstrate that: (1) the price on which the alleged subsidy is based differs from the U.S. invoiced price; (2) the exporters and the party that invoices the customer are affiliated; (3) the U.S. invoice establishes the customs value to which the CVD duties are applied; (4) there is a one-to-one correlation between the invoice that reflect the price on which subsidies are received and the invoice with the mark-up that accompanies the shipment; (5) the merchandise is

²⁹² See Assan's VR at Exhibit VE-1.

²⁹³ See Assan's Case Brief at 3-4 (citing *Circular Welded Carbon Steel Pipes and Tubes from Turkey* IDM at 11-12).

²⁹⁴ See Assan's Case Brief at 3-4.

²⁹⁵ See Assan's Letter, "Common Alloy Aluminum Sheet from Turkey: Section III Affiliation Questionnaire Response," dated May 14, 2020 at Exhibit 1, Sequence No. 13 regarding Kibar Dis.

²⁹⁶ See 19 CFR 351.525(a).

shipped directly to the United States; and (6) the invoices can be tracked as back-to-back invoices that are identical except for price.²⁹⁷

Commerce's practice of granting a sales adjustment is limited to instances where a respondent can demonstrate that all of its sales to the United States met the six criteria listed above. This is to satisfy Commerce that the sales value adjustment properly reflects an upward adjustment to the sales value of all merchandise that entered the United States, and on which U.S. Customs and Border Protection assessed dutiable value.²⁹⁸ Assan has not requested an EVA, nor has it satisfied the six criteria listed above and, accordingly, we will not grant Assan an EVA for the final determination.

Comment 5: Whether Commerce Should Deduct Commissions Paid by Assan Regarding the Rediscount Loan Program and the Export-Oriented Working Capital Credit Program

Assan's Case Brief:

- Commerce should correct a ministerial error and deduct "commissions" paid by Assan in calculating benefits under the Rediscount Loan Program and the Export-Oriented Working Capital Credit Program.
- When calculating the subsidy benefit under these programs, Commerce made ministerial errors by ignoring the previous principal payments made by Assan and, also, Commerce did not deduct commissions incurred as necessary expenses for the loans issued under these programs.²⁹⁹
- When calculating the benchmark interest payments, Commerce relied on the initial loan amount rather than the principal balance to which each interest payment applies. This ignores Commerce's practice of calculating the benefit in its loan calculations.
- Regarding the commissions issue, Assan reported that it pays commissions for commercial banks to issue collaterals and guarantees for loans under these programs. Commerce should follow its practice and deduct these commissions when calculating the subsidy benefit for loans under these programs for the final determination.³⁰⁰

No other party commented on this issue.

Commerce's Position: We agree with Assan and have revised the calculations under these programs to base the subsidy calculations on the principal balance to which each interest payment applies. We have also deducted the commissions that Assan paid with respect to the loans under these programs, for the final determination.³⁰¹

²⁹⁷ See, e.g., *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Countervailing Duty Administrative Review and Rescission of Review, in Part*; 2016, 84 FR 45125 (August 28, 2019), and accompanying IDM at Comment 12.

²⁹⁸ *Id.*

²⁹⁹ See Assan's Case Brief at 6-10.

³⁰⁰ *Id.*

³⁰¹ See Assan's Final Analysis Memorandum.

Comment 6: Whether Commerce Should Correct Certain Calculation Errors Regarding Assan

Assan's Case Brief:

- Commerce made a ministerial error when calculating Assan's subsidy benefit related to the import customs duty exemptions that Assan received under the Regional Investment Incentive Scheme Program. Specifically, Commerce used the incorrect import duty to calculate the amount of exempt import duties that Assan would have paid in absence of the program, and should correct this error for the final determination.³⁰²
- Commerce also committed an error by double-counting certain Foreign Fair Support Grants reported by Assan, countervailing these grants twice. Assan reported that it received foreign fair support under the Turquality Program, which is separate from the Foreign Fair Support Program.
- To ensure accurate and complete reporting, Assan included "foreign fair supports" received under the Turquality Program in the exhibit regarding the Foreign Fair Support Program noting that these grants were already reported in another exhibit. Commerce inadvertently overlooked this note and countervailed certain grants twice.

No other party commented on this issue.

Commerce's Position: We agree with Assan and have corrected these errors in the final determination.³⁰³

VIII. RECOMMENDATION

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

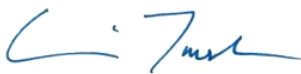


Agree

Disagree

3/1/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

³⁰² See Assan's Case Brief at 6-10.

³⁰³ See Assan's Final Analysis Memorandum.

Appendix

AFA Rate Calculation for Teknik Alüminyum Sanayi A.Ş.	
Program Name	AFA Rate (%)
Foreign Market Research and Market Entry Grants Program	2.11 ³⁰⁴
Foreign Fair Support Program	2.11 ³⁰⁵
Deduction from Taxable Income for Export Revenue Program	0.11 ³⁰⁶
Exemption from Property Tax	0.01 ³⁰⁷
Total	4.34 percent <i>ad valorem</i>

³⁰⁴ See *Pasta from Turkey: Preliminary Results of Countervailing Duty Administrative Review*; 2014, 81 FR 52825 (August 10, 2016), and accompanying PDM at 6, unchanged in *Pasta from Turkey: Final Results of Countervailing Duty Administrative Review*; 2014, 81 FR 90775 (December 15, 2016).

³⁰⁵ *Id.*

³⁰⁶ See *Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 85 FR 80005 (December 11, 2020).

³⁰⁷ See Assan's Final Analysis Memorandum.