



C-489-502
Administrative Review
POR: 01/01/2019 – 12/31/2019
Public Document
E&C AD/CVD OIII: JL, EBG

May 27, 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: Countervailing Duty Administrative Review: Circular Welded
Carbon Steel Pipes and Tubes from the Republic of Turkey; 2019:
Decision Memorandum for the Preliminary Results

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on circular welded carbon steel pipes and tubes (pipes and tubes) from the Republic of Turkey (Turkey). The period of review (POR) is January 1, 2019, through December 31, 2019. We preliminarily determine that producers/exporters of subject merchandise received countervailable subsidies during the POR.

II. BACKGROUND

On March 7, 1986, Commerce published in the *Federal Register* the CVD order on pipes and tubes from Turkey.¹ On March 2, 2020, Commerce published the notice of opportunity to request an administrative review of the *Order* for the period January 1, 2019, through December 31, 2019.² We received timely requests for Commerce to conduct an administrative review of 37 exporters and/or producers, including members of the Borusan Companies.³ On May 6, 2020,

¹ See *Countervailing Duty Order; Certain Welded Carbon Steel Pipe and Tube Products from Turkey*, 51 FR 7984 (March 7, 1986) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 85 FR 12267 (March 2, 2020).

³ The petitioner is Nucor Tubular Products Inc. See Petitioner's Letter "Circular Welded Carbon Steel Pipes and Tubes from Turkey: Request for Administrative Review," dated March 31, 2020; Borusan Companies' Letter "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: Request for Administrative Review," dated March 31, 2020. Hereafter, we refer to the following companies as the Borusan Companies: Borusan Holding, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), Borusan Mannesmann Boru Yatirim Holding (BMBYH), and Borusan Istikbal Ticaret T.A.S. (Istikbal).



Commerce initiated a CVD review of the *Order*, covering the 37 exporters and/or producers for which a review was requested.⁴

In the *Initiation Notice*, we stated that in the event we limited the number of respondents for individual examination, we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the POR.⁵ Accordingly, on May 11, 2020, we released the CBP entry data under administrative protective order (APO) and provided interested parties an opportunity to comment on the CBP data for purposes of respondent selection.⁶

On May 11, 2020, Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) timely filed a no shipments certification.⁷ On May 18, 2020, the petitioner submitted comments in response to the CBP Query Memorandum.⁸ On May 18, 2020, Toscelik Profil ve Sac Endustrisi A.S., Tosyali Dis Ticaret A.S., and Toscelik Metal Ticaret A.S. (collectively, the Toscelik Companies), timely submitted a no shipments certification.⁹ On May 20, 2020, Cayirova Boru Sanayi ve Ticaret A.S., Yucel Boru ve Profil Endustrisi A.S., and Yucelboru Ihracat Ithalat ve Pazarlama A.S. (collectively, the Yucel Companies) timely filed a no shipments certification.¹⁰ On June 15, 2020, Cinar Boru Profil Sanayi ve Ticaret Anonim Sirketi (Cinar Boru) timely filed a claim of no shipments.¹¹

On June 8, 2020, the Borusan Companies submitted a letter to Commerce timely certifying that its affiliated companies Borusan Istikbal Ticaret T.A.S. (Istikbal), Borusan Birlesik Boru Fabrikalari San ve Tic. (Borusan Fabrikalari), Borusan Gemlik Boru Tesisleri A.S. (Borusan Gemlik), Borusan Ihracat Ithalat ve Dagitim A.S. (Borusan Dagitim), Tubeco Pipe and Steel Corporation (Tubeco), and Borusan Lojistik Dagitim Depolama Tasimacilik ve Ticaret A.S. (Borusan Lojistik) had no entries, exports, or sales of subject merchandise during the POR.¹²

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 26931 (May 6, 2020) (*Initiation Notice*).

⁵ *Id.*, 88 FR at 26932.

⁶ See Memorandum, “Results of Customs and Border Protection Query Results,” dated May 11, 2020 (CBP Query Memorandum).

⁷ See Erbosan’s Letter, “No Shipment Certification of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) in the 2019 Administrative Review of the Countervailing Duty Order Involving Certain Welded Carbon Steel Standard Pipe from Turkey,” dated May 11, 2020 (Erbosan No-Shipment Claim).

⁸ See Petitioner’s Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey: Comments on CBP Data and Respondent Selection and on Erbosan’s No Shipments Certification,” dated May 18, 2020.

⁹ See Toscelik Companies’ Letter, “Circular Welded Carbon Steel Pipe from Turkey; Toscelik No Shipments Letter,” dated May 18, 2020 (Toscelik Companies No-Shipment Claim).

¹⁰ See Yucel Companies’ Letter, “Circular Welded Carbon Steel Pipe from Turkey; Yucel No Shipments Letter,” dated May 20, 2020 (Yucel Companies No-Shipment Claim).

¹¹ See Cinar Boru’s Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey (C-489-502),” dated June 15, 2020 (Cinar Boru No-Shipment Claim).

¹² See Borusan Companies’ Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey. Case No. C-489-502: No Shipment Letter,” dated June 5, 2020 (Borusan Companies No-Shipment Claim).

On June 2, 2020, we selected the Borusan Companies, which accounted for the largest volume of subject merchandise entries during the POR, as the sole mandatory respondent.¹³ On June 3, 2020, we issued the CVD questionnaire to the Government of Turkey (GOT) and the Borusan Companies.¹⁴ In the instructions to the questionnaire, we notified the GOT that we selected the Borusan Companies as the sole mandatory respondent in this review and stated that the GOT “is responsible for forwarding a copy of *Section I* and *Section III* of this questionnaire” to the mandatory respondent in this administrative review.¹⁵ On June 24, 2020, we received a timely response to the “affiliated companies” section of the Initial Questionnaire from the Borusan Companies.¹⁶ On July 27, 2020, we received the Borusan Companies’ response to Section III of the Initial Questionnaire.¹⁷ On July 27, 2020, we received the GOT’s response to the Initial Questionnaire.¹⁸

On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 60 days.¹⁹ On August 12, 2020, the petitioner submitted comments on the initial questionnaire responses of the Borusan Companies and the GOT.²⁰ On August 17, 2020, the petitioner filed a new subsidy allegation (NSA).²¹ On September 10, 2020, we issued a supplemental questionnaire to the Borusan Companies, to which they responded on October 1, 2020.²² On October 8, 2020, we issued a supplemental questionnaire to the GOT, to which they responded on October 22, 2020.²³ On December 7, 2020, Commerce extended the deadline for the preliminary results of this administrative review until May 28, 2020.²⁴ On January 5, 2021, Commerce initiated an investigation of the newly alleged subsidy programs.²⁵ On January 12, 2021, Commerce issued

¹³ See Memorandum, “Countervailing Duty Administrative Review of Circular Welded Carbon Steel Pipe and Tube from the Republic of Turkey: Selection of Respondents for Individual Examination,” dated June 2, 2020 (Respondent Selection Memorandum).

¹⁴ See Commerce’s Letter, “Countervailing Duty Questionnaire,” dated June 4, 2018 (Initial Questionnaire). Section II of the Initial Questionnaire contained questions for the GOT, while Section III contained questions for the respondent firms.

¹⁵ *Id.*

¹⁶ See Borusan Companies’ Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey. Case No. C-489-502: Response to Affiliated Companies Section of Initial Questionnaire,” dated June 24, 2020.

¹⁷ See Borusan Companies’ Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: BMB’s Initial Questionnaire Response,” dated July 27, 2020 (Borusan Companies Initial QNR Response).

¹⁸ See Commerce’s Letter, “Response of the Government of Turkey in 2018 Countervailing Duty Administrative Review on Imports of Certain Welded Carbon Steel Pipe and Tube from Turkey,” dated July 27, 2020 (GOT Initial QNR Response).

¹⁹ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,” dated July 21, 2020.

²⁰ See Petitioner’s Letter “Circular Welded Carbon Steel Pipes and Tubes from Turkey: Comments on Borusan’s and the GOT’s Initial Questionnaire Responses,” dated August 12, 2020.

²¹ See Petitioner’s Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey: New Subsidy Allegations,” dated August 17, 2020 (NSA Submission).

²² See Borusan Companies’ Letter, “Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: Borusan’s First Supplemental Questionnaire Response,” dated October 1, 2020.

²³ See GOT’s Letter, “Response of the Government of Turkey in 2019 Countervailing Duty Administrative Review on Imports of Certain Carbon Steel Pipes and Tubes from Turkey,” dated October 22, 2021 Case No. C-489-502: Borusan’s First Supplemental Questionnaire Response,” dated October 22, 2020.

²⁴ See Memorandum, “Circular Welded Carbon Steel Pipes and Tubes from Turkey: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,” dated December 7, 2020.

²⁵ See Memorandum, “Administrative Review of the Countervailing Duty Order on Welded Carbon Steel Pipes and Tubes from Turkey; 2019: New Subsidy Allegation, dated January 5, 2021 (NSA Memorandum).

an NSA Questionnaire to the GOT and the Borusan Companies, to which they responded on February 9, 2021.²⁶

On March 17, 2021, we issued a supplemental NSA questionnaire to the GOT and the Borusan Companies, to which they responded on April 1, 2021.²⁷ On April 9, 2021, we issued a second NSA supplemental questionnaire to the GOT, to which it responded on April 28, 2021.²⁸

III. PERIOD OF REVIEW

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

IV. SCOPE OF THE ORDER

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

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.²⁹ Commerce finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, as revised.³⁰ Commerce notified the respondents of the 15-year AUL in the initial questionnaire and requested data accordingly. No party in this proceeding has disputed this allocation period.

Furthermore, for non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for

²⁶ See GOT's Letter, "Response of the Government of Turkey in 2019 Countervailing Duty Administrative Review on Imports of Certain Welded Carbon Steel Pipe and Tube from Turkey," dated February 9, 2021; *see also* Borusan Companies' Letter, "Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: BMB's New Subsidy Allegation Questionnaire Response," dated February 9, 2021 (Borusan NSA QNR Response).

²⁷ See GOT's Letter, "Response of the Government of Turkey in 2019 Countervailing Duty Administrative Review on Imports of Certain Welded Carbon Steel Pipe and Tube from Turkey," dated April 1, 2021; *see also* Borusan's Letter, "Borusan Companies Circular Welded Carbon Steel Pipes and Tubes from Turkey, Case No. C-489-502: BMB's New Subsidy Allegation Supplemental Questionnaire Response," dated April 1, 2021.

²⁸ See GOT's Letter, "Response of the Government of Turkey in 2019 Countervailing Duty Administrative Review on Imports of Certain Welded Carbon Steel Pipe and Tube from Turkey," dated April 28, 2021 (GOT NSA Supplemental QNR2 Response).

²⁹ See 19 CFR 351.524(b).

³⁰ See U.S. Internal Revenue Service Publication 946 (2017), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt, rather than across the AUL.

B. Attribution of Subsidies

1. Cross-Ownership

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

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

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits)... Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a "golden share" may also result in cross-ownership.³¹

Thus, Commerce's regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade has upheld Commerce's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.³²

³¹ See *Countervailing Duties: Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

³² See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

2. The Borusan Companies

Borusan Holding is the parent holding company of the Borusan Companies. Borusan is affiliated with other companies in the Borusan Companies through direct and indirect ownership by Borusan Holding. Borusan and its affiliated foreign trading company, Istikbal, are both part of the Borusan Companies and are cross-owned under 19 CFR 351.525(b)(vi) by common ownership.³³

In its affiliation questionnaire response, the Borusan Companies stated that neither BMBYH nor Borusan Holding engaged in production or sales activities that would make them eligible for any of the alleged subsidies in this review.³⁴ Moreover, the Borusan Companies stated that BMBYH and Borusan Holding did not receive any subsidies from the programs listed in Commerce's CVD questionnaire.³⁵ Therefore, while we preliminarily find that BMBYH and Borusan Holding are cross-owned with Borusan within the meaning of 19 CFR 351.525(b)(6)(vi), we find no evidence that Borusan Holding or BMBYH received any countervailable subsidies attributable to Borusan during the POR. In accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Borusan (the only member of the Borusan Companies that reported receiving subsidies) to the sales reported by Borusan.

The Borusan Companies identified numerous additional companies with which it was affiliated during the POR based on cross-ownership with Borusan Holding.³⁶ However, the Borusan Companies reported that none of these affiliates were involved in the production or sale of subject merchandise.³⁷ Therefore, we preliminarily determine that these affiliated companies do not meet any of the conditions set forth in 19 CFR 351.525(b)(6)(ii)-(v); as a result, we have not included them in our subsidy analysis. Our approach in this regard is consistent with the prior review.³⁸

Borusan produces subject merchandise for both the home and export markets. During the POR, Borusan accounted for all subject merchandise exported to the United States by the Borusan Companies.³⁹ Borusan reported that Istikbal exported its subject merchandise only to non-U.S.

³³ See Borusan Companies Affiliation QNR Response at 5-11 and Exhibits 2 and 3. Our approach in this regard is consistent with our practice. See, e.g., *Circular Welded Carbon Steel Pipe and Tube Products from Turkey: Preliminary Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Intent To Rescind Countervailing Duty Administrative Review, in Part*, 79 FR 22625 (April 17, 2014), and accompanying Preliminary Decision Memorandum (PDM) at 5, unchanged in *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Rescission of Countervailing Duty Administrative Review, in Part*, 79 FR 51140 (August 27, 2014), and accompanying Issues and Decision Memorandum (IDM) at 2.

³⁴ See Borusan Companies Affiliation QNR Response at 10.

³⁵ *Id.*

³⁶ *Id.* at 5-9.

³⁷ *Id.*

³⁸ See *Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Partial Rescission; Calendar Year 2018*, 85 FR 18917 (April 3, 2020) (*Pipe and Tube from Turkey 2018 Preliminary Results*), and accompanying PDM at 8-9; unchanged in *Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2018*, 86 FR 6866 (January 25, 2021) (*Pipe and Tube from Turkey 2018 Final Results*), and accompanying IDM at 4-6.

³⁹ See Borusan Companies Initial QNR Response at 11.

locations during the POR.⁴⁰ Thus, the attribution rule under 19 CFR 351.525(c) does not apply.⁴¹ Moreover, Borusan reported that Istikbal received no subsidies allocable to the POR. Accordingly, and consistent with the prior review, we preliminary find no attributable benefits from any subsidies to Istikbal.⁴²

C. Denominators

In accordance with 19 CFR 351.525(b), when selecting an appropriate denominator for use in calculating the *ad valorem* subsidy rate, Commerce considers the basis for the respondents' receipt of benefits under each program. As discussed in further detail below in the "Programs Preliminarily Determined to be Countervailable" section, where the program has been found to be countervailable as a domestic subsidy, we used the recipient's total sales as the denominator (or the total combined sales of the cross-owned affiliates, as described above). Similarly, where the program has been found to be countervailable as an export subsidy, we used the recipient's total export sales as the denominator (or the total export sales of the cross-owned affiliates, as described above). In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs.⁴³

D. Benchmark Interest Rates

We are examining export loans and non-recurring, allocable subsidies that the respondent received.⁴⁴ In the section below, we discuss the derivation of the benchmarks and discount rates for the POR and previous years.

Short-Term Benchmarks

To determine whether government-provided loans under investigation conferred a benefit, Commerce uses, where possible, company-specific interest rates for comparable commercial loans.⁴⁵ When loans are denominated in a foreign currency, 19 CFR 351.505(a)(2)(i) directs us to use a benchmark denominated in the same foreign currency as the loan. The Borusan Companies submitted weighted-average interest rates, along with the underlying data, that they paid on comparable short-term commercial loans. Consistent with 19 CFR 351.505(a)(2)(ii), we are preliminarily using the interest rates that the Borusan Companies submitted on comparable short-term loans as benchmarks.

⁴⁰ See Borusan Companies Affiliation QNR Response at 3 and 11.

⁴¹ See, e.g., *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 82 FR 23188 (May 22, 2017), and accompanying IDM under "Attribution of Subsidies."

⁴² See Borusan Companies Affiliation QNR Response at 3, 5 and 11; see also *Pipe and Tube from Turkey 2018 Preliminary Results* PDM at 8-9; unchanged in *Pipe and Tube from Turkey 2018 Final Results*.

⁴³ See Memorandum, "Preliminary Results Calculations for the Borusan Companies," dated concurrently with this memorandum.

⁴⁴ See 19 CFR 351.524(b)(1).

⁴⁵ See 19 CFR 351.505(a)(2)(ii).

Long-Term Benchmark

As discussed above, to determine whether government-provided loans under investigation conferred a benefit, Commerce uses, where possible, company-specific interest rates for comparable commercial loans.⁴⁶ Where such benchmark rates are unavailable, consistent with 19 CFR 351.505(a)(3)(ii), we use lending rate data from the International Monetary Fund's International Financial Statistics as our national average benchmark.⁴⁷

Discount Rates

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

VI. NO-SHIPMENT CLAIMS AND INTENT TO RESCIND

As noted above, the Toscelik companies, the Yucel Companies, and Cinar Boru submitted no-shipment claims.⁴⁸ Additionally, as noted above, the Borusan Companies submitted a letter to Commerce timely claiming that Borusan Istikbal, Borusan Fabrikalari, Borusan Gemlik, Borusan Dagitim, Tubeco, and Borusan Lojistik had no entries, exports, or sales of subject merchandise during the POR.⁴⁹

Based on the results of our query of CBP's trade database,⁵⁰ as well as the responses received from CBP to our no-shipment inquiries,⁵¹ we intend to rescind the administrative review with regard to the Toscelik Companies, the Yucel Companies, Cinar Boru, Borusan Fabrikalari, Borusan Gemlik, Borusan Dagitim, Tubeco, and Borusan Lojistik in accordance with 19 CFR 351.213(d)(3). However, we do not intend to rescind the review for Istikbal, which we preliminarily determine to be part of the cross-owned entity, the Borusan Companies, the mandatory respondent in this review.

As noted above, Erbosan also submitted a no-shipment claim.⁵² However, the information reflected in the CBP Query Memorandum indicates that Erbosan had reviewable entries of

⁴⁶ See 19 CFR 351.505(a)(2)(ii).

⁴⁷ See *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013) (*Pipe and Tube from Turkey 2011*), and accompanying IDM at "Benchmarks and Interest Rates."

⁴⁸ See Toscelik Companies No-Shipment Claim; Yucel Companies No-Shipment Claim, and Cinar Boru No-Shipment Claim.

⁴⁹ See Borusan Companies No-Shipment Claim.

⁵⁰ See CBP Query Memorandum.

⁵¹ See Memorandum, "Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey (C-489-502): Cinar Boru," dated July 9, 2020; Memorandum, "Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey (C-489-502): Certain Borusan Companies," dated July 9, 2020; and Memorandum, "Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey (C-489-502): Yucel Companies and Toscelik Companies," dated September 15, 2020.

⁵² See Erbosan No-Shipment Claim.

subject merchandise during the POR.⁵³ Thus, consistent with Commerce’s findings in the Respondent Selection Memorandum,⁵⁴ we preliminarily determine that subject merchandise produced and/or exported by the Erbosan entered the United States during the POR and, therefore, we do not intend to rescind the review with regard to Erbosan. Accordingly, we are including Erbosan among the companies subject to the non-selected rate.

VII. NON-SELECTED RATE

The Tariff Act of 1930, as amended (the Act), and Commerce’s regulations do not address the establishment of a rate to be applied to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. Generally, when determining the rate for such respondents in an administrative review, Commerce looks to section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation. Section 705(c)(5)(A)(i) of the Act instructs Commerce to use the average of the individually calculated rates as the all-others rate, excluding rates which are zero, *de minimis*, or based entirely on facts available. Accordingly, Commerce’s usual practice in administrative reviews for determining the rate for respondents not selected for individual examination has been to average the weighted-average net subsidy rates for the selected companies, excluding rates that are zero, *de minimis*, or based entirely on facts available.⁵⁵ However, section 705(c)(5)(A)(ii) of the Act provides that, where all the individually calculated rates are zero, *de minimis*, or based entirely on facts available, we may use “any reasonable method” for assigning the all-others rate, including averaging the estimated weighted-average net subsidy rates determined for the exporters and producers individually investigated.

In these preliminary results, we have calculated an above-*de minimis* net subsidy rate for the Borusan Companies, the sole mandatory respondent, during the POR that is not based entirely on facts available. Therefore, in keeping with our practice, we are assigning the net subsidy rate calculated for the Borusan Companies as the non-selected rate applicable to the firms under review but not selected for individual examination.

VIII. ANALYSIS OF PROGRAMS

A. Programs Preliminarily Determined to be Countervailable

1. Provision of Hot-Rolled Steel (HRS) for Less than Adequate Remuneration (LTAR)

We examined the provision of HRS to the Borusan Companies during the POR. The Borusan Companies reported purchasing HRS from Eregli Demir ve Celik Fabrikalari T.A.S. (Erdemir) or Iskenderun Demir ve Çelik A.S. (Isdemir) during the POR.⁵⁶

The information submitted by the GOT regarding this program remains consistent with our

⁵³ See CBP Query Results Memorandum.

⁵⁴ See Respondent Selection Memorandum at 5.

⁵⁵ See, e.g., *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386, 37387 (June 29, 2010).

⁵⁶ See Borusan Companies Initial QNR Response at 25 and Exhibit N-1.

findings in prior segments of this proceeding, as well as other Turkish CVD proceedings, where Commerce found that this program provides countervailable subsidies.⁵⁷ The GOT provided information on Erdemir and Isdemir, suppliers of HRS, as well as Ordu Yardımlaşma Kurumu (OYAK), the Turkish military pension fund that is the controlling shareholder of Erdemir and Isdemir. During the POR, OYAK owned 49.29 percent of Erdemir's shares through a wholly-owned holding company, Ataer Holding A.S.⁵⁸ Because 3.08 percent of Erdemir's shares were owned by Erdemir itself in the form of treasury shares,⁵⁹ OYAK was the controlling shareholder of Erdemir. During the POR, Erdemir, in turn, owned 95.07 percent of Isdemir.⁶⁰

In its initial questionnaire response, the GOT responded to the Input Producer Appendix for Erdemir, Isdemir, and OYAK.⁶¹ The law establishing OYAK (the Military Personnel Assistance and Pension Fund Law), which was enacted on January 3, 1961, states that the GOT created OYAK "as an institution related to the Ministry of National Defense."⁶² Information in the GOT's questionnaire responses indicates the GOT's significant involvement in OYAK. For example, pursuant to the pension fund law, OYAK's Representative Assembly shall be composed of not less than 50 and not more than 100 members of the Turkish Armed Forces "designated by their respective commanders or superiors."⁶³ The Representatives Assembly, in turn, elects 20 of the 40 members of OYAK's General Assembly.⁶⁴ Of the General Assembly's other 20 members, 17 are by statute government officials (*e.g.*, Ministers of Finance and Defense). Members of the General Assembly elect the eight-person Board of Directors.⁶⁵ Also, OYAK's property has, by law, the "same rights and privileges of state property," OYAK is

⁵⁷ See, *e.g.*, *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 47479 (October 12, 2017) (*Pipe and Tube from Turkey 2015*), and accompanying IDM at 15; see also *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015), and accompanying IDM at 13–17; *Welded Line Pipe from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2015*, 83 FR 1237 (January 10, 2018), and accompanying PDM at 8–12; unchanged in *Welded Line Pipe from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2015*, 83 FR 34113 (July 19, 2018), and accompanying IDM at 3; *Large Diameter Welded Pipe from the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 30697 (June 29, 2018) (*LDWP from Turkey Preliminary Determination*), and accompanying PDM at 7–11, unchanged in *Large Diameter Welded Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 84 FR 6367 (February 27, 2019) (*LDWP from Turkey Final Determination*), and accompanying IDM at 4 and Comments 1 and 2; and *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) (*Pipe and Tube from Turkey 2017 Preliminary Results*), and accompanying PDM at 11; unchanged in *Circular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part; Calendar Year 2017*, 84 FR 56173, 56175 (October 21, 2019) (*Pipe and Tube from Turkey 2017 Final Determination*), and accompanying IDM at 6.

⁵⁸ See GOT's Initial QNR Response at 28.

⁵⁹ *Id.* at Exhibit 4, which contains the Input Producer Appendix.

⁶⁰ *Id.*

⁶¹ See GOT Initial QNR Response at Exhibit 4.

⁶² *Id.*

⁶³ *Id.* at Exhibit 4-N, which contains Ataer's and Oyak's Response to The Input Producer Appendix.

⁶⁴ *Id.*

⁶⁵ *Id.* at Exhibit 4-N and Exhibit 4-G, which contains Article 2 of the Law No. 205.

exempt from corporate and other taxes, and members of the armed forces must by law contribute part of their salaries to OYAK.⁶⁶

Record evidence indicates that the GOT's significant involvement in OYAK extends to Erdemir and Isdemir. For example, in *Pipe and Tube from Turkey 2018*, Commerce explained that Erdemir's 2016 Annual Report states that Erdemir "aims to meet the present and future needs of Turkish industry to the highest level by investing in the production of high value added products."⁶⁷ These policies are in line with the GOT's stated policy in its 2012-2014 Medium Term Program to improve Turkey's balance of payments.⁶⁸ The GOT further explained that the Turkish Privatization Administration (TPA) holds veto power over any decisions related to the closedown, sale, de-merger, merger, or liquidation of both Erdemir and Isdemir.⁶⁹ The 2019 report describes Erdemir and Isdemir as being its "production companies" and describes Erdemir as being its "flagship company."⁷⁰

We preliminarily determine that the record evidence cited above indicates that the GOT exercises meaningful control over Erdemir and Isdemir, such that Erdemir and Isdemir possessed, exercised, or were vested with government authority during the POR. This meaningful control is evident from both the role of OYAK as an institution through which the GOT exercises control over Erdemir and Isdemir, and the alignment of Erdemir's Annual Report with the Medium-Term Program. Therefore, consistent with prior segments of this proceeding and other Turkish CVD proceedings,⁷¹ as well as the Court's holding in *Borusan*,⁷² we determine that Erdemir and Isdemir are public bodies, and hence "authorities," pursuant to section 771(5)(B) of the Act. Consequently, we find that the HRS supplied by Erdemir and Isdemir to Borusan are financial contributions in the form of a governmental provision of a good under section 771(5)(D)(iii) of the Act.

To assess whether the provision of HRS for LTAR is specific under section 771(5A) of the Act, we requested, and the GOT provided, a list of the industries that purchased HRS in Turkey during the POR.⁷³ Specifically, the GOT identified the following industries as purchasers of HRS during the POR: steel pipe and profile, rerolling producers, machinery manufacturing,

⁶⁶ *Id.* at Exhibit 9 G2 at Articles 18, 35, and 37.

⁶⁷ *See Pipe and Tube from Turkey 2018 Final Results* IDM at 12-13.

⁶⁸ *Id.*

⁶⁹ *See* GOT Initial QNR Response at Exhibit 4 at 6.

⁷⁰ *See* GOT Initial QNR Response at Exhibit 4C.6 at 1-12.

⁷¹ *See Certain Oil Country Tubular Goods from the Republic of Turkey: Final Determination in the Countervailing Duty Determination and Final Affirmation Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey*), and accompanying IDM at Comment 1; *LDWP from Turkey Preliminary Determination* PDM at 7-11, unchanged in *LDWP from Turkey Final Determination* IDM at 4 and Comment 1 and 2; *Pipe and Tube from Turkey 2017 Preliminary Results* PDM at 13; unchanged in *Pipe and Tube from Turkey 2017 Final Determination* IDM at 6, and *Pipe and Tube from Turkey 2018 Preliminary Results* PDM at 12-13, unchanged in *Pipe and Tube from Turkey 2018 Final Results* IDM.

⁷² *See Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. & Borusan Istikbal Ticaret v. United States*, 61 F. Supp. 3d 1306, 1314-24 (CIT 2015) (*Borusan*), *aff'd on other grounds*, 857 F.3d 1353 (Fed. Cir. 2017), in which the Court upheld Commerce's finding that Erdemir and Isdemir are "authorities" within the meaning of section 771(5)(B) of the Act.

⁷³ *See* GOT Initial QNR Response at 26. The existence of this program is evident from both the repeated provision of HRS by Erdemir and Isdemir and the Annual Reports of Erdemir.

automotive, heavy industry, consumer products, pressure purposes (pressure vessels, steam boilers), panel radiator, white appliances, and shipbuilding.⁷⁴ Consistent with Commerce's prior determinations, we preliminarily determine that the financial contribution provided by the GOT under this program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because the number of industries using HRS is limited in number.⁷⁵

Regarding benefit, Commerce identifies appropriate market-determined benchmarks for measuring the adequacy of remuneration for government-provided goods or services, in accordance with 19 CFR 351.511(a)(2). This section of Commerce's regulations specifies potential benchmarks in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports, or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three). As provided at 19 CFR 351.511(a)(2), the preferred benchmark in the hierarchy is an observed market price from actual transactions within the country under investigation.⁷⁶ This is because such prices generally reflect most closely the prevailing market conditions of the purchaser under investigation.

Based on this hierarchy, we must first determine whether there are market prices from actual sales transactions involving Turkish buyers and sellers that can be used to determine whether Erdemir and Isdemir sold HRS to Borusan for LTAR. Notwithstanding the regulatory preference for the use of prices stemming from actual transactions in the country, where Commerce finds that the government owns or controls the majority or, in certain circumstances, a substantial portion of the market for the good or service, Commerce will consider such prices to be significantly distorted and not an appropriate basis of comparison for determining whether there is a benefit.⁷⁷

Consistent with Commerce's prior findings in this proceeding and other Turkey CVD proceedings,⁷⁸ we determine that the record evidence does not support a finding that the Turkey HRS market is so distorted that it cannot serve as a source for an appropriate benchmark. The record information indicates that for 2017, 2018 and 2019, the combined domestic HRS production of Erdemir and Isdemir accounted for 36.22, 38.00, and 34.93 percent of supply, respectively, while total imports of HRS accounted for 34.15, 27.74, and 29.92 percent in the same years, respectively.⁷⁹ Given the minority share of government production, the substantial levels of imports, and the lack of other record evidence indicative of distortion, such as an export

⁷⁴ *Id.*

⁷⁵ See, *e.g.*, *OCTG from Turkey* IDM at 20-26; see also *LDWP from Turkey Preliminary Determination* PDM at 7-11, unchanged in *LDWP from Turkey Final Determination* IDM at 4 and Comment 1 and 2.

⁷⁶ See, *e.g.*, *Notice of Affirmative Countervailing Duty Determination and Final Negative Critical Determination: Certain Softwood Lumber Products from Canada*, 67 FR 15545 (April 2, 2002) (*Softwood Lumber from Canada*), and accompanying IDM at "Market Based Benchmark."

⁷⁷ See *CVD Preamble*, 63 FR at 65277.

⁷⁸ See, *e.g.*, *Pipe and Tube from Turkey 2015* IDM at 15; *LDWP from Turkey Preliminary Determination* PDM at 7-11, unchanged in *LDWP from Turkey Final Determination* IDM at 4 and Comment 1 and 2; and *Pipe and Tube from Turkey 2018* PDM at 14-15; unchanged in *Pipe and Tube from Turkey 2018 Final Results*.

⁷⁹ See GOT Initial QNR Response at 23-24.

tax on or export quota for the input, we preliminarily find, consistent with our prior determinations noted above, that the HRS market in Turkey was not distorted by the government's presence during this period. Therefore, we determine that Borusan's reported prices for domestic HRS (other than from Erdemir and Isdemir) and imported HRS can serve as tier-one benchmarks. Accordingly, pursuant to 19 CFR 351.511(a)(2)(i), we used Borusan's actual domestic and import prices for HRS to calculate the benefit from its purchases of HRS from Erdemir and Isdemir, where applicable, during the POR.

Under 19 CFR 351.511(a)(2)(iv), when measuring the adequacy of remuneration under tier one or tier two, Commerce will adjust the benchmark price to reflect the price that a firm actually paid or would pay if it imported the product, including delivery charges and import duties. Because we are using actual domestic and import prices paid by Borusan, the benchmark includes the delivery charges, import duties (where applicable), and value-added taxes (VAT) paid (where applicable). The Borusan Companies reported that Borusan purchased HRS of grade X-70 as well as non-X-series grade HRS from private parties during the POR and that Borusan made purchases of only non-X-series grade HRS from Erdemir and Isdemir during the POR.⁸⁰ Consistent with Commerce's approach in the previous review of this proceeding,⁸¹ we excluded Borusan's purchases of X-70 grade HRS from the HRS benchmark calculation because Borusan had no comparable purchases from Erdemir and Isdemir.⁸² Thus, in determining whether Borusan purchased non-X-series grade HRS from Erdemir and Isdemir for LTAR, we limited our benchmark to non-X-series grade HRS that Borusan purchased from private parties.

In comparing the monthly benchmark prices to Borusan's actual purchase prices for HRS from Erdemir and/or Isdemir, we included taxes and delivery charges, as appropriate. Regarding our treatment of VAT, in *HWRPT from Turkey 2017*,⁸³ Commerce found that the respondent used Inward Processing Certificates (IPCs) for its HRS purchases that resulted in VAT being waived on its domestic and imported purchases of HRS.⁸⁴ Accordingly, to avoid a "distortive" outcome, ensure an "apples-to-apples" comparison, and create an "equitable basis upon which to calculate the benefit," in *HWRPT from Turkey 2017*, Commerce did not include VAT in the respondent's purchases of HRS from Erdemir and Isdemir or in its purchases of HRS from foreign and private domestic suppliers.⁸⁵ In this review, the Borusan Companies have provided similar information indicating that its purchases of HRS from Erdemir and Isdemir as well as its purchases of HRS from foreign and private domestic suppliers did not include VAT due to the Borusan Companies' use of IPCs.⁸⁶ Therefore, consistent with *HWRPT from Turkey 2017*, we have not included VAT when conducting our benefit price comparisons under the provision of HRS for LTAR program.

⁸⁰ See Borusan Companies Initial QNR Response at Exhibit N-1.

⁸¹ See *Pipe and Tube from Turkey 2017 Final Determination* IDM at Comment 1; see also *Pipe and Tube from Turkey 2018 Final Results* IDM at Comment 1.

⁸² See Borusan Companies Initial QNR Response at 27-30, Exhibit N-2, and Exhibit N-10.

⁸³ See *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Results of Countervailing Duty Administrative Review; 2017*, 84 FR 70495 (December 23, 2019) (*HWRPT from Turkey 2017*), and accompanying IDM at Comment 1.

⁸⁴ For more information on IPCs, see "IPC Exemption Program," which is included in the "Programs Preliminarily Found not to Confer Subsidies" section of this decision memorandum.

⁸⁵ See *HWRPT from Turkey 2017* IDM at Comment 1.

⁸⁶ See Borusan Companies Initial QNR Response at 37-38.

In instances in which Borusan paid Erdemir and/or Isdemir a lower unit price than the benchmark unit price, we multiplied the difference by the quantity purchased to calculate the benefit. Under this methodology, we find that Borusan received a benefit to the extent that the prices it paid for HRS produced by Erdemir and Isdemir were for LTAR.⁸⁷ To calculate the net subsidy rate, we divided Borusan's benefit by its total sales for the POR. On this basis, we find that the Borusan Companies received a countervailable subsidy of 0.25 percent *ad valorem*.

2. Export Financing: Short Term Pre-shipment Rediscount Program

The Rediscount Program is administered by the Export Credit Bank of Turkey (Turkey Eximbank).⁸⁸ The Rediscount Program was designed to provide financing to exporters.⁸⁹ This program is contingent upon an export commitment. Under the Rediscount Program, there is a minimum loan amount of 50,000 U.S. dollars per small – and medium-sized company.⁹⁰ Loan payments shall be made within the credit period or at maturity to the Turkey Eximbank.⁹¹ The loans are provided by the Turkey Eximbank through intermediary commercial banks, and the commercial banks require payment of a guarantee by the borrower.⁹² Companies can repay either in the foreign currency in which the loan was obtained or in a Turkish-lira equivalent of the principal and interest based on exchange rates determined by the Turkey Eximbank.⁹³

The Borusan Companies reported that Borusan had loans outstanding during the POR under the program.⁹⁴ They also reported that Istikbal received Turkey Eximbank rediscount financing from commercial banks during the POR but that all of the loans were received in connection with exports to non-U.S. markets.⁹⁵ However, as noted above in the “Attribution of Subsidies” section, because Istikbal exported only to non-U.S. markets during the POR, we find that the trading company rule under 19 CFR 351.525(c) does not apply and, thus, we are making no attribution with regard to any benefits from these loans. Therefore, we have not included this loan in our benefit analysis. Consequently, whether or not these loans are tied to those other export markets outside the United States is a moot point, and we are making no finding under 19 CFR 351.525(b)(4) for these preliminary results.

We preliminarily find that Borusan's loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT under 771(5)(D)(i) of the Act. The program is specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance. Commerce's finding in this regard is consistent with its practice.⁹⁶ A benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the

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

⁸⁸ See Borusan Companies Initial QNR Response at Exhibit G-1.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ See Borusan Companies Initial QNR Response at 17 and Exhibit G-2 (Loan Chart).

⁹⁵ *Id.* at 20.

⁹⁶ See, e.g., *Pipe and Tube from Turkey 2011* IDM at 6-7; see also *OCTG from Turkey* IDM at 11-12.

difference between the amount paid by the company for the loans during the POR and the amount the company would have paid on comparable commercial loans.

In calculating the benefit pursuant to section 771(5)(E) of the Act and 19 CFR 351.505(a)(1), we applied a discounted benchmark interest rate because a borrower pays the interest due upfront when the loan is received. Further, in accordance with section 771(6)(A) of the Act, we subtracted any fees paid for guarantees required for receipt of the loans from the benefit calculation.

To calculate the countervailable subsidy rate, we divided the benefit amounts received by Borusan by its total export sales value for the POR. On this basis, we preliminarily determine the net countervailable subsidy rate for this program to be 0.49 percent *ad valorem* for the Borusan Companies.

3. Exemptions from Bank & Insurance Transactions Tax on Foreign Exchange Transactions

Under Article 33 of Law 6802 (the Expenditure Expenses Law), companies in Turkey are required to pay a tax on their sales in foreign currencies for spot transactions.⁹⁷ Prior to May 15, 2019, the Banking and Insurance Transactions Tax (BITT) on foreign exchange transactions was set at 0 percent. On May 15, 2019, the BITT rate was set at 0.1 percent. On December 5, 2019, the rate was increased to 0.2 percent.⁹⁸ The Borusan Companies reported that the following transactions and sales are exempted from the tax: (1) foreign exchange transactions among and between banks and authorized institutions; (2) foreign currency sales to the Ministry of Treasury and Finance; (3) foreign currency sales, by the lending local bank or the local bank that intermediates the loan, to the parties for repayment of their foreign currency denominated loans; (4) foreign exchange sales to enterprises having an industrial registry certificate; and (5) foreign currency sales to export companies which are members of exporters' associations.⁹⁹

The Borusan companies reported that Borusan was eligible to receive this tax exemption because it has an industrial registry certificate.¹⁰⁰ This exemption was not contingent on BMB's exports, use of domestic rather than imported goods, the specific industry or the region.¹⁰¹

We preliminarily find that the exemption from tax on foreign exchange transactions constitutes a financial contribution in the form of revenue forgone within the meaning of section 771(5)(D)(ii) of the Act. This exemption provides a benefit to the recipient in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. We also find that this program is specific under sections 771(5A)(D)(i) and (iv) of the Act, because, as discussed above, the program is

⁹⁷ See Borusan Companies Initial QNR Response at 50 and Exhibit O-5; see also Borusan Companies NSA QNR Response at Exhibit NSA-3.

⁹⁸ See Borusan Companies Initial QNR Response at 50

⁹⁹ *Id.*

¹⁰⁰ See Borusan Companies NSA QNR Response at Exhibit NSA-3.

¹⁰¹ *Id.*

limited to firms that conduct certain types of foreign exchange transactions that were exempted by law 6802 (Article 33) (the Expenditure Expenses Law).¹⁰²

To calculate the benefit, we separately summed the amount of the POR tax exemptions as reported by Borusan. We then divided the total tax savings for the POR by Borusan's total sales for the POR. On this basis, we preliminarily determine a net subsidy rate 0.09 percent *ad valorem* for this program.¹⁰³

B. Programs Preliminarily Found Not Used or Not to Confer Benefits During the POR

1. Deduction from Taxable Income for Export Revenue

Addendum 4108 of Article 40 of the Income Tax Law Number 193, effective June 2, 1995, allows taxpayers engaged in export activities to claim a lump sum deduction from gross income resulting from exports, construction, maintenance, assembly, and transportation activities abroad in an amount not to exceed 0.5 percent of the taxpayer's foreign-exchange earnings from such activities.¹⁰⁴ This deduction is to cover the expenditures without documentation incurred from exports, construction, maintenance, assembly, and transportation activities abroad.¹⁰⁵ The deduction for export earnings may either be taken as a lump sum on a company's annual income tax return or be shown within the company's marketing, selling and distribution expense account of the income statement.¹⁰⁶ Under this program, marketing, selling, and distribution expenses are deductible expenditures for tax purposes.

Consistent with prior determinations,¹⁰⁷ we preliminarily find that this tax deduction is a countervailable subsidy. The income tax deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, because it represents revenue forgone by the GOT. The deduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. It is also specific under section 771(5A)(B) of the Act because its receipt is contingent upon export earnings. Commerce typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1). The amount of the benefit is equal to the amount of tax that would have been paid absent the program pursuant to 19 CFR 351.509(a)(1).

The Borusan Companies reported that Borusan received the deduction for export earnings with respect to the tax return it filed during the POR.¹⁰⁸ However, Borusan Companies reported that

¹⁰² See *Common Alloy Aluminum Sheet from The Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Determination of Critical Circumstances in Part, and Alignment of Final Determination with Final Antidumping Duty Determination* 85 FR 49629 (August 14, 2020), and accompanying PDM at 23, unchanged in *Common Alloy Aluminum Sheet from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Determination of Critical Circumstances, in Part*, 86 FR 13315 (March 8, 2021), and accompanying IDM at 13.

¹⁰³ See Borusan Companies Preliminary Calculation Memorandum.

¹⁰⁴ See Borusan Companies Initial QNR Response at Exhibit A-2.

¹⁰⁵ See Borusan Companies Initial QNR Response at Exhibit A-1.

¹⁰⁶ *Id.*

¹⁰⁷ See, e.g., *Pipe and Tube from Turkey 2018 Final Results* IDM at 7-8.

¹⁰⁸ See Borusan Companies Initial QNR Response at 12-13 and Exhibit A-1.

Borusan was in a tax loss position with respect to the tax year 2018 tax return it filed during the POR.¹⁰⁹ Thus, based on the information on the record, we preliminarily find that Borusan did not receive a benefit under this program during the POR.

2. IPC Exemption Program

The Ministry of Economy is the authority responsible for granting the IPC. Under the IPC program, companies are exempt from paying customs duties and VAT on raw materials and intermediate unfinished goods that are imported and used in the production of exported goods. Companies may choose whether to be exempt from the applicable duties and taxes upon importation (*i.e.*, the Suspension System) or have the duties and taxes reimbursed after exportation of the finished goods (*i.e.*, the Drawback System). Under both systems, companies provide a letter of guarantee that is returned to them upon fulfillment of the export commitment.¹¹⁰

To participate in this program, a company must hold an IPC, which specifies the types and amounts of raw materials/intermediate unfinished goods to be imported and the amount of the resulting finished product to be exported. To obtain an IPC, an exporter must submit an application, which provides information about the goods to be produced and the raw materials to be imported. There are two types of IPCs: (1) D-1 certificates for imported raw materials or intermediate unfinished goods used in the production of exported goods; and (2) D-3 certificates for imported raw materials or intermediate unfinished goods used in the production of goods sold in the domestic market. D-1 certificates provide for exemption or drawback of both import duties and VAT, while D-3 certificates only provide for exemption of import duties (*i.e.*, for D-3 the VAT is payable).¹¹¹

Concerning the duty drawback under the D-1 certificates, pursuant to 19 CFR 351.519(a)(1)(ii), a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than import charges that are imposed on the input. Regarding the VAT exemption granted under the same certificates, pursuant to 19 CFR 351.517(a), a benefit exists to the extent that Commerce determines that the amount exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.¹¹²

In prior reviews, Commerce found with regard to the duty drawback that, in accordance with 19 CFR 351.519(a)(4)(i), the GOT has a system in place to confirm which inputs, and in what amounts, are consumed in the production of the exported product, and that the system is

¹⁰⁹ See Borusan Companies Initial QNR Response at Exhibits A-1 and Exhibit 10, which contains the 2018 Income Tax Return of BMB.

¹¹⁰ See GOT Initial QNR Response at 5, which states that there have been no changes to this program during the POR from what Commerce found countervailable in the previous review.

¹¹¹ *Id.* at 5.

¹¹² See *Pipe and Tube from Turkey 2015* IDM at 7.

reasonable for the purposes intended.¹¹³ Commerce also found that the VAT exemption granted on certain methods of payments used in purchasing imported raw materials under this program does not constitute a subsidy pursuant to 19 CFR 351.517(a), because the tax exempted upon export does not exceed the amount of tax levied on like products when sold for domestic consumption.¹¹⁴ We have no new information on the record of this proceeding to warrant a reconsideration of Commerce's earlier findings.

During the POR, Borusan did not hold D-3 certificates for duty-free imports of raw materials for use in the production of carbon steel pipe and tube sold domestically. BMB used D-1 certificates to receive duty and VAT exemptions on certain imported inputs used in the production of exported pipes and tubes.¹¹⁵ Consistent with Commerce's prior findings and based on our review of the information supplied by the Borusan Companies regarding this program in this administrative review, we preliminarily find no evidence on the record of this proceeding indicating that the amounts of VAT and duty exemptions on inputs Borusan imported under the program were excessive or that Borusan used the imported inputs for any other product besides those exported, respectively.¹¹⁶

Therefore, consistent with past cases, we preliminarily determine that the duty exemptions received by Borusan on imported inputs under D-1 certificates of the IPC program did not confer countervailable benefits as the exemptions were applied only to the imported inputs consumed in the production of the exported product, making normal allowance for waste.¹¹⁷ We further preliminarily find that the VAT exemption did not confer countervailable benefits to the Borusan Companies because the exemptions do not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption.¹¹⁸ Further, because Borusan did not import any goods under a D-3 certificate during the POR, we preliminarily determine that this aspect of the IPC program was not used by the Borusan Companies.¹¹⁹

3. Various Other Programs

The Borusan Companies reported receiving benefits under various other programs, some of which were specifically alleged, and some were self-reported.¹²⁰ Based on the record evidence, we preliminarily determine that the benefits from certain programs: (1) were fully expensed prior and thus not allocable to the POR; or (2) if allocable to the POR, are less than 0.005 percent

¹¹³ See, e.g., *Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey*, 71 FR 43111 (July 31, 2006) (*Pipe and Tube from Turkey 2004*), and accompanying IDM at 12-19.

¹¹⁴ See *Pipe and Tube from Turkey 2004* IDM at 12-19; see also *See Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2013 and Rescission of Countervailing Duty Administrative Review, in Part*, 80 FR 61361 (October 13, 2015), and accompanying IDM at 7-8.

¹¹⁵ See Borusan Companies IQR at 16 and Exhibit E-3; see also GOT Initial QR at 5.

¹¹⁶ See *Pipe and Tube from Turkey* IDM at 13-17; and *Pipe and Tube from Turkey 2018 Final Results* IDM at 7-8.

¹¹⁷ See, e.g., *Pipe and Tube from Turkey 2018 Preliminary Results* PDM at 17-19; unchanged in *Pipe and Tube from Turkey 2018 Final Results* IDM at 7-8.

¹¹⁸ *Id.*

¹¹⁹ See Borusan Companies Initial QNR Response at 15.

¹²⁰ See Borusan Companies Initial QNR Response at 44-51.

ad valorem in the POR when attributed to the respondent's applicable sales as discussed above in the "Attribution of Subsidies" section above. Consistent with Commerce's practice,¹²¹ we have not included these programs in our preliminary subsidy rate calculations for the Borusan Companies.¹²²

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

C. Program Preliminarily Determined Not to Exist

Policy Loans from State-Owned Banks

As explained in the NSA Memorandum, we initiated an investigation into whether state-owned banks in Turkey made loans to members of Turkey's steel industry based on policy directives from the GOT.

In response to our questionnaire, the Borusan Companies stated that they received two long-term loans from certain state-owned banks during the POR under the Advanced, Efficient, and Domestic loan program during the POR.¹²³ The Borusan Companies stated that they did not receive these loans in connection with the alleged Policy Loan program or the 11th Five-Year Plan.¹²⁴ In their response, the Borusan Companies indicate that they did not pay and were not otherwise scheduled to pay any interest on these loans during the POR under the normal terms of the loan agreement.¹²⁵ Therefore, we have not included these loans in our analysis of the Policy Loans program alleged by the petitioner. Additionally, in response to our questions concerning the alleged Policy Loan program, the Borusan Companies reported that Borusan Holding had two long-term loans outstanding during the POR that it received from two state-owned banks.¹²⁶ However, the interest rates for these two loans are higher than the interest rates on comparable, long-term loans issued by private banks in the same years. Thus, because under 19 CFR 351.505(a)(1) and (a)(2)(i)-(ii) these loans confer no benefit, we have not included them in our analysis of the Policy Loans program.

Lastly, the Borusan Companies reported that Borusan received numerous short-term loans from state-owned banks that were outstanding during the POR.¹²⁷ Thus, we reviewed the information from the GOT and the Borusan Companies to determine whether Borusan received these loans in connection with any policy lending program the GOT has directed toward the Turkish steel industry. Specifically, we reviewed the GOT's 11 Five-Year Plan (as referenced in the NSA

¹²¹ See, e.g., *Certain Frozen Warmwater Shrimp from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013), and accompanying IDM at 32, footnote 144.

¹²² See Borusan Companies Preliminary Calculation Memorandum.

¹²³ See Borusan Companies NSA QR at Exhibit NSA-5.

¹²⁴ *Id.*

¹²⁵ *Id.* at Exhibits NSA-5 through 7.

¹²⁶ See Borusan Companies NSA QNR Response at Exhibit NSA-12.

¹²⁷ See Borusan Companies NSA QNR Response at Exhibits NSA-9 and 10.

Allegation), the Committee Report for the Main Metal Industry (a report that was drafted in preparation of the 11th Five-Year Plan), and the source documents related to the short-term loans the Borusan Companies received from state-owned banks that were outstanding during the POR.¹²⁸ Based on our review of the aforementioned information, we find there is no language in the GOT's 11th Five-Year Plan or the Committee Report for the Main Metal Industry that discusses specific goals and objectives as they relate to government policy lending to Turkey's steel sector.¹²⁹ Thus, we find that the GOT has no specific measures in place to channel credit, as a matter of preferential policy, to the steel sector in which the Borusan Companies operate. Further, we find there is no information in the loan documentation submitted by the Borusan Companies as it regards the short-term loans in question indicating that their receipt was in connection with a government policy lending program. Therefore, we preliminarily determine there is no information indicating that the GOT has a lending policy in place to support the Turkish steel industry and no evidence indicating that the GOT carries out industrial policies that encourage and support the growth of the steel sector through the provision of preferential policy loans. Our analysis in this regard is consistent with Commerce's practice regarding policy lending allegations.¹³⁰ Therefore, we preliminarily determine this program does not exist.

D. Programs Preliminarily Determined to Not Be Used

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

- Investment Encouragement Program: Customs Duty Exemptions
- Post-Shipment Export Loans
- Pre-Export Credit Programs
- Pre-Shipment Export Credits
- Pre-Shipment Rediscount Loans
- Post-Shipment Export Loans
- Export Credit Bank of Turkey Buyer Credits
- Foreign Trade Companies Short Term Export Credits
- Exemption from Property Tax
- Exemption from Stamp Duties and Fees in Free Zones
- Investment Incentive Program
- Comprehensive Investment Incentives Program
- Law 5084: Withholding of Income Tax on Wages and Salaries
- Law 5084: Incentives for Employers' Share in Insurance Premiums
- Law 5084: Allocation of Free Land and Purchase of Land for LTAR
- Law 5084: Energy Support
- Subsidized Turkish Lira Credit Facilities
- Subsidized Credit for Proportion of Fixed Expenditures
- Subsidized Credit in Foreign Currency

¹²⁸ See NSA Submission at Exhibit 21, GOT NSA Supplemental QNR2 Response at Exhibit 1, and Borusan NSA QNR Response at Exhibit 10, and Borusan Companies NSA Supplemental QNR1 Response at Exhibits 17 and 18.

¹²⁹ See NSA Submission at Exhibit 21; and GOT NSA Supplemental QNR2 Response at Exhibit 1.

¹³⁰ 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 Comment 8.

- Super Incentive Scheme pursuant to Turkish Law No. 6745 and Decree 2016/9495
- Regional Subsidies
- VAT Support System (Incentive Premium on Domestically Obtained Goods)
- Investment Encouragement Program (IEP): Reductions in Corporate Taxes
- IEP: Interest Support
- IEP: Customs Duty Exemptions
- IEP: Social Security Premium Support
- IEP: Land Allocation
- IEP: Reductions in Corporate Taxes
- IEP: Value Added Exemptions (VAT)
- National Restructuring Program
- Provision of Land for LTAR
- Regional Incentive Scheme (RIS): Reduced Corporate Tax Rates
- RIS: Social Security Premium Contribution for Employees
- RIS: Allocation of State Land
- RIS: Interest Support
- Organized Industrial Zone (OIZ): Waste-Water Charges
- OIZ: Exemptions from Customs Duties, VAT, and Payments for Public Housing Fund, for Investments for which an Income Certificate is Received
- OIZ: Credits for Research and Development Investments, Environmental Investments, Certain Technology Investments, Certain “Regional Development” Investments, and Investments Moved from Developed regions to “Regions of Special Purpose”
- OIZ: Exemption from Building and Construction Charges
- OIZ: Exemption for Property Tax
- OIZ: Exemption from Amalgamation and Allotment Transaction Charges
- Corporate Income Tax Exemption under the Free Zones Law
- Stamp Duties and Fees Exemptions under the Free Zones Law
- Support for Energy Payments
- Customs Duty Exemptions Under the Free Zones Law
- Value Added Tax Exemptions Under the Free Zones Law
- Provision of Building and Land Use Rights for Less than Adequate Remuneration under the Free Zones Law
- Housing Fund, for Investments for which an Income Certificate is Received
- OIA: Exemption from Amalgamation and Allotment Transaction Charges
- Scientific and Technological Research Council of Turkey Grants (Tubitak Grants)
- Tax and Fee Incentives for Renewable Energy
- Export Freight Support

IX. RECOMMENDATION

We recommend that you approve the preliminary findings described above.



Agree



Disagree

5/27/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance