C-489-819
Administrative Review
POR: 01/01/2018 – 12/31/2018
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September 21, 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 Results of the Countervailing Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey; 2018

I. SUMMARY

The Department of Commerce (Commerce) completed its administrative review of the countervailing duty (CVD) order on steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey),[1] for the period January 1, 2018, through December 31, 2018. After analyzing the comments raised by the interested parties in their case and rebuttal briefs, we made certain changes to the *Preliminary Results*.[2] Below is a complete list of the issues for which we received comments from interested parties:

Comment 1: Whether Commerce Should Countervail Import Duty Exemptions Under the Inward Processing Regime (IPR) Program
Comment 2: Whether Commerce Should Countervail the Provision of Lignite for Less than Adequate Remuneration (LTAR)
Comment 3: Whether Commerce Should Countervail the Provision of Natural Gas for LTAR
Comment 4: Whether Commerce Should Revise the Sales Denominators That It Used in the Preliminary Results for Icdas and Kaptan
Comment 5: Whether Commerce Should Revise its Finding that Nur Gemicilik ve Tic. A.S. (Nur) is a Cross-Owned Input Supplier
Comment 6: Whether Commerce Should Revise Its Finding That Nur's Land Rent Exemption is Countervailable

[1] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Countervailing Duty Order*, 79 FR 65926 (November 6, 2014) (*Order*).
[2] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind in Part; 2018*, 86 FR 15921 (March 25, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

Comment 7: Whether Commerce Should Reduce Its Calculation of Benefits Attributed to Icdas for Renewable Energy Sources Support Mechanism (YEKDEM) Support by the Amount Reclaimed

Comment 8: Whether Commerce Should Revise Its Benchmark Interest Rate Calculations to Include All Short-Term Commercial Loans in Effect During the POR

II. BACKGROUND

On March 25, 2021, Commerce published the *Preliminary Results* and requested comments from interested parties.[3] The mandatory respondents are Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas), and Kaptan Demir Celik Endustrisi ve Ticaret A.S. (Kaptan Demir) and Kaptan Metal Dis Ticaret Ve Nakliyat A.S. (Kaptan Metal) (collectively, Kaptan). Also subject to this review are a number of other companies not selected for individual examination, including Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji A.S.

On July 15, 2021, we released the results of our post-preliminary analysis.[4] On July 28, 2021, we received timely filed case briefs from Rebar Trade Action Coalition (RTAC or the petitioner), Icdas, and Kaptan.[5] The petitioner, Kaptan, Icdas, and the Government of Turkey (GOT) submitted timely rebuttal briefs on August 11, 2021.[6] On June 25, 2021, Commerce extended the deadline to issue the final results of this review until September 21, 2021.[7]

[3] *Id.*

[4] *See* Memorandum, "Post-Preliminary Analysis Memorandum," dated July 15, 2021 (Post-Preliminary Results). We note that no issues were raised by the interested parties regarding the "Purchase of Electricity for MTAR – Sales to Public Buyers" program, which was the subject of Commerce's post-preliminary analysis.

[5] *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Case Brief," dated July 28, 2021 (Petitioner's Case Brief); Icdas' Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey; Icdas Case Brief," dated July 28, 2021 (Icdas' Case Brief); and Kaptan's Letter, "Administrative Case Brief: Administrative Review of the Countervailing Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey (C-489-819) (POR: 2018)," dated July 28, 2021 (Kaptan's Case Brief).

[6] *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Rebuttal Brief," dated August 11, 2021 (Petitioner's Rebuttal Brief); Icdas' Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey; Icdas Rebuttal Brief," dated August 11, 2021 (Icdas' Rebuttal Brief); Kaptan's Letter, "Rebuttal Case Brief: Administrative Review of the Countervailing Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey (C-489-819) (POR: 2018)," dated August 11, 2021 (Kaptan's Rebuttal Brief); and GOT's Letter, "Countervailing Duty 2018 Administrative Review on Steel Concrete Reinforcing Bar from the Republic of Turkey: Rebuttal Brief," dated August 11, 2021 (GOT's Rebuttal Brief).

[7] *See* Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 2018," dated June 25, 2021.

The petitioner and Kaptan requested a hearing,[8] but subsequently withdrew the respective requests on August 20, 2021,[9] and August 24, 2021.[10] Thus, no hearing was held. We held an *ex parte* meeting with counsel for the petitioner on September 8, 2021.[11]

III. SCOPE OF THE *ORDER*

The merchandise subject to this *Order* is steel concrete reinforcing bar imported in either straight length or coil form (rebar) regardless of metallurgy, length, diameter, or grade. The subject merchandise is classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) primarily under item numbers 7213.10.0000, 7214.20.0000, and 7228.30.8010.

The subject merchandise may also enter under other HTSUS numbers including 7215.90.1000, 7215.90.5000, 7221.00.0015, 7221.00.0030, 7221.00.0045, 7222.11.0001, 7222.11.0057, 7222.11.0059, 7222.30.0001, 7227.20.0080, 7227.90.6085, 7228.20.1000, and 7228.60.6000. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth rebar). Also excluded from the scope is deformed steel wire meeting ASTM A1064/A1064M with no bar markings (*e.g.*, mill mark, size, or grade) and without being subject to an elongation test. HTSUS numbers are provided for convenience and customs purposes; however, the written description of the scope remains dispositive.

IV. RESCISSION OF ADMINISTRATIVE REVIEW, IN PART

We continue to find that 21 companies subject to this review did not have reviewable entries of subject merchandise for which liquidation is suspended.[12] No interested party submitted comments on this matter. Because there is no evidence on the record to indicate that these companies had entries, exports, or sales of subject merchandise during the POR, we are rescinding this review with respect to these companies, consistent with 19 CFR 351.213(d)(3).

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[8] *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Request for Hearing," dated April 26, 2021; and Kaptan's Letter, "Kaptan Hearing Request: Administrative Review of the Countervailing Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey (C489-819) (POR: 2018)," dated April 26, 2021.

[9] *See* Petitioner's Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey: Withdrawal of Request for Hearing," dated August 20, 2021.

[10] *See* Kaptan's Letter, "Kaptan Withdrawal of Hearing Request: Administrative Review of the Countervailing Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey (C-489-819) (POR: 2018)," dated August 24, 2021.

[11] *See* Memorandum, "Steel Concrete Reinforcing Bar from the Republic of Turkey; 2018: Meeting with Counsel to the Petitioners," dated September 13, 2021.

[12] The 21 companies are: Acemar International Limited; A G Royce Metal Marketing; Agir Haddecilik A.S; As Gaz Sinai ve Tibbi Gazlar A.S.; Asil Celik Sanayi ve Ticaret A.S.; Atakas Celik Sanayi ve Ticaret A.S.; Bastug Metalurji Sanayi AS; Demirsan Haddecilik Sanayi Ve Ticaret AS; Diler Dis Ticaret AS; Duferco Investment Services SA; Duferco Celik Ticaret Limited; Ege Celik Endustrisi Sanayi ve Ticaret A.S.; Ekinciler Demir ve Celik Sanayi Anonim Sirketi; Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas); Izmir Demir Celik Sanayi A.S.; Kibar Dis Ticaret A.S.; Kocaer Haddecilik Sanayi ve Ticar; Mettech Metalurji Madencilik Muhendislik Uretim Danismanlik ve Ticaret Limited Sirketi; MMZ Onur Boru Profil A.S.; Ozkan Demir Celik Sanayi A.S.; and Wilmar Europe Trading B.V. *See also Preliminary Results* PDM at 5.

V. NON-SELECTED RATE

In the *Preliminary Results*,[13] we determined that Kaptan was the sole mandatory respondent with a calculated rate above *de minimis* and, therefore, assigned Kaptan's rate of 2.55 percent *ad valorem* to the two remaining non-selected companies for which an individual rate was not calculated.[14] We continue to find that Kaptan is the sole mandatory respondent with a calculated rate above *de minimis* and, therefore, we are assigning Kaptan's rate of 1.82 to the non-selected companies. No interested parties submitted comments regarding selection of this rate for non-selected respondents.

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

We made no changes to the allocation period and the allocation methodology used in the *Preliminary Results*.[15] No issues were raised by interested parties in their briefs regarding this topic. For a description of the allocation period and the methodology used for these final results, *see* the *Preliminary Results*.[16]

B. Cross-Ownership and Attribution of Subsidies

We made no changes to our cross-ownership and attribution analysis as discussed in the *Preliminary Results*.[17] In Comment 5, however, we address issues raised by interested parties regarding the attribution of subsidies to Kaptan's cross-owned affiliate Nur.

C. Loan Benchmark and Discount Rates

We made no changes to the loan benchmarks or discount rates used in the *Preliminary Results*.[18] In Comment 8, however, we address issues raised by interested parties regarding the loan benchmark interest rates used in this review.

D. Denominators

We made no changes to the sales denominators used in the *Preliminary Results*.[19] In Comment 4, however, we address issues raised by interested parties regarding the sales denominators used in this review.

[13] *See Preliminary Results* PDM at 6.
[14] The two non-selected companies are: Colakoglu Dis Ticaret A.S., and Colakoglu Metalurji A.S.
[15] *See Preliminary Results* PDM at 7.
[16] *Id*.
[17] *Id*. at 8-10.
[18] *Id*. at 10.
[19] *Id*.

VII. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

1. Renewable Energy Sources Support Mechanism (YEKDEM)

Icdas submitted comments in its case brief regarding this program. As explained in Commerce's position under Comment 7, we made no change to our analysis of this program in the *Preliminary Results*.[20] The final program rates are unchanged as follows:

Icdas: 0.30 percent *ad valorem*
Kaptan: not used

2. Rediscount Program

We received no comments from interested parties regarding this program. Accordingly, we made no change to our analysis of the program in the *Preliminary Results*.[21] The final program rates are unchanged as follows:

Icdas: 0.02 percent *ad valorem*
Kaptan: 0.18 percent *ad valorem*

3. Land for LTAR under Law 5084

Kaptan submitted comments in its case brief regarding this program. As explained in Commerce's position under Comment 6, we are making an adjustment to our calculation for purposes of these final results.[22] The final program rates are as follows:

Icdas: not used
Kaptan: 1.64 percent *ad valorem*

B. Programs Determined Not to be Countervailable

1. Provision of Natural Gas for LTAR

The petitioner submitted comments in its case brief regarding this program. As explained in Commerce's position under Comment 3, our analysis of this program remains unchanged from the *Preliminary Results*.[23]

[20] *See Preliminary Results* PDM at 11-12.
[21] *Id*. at 12-13.
[22] *See* Memorandum, "Final Results Calculation for Kaptan," dated September 21, 2021; *see also Preliminary Results* PDM at 13.
[23] *See Preliminary Results* PDM at 14.

2. Purchase of Electricity for More Than Adequate Remuneration (MTAR) – Sale to Public Buyers

We received no comments from interested parties regarding this program. Accordingly, we made no change to our analysis of this program from the Post-Preliminary Results.[24]

C. Program Determined Not to Confer Countervailable Benefits

1. Inward Processing Regime

The petitioner submitted comments in its case brief regarding this program. As explained in Commerce's position under Comment 1, our analysis of this program remains unchanged from the *Preliminary Results*.[25]

D. Program Determined to Provide No Measurable Benefit During the POR

Consistent with the *Preliminary Results*, we find that the benefits from the program, below, were fully expensed prior to the POR, or are less than 0.005 percent *ad valorem* when allocated to the respondents' POR sales as discussed in the "Attribution of Subsidies" in the *Preliminary Results*.[26] Accordingly, we did not include this program in our subsidy rate calculations for the respondents, consistent with our established practice.[27]

1. Reduction and Exemption of Licensing Fees for Renewable Resource Power Plants

E. Programs Determined to be Not Used

Other than as noted below, no issues were raised by the interested parties regarding the following programs. *See* the *Preliminary Results*.[28]

1. Purchase of Electricity for MTAR – Sales via Build-Operate-Own, Build Operate-Transfer, and Transfer of Operating Rights Contracts
2. Research and Development Grant Program
3. Export Credits, Loans, and Insurance from Turk Eximbank
4. Large-Scale Investment Incentives
5. Strategic Investment Incentives
6. Incentives for Research & Development Activities
7. Regional Development Subsidies
8. Comprehensive Investment Incentives (also known as Super Incentive Scheme)

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[24] *See* Post-Preliminary Results at 2-3.
[25] *See Preliminary Results* PDM at 15-16.
[26] *Id*. at 16-17.
[27] *See, e.g.*, *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016), and accompanying IDM at 31-32; *see also Preliminary Results* PDM at 17.
[28] *See, e.g.*, C*ountervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016), and accompanying IDM at 31-32.

9. Preferential Financing from the Turkish Development Bank
10. Liquefied Natural Gas for LTAR
11. Deduction from Taxable Income for Export Revenue
12. Assistance for Participation in Trade Fairs Abroad
13. Assistance to Offset Costs Related to Antidumping/CVD Investigations
14. Export Buyer's Credit
15. Export-Oriented Investment Credit Program
16. Export-Oriented Working Capital Credit Program
17. Specific Export Credit Program
18. Foreign Market Research and Market Entry Grants
19. Scientific and Technological Research Council of Turkey (TUBITAK)
20. TURQUALITY Program
21. Export Freight Support Program
22. Credit Guarantee Fund Equity-Backed Guarantees and Treasury Backed Guarantee

The petitioner submitted comments in its case brief regarding the Provision of Lignite for LTAR program. As explained in Commerce's position under Comment 2, our analysis of this program remains unchanged from the *Preliminary Results*.[29]

VIII. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce Should Countervail Import Duty Exemptions Under the IPR Program

Petitioner's Brief[30]

- Commerce preliminarily found that the GOT had a system in place in accordance with 19 CFR 351.519(a)(4)(i) to confirm which inputs and in what amounts were consumed in the production of the exported products, and that the system was reasonable. Consequently, Commerce preliminarily found that the GOT's IPR Program did not confer countervailable benefits. However, the record does not support this finding, as the GOT failed to respond to Commerce's request for information. The record of the current review needs to support the finding as Commerce's conclusion in the 2017 administrative review is based on the record of that review.
- The GOT failed to provide information related to: (1) application and approval packages; (2) usage/waste rates and capacity reports; (3) waste and scrap sold in Turkey; and (4) D-1 certificates. The information provided by the GOT is insufficient for Commerce to conduct an analysis based on 19 CFR 351.519(a)(4)(i).
- Under 19 CFR 351.519(a)(4)(i), record information must demonstrate that a government's system or procedure that is reasonable and effective for the purposes intended and based on generally accepted commercial principles in the country of export. If the government in question fails to show that such a system exists and is applied effectively, the exemption, deferral, or drawback is countervailable.
- Here, the GOT failed to provide information on its procedures for monitoring entries of waste or scrap, as deemed necessary by Commerce in other proceedings to determine if a

[29] *See Preliminary Results* PDM at 17.
[30] *See* Petitioner's Case Brief at 2-12.

country's monitoring system is reasonable and effective pursuant to 19 CFR 351.519(a)(4)(i).

- As the United States Court of International Trade (CIT) held in *Guizhou Tire*, the relevant question for analysis under 19 CFR 351.519(a)(4)(i) is not whether respondents maintain sufficient records of their consumption.[31] "{T}he underlying concern is whether the government maintains and applies a consistent procedure in order to confirm the inputs consumed in the production."[32] Through its refusals to provide necessary information in this review, the GOT failed to meet the burden of demonstrating that its monitoring system is reasonable and effective pursuant to 19 CFR 351.519(a)(4)(i).
- Commerce should find that the IPR program provides financial contribution within the meaning of section 771(5)(D)(ii) of the Tariff Act of 1930, as amended (the Act), in the form of revenue forgone by the GOT, and that the program is specific under sections 771(5A)(A) and (B) of the Act, because it is contingent on exports. Most importantly, Commerce should apply adverse facts available (AFA) and find that the GOT did not have a system or procedure in place to confirm which inputs were consumed in the production of exported products. On this basis, Commerce should treat the entire amount of duty exemptions that the respondents received under the program as the benefit, pursuant to 19 CFR 351.519(a)(4).

GOT's Rebuttal Brief[33]

- The GOT provided the requested application package information and explained the application process for the D-1 and D-3 certificates in the initial questionnaire. The GOT also provided additional documentation related to the application materials in supplemental responses.
- The petitioner claims that the GOT provided a cursory explanation on the accuracy of usage/waste rates and capacity reports. This is untrue, as the GOT explained that the usage and waste rates are checked by the Ministry of Trade (MOT) in accordance with Capacity and Expense reports which are prepared by the Chamber of Commerce and Industry. Further, the GOT provided the capacity reports relevant to this proceeding.
- The GOT also stated that there is an electronic database on which the Inward Processing Certificates (IPCs) are evaluated. The GOT closely monitors this database as the process continues from start to finish. After the process is finished, the firms apply to the MOT for closure of the certificate. At that point, the MOT examines firms' customs declarations, consumption rates, and other related documents to ensure that imports and exports are carried out in accordance with the certificate.
- The documentation for monitoring by the MOT intrinsically includes waste and scrap, which should have a capacity or expense report to prove it during the application phase. Further, if this scrap is subject to the production of the company, the amount of scrap to be produced from the amount of input goods should also be declared and exported by the company as the GOT monitors whether scrap is exported or not in the same system.
- The GOT responded to Commerce's requests and fully cooperated in the proceeding. Further, the outlined explanation based on record evidence clearly shows that the GOT

[31] *Id.* at 11 (citing *Guizhou Tyre Co. v. United States*, 415 F. Supp. 3d 1402 (CIT 2018)).
[32] *Id*.
[33] *See* GOT's Rebuttal Brief at 1-2.

has a system to confirm that imported inputs are consumed in the production of exported products.

Kaptan's Rebuttal Brief[34]

- The petitioner's argument that the GOT did not have a system in place during the POR that meets the standards of 19 CFR 351.519(a)(4)(i) is entirely unsupported by record evidence. Further, Commerce's determination is consistent with multiple prior segments of this proceeding, as well as prior decisions in other proceedings.
- Commerce generally does not revise its countervailability findings in subsequent reviews absent new information, and no new facts are present here. The petitioner did not identify any new facts in this proceeding which call the finding in previous segments of this proceeding into question.
- The petitioner argues that Commerce may not rely on the 2017 administrative review results in this decision, but has not pointed to any record evidence that would suggest the program does not operate in the same manner as it has in previous reviews, or that a countervailable benefit was conferred to Kaptan in this proceeding. Because there is no new information on the record Commerce should, as it always has, continue to find that the IPR program provided no countervailable benefit to Kaptan.
- The petitioner did not identify a gap in the record to warrant an AFA finding. In order to apply AFA, Commerce needs to find that: (1) there is a gap in the record; (2) identify how the offending party failed to cooperate to the best of its ability; and (3) the decision to apply AFA must be based on substantial evidence.
- Sections 776(a) and (b) of the Act identify the process for use of facts otherwise available and use of adverse inference, respectively. The two provisions require separate findings. An adverse inference cannot be applied unless it is appropriate to use facts otherwise available. Further, reliance on facts otherwise available is only appropriate to fill gaps in the record necessary for Commerce to complete its calculation.
- In addition to showing that the information is missing information from the record, Commerce must find that the interested party failed to cooperate by not acting to the best of its ability. This means that Commerce cannot apply AFA unless it is reasonable to conclude that less than full cooperation has been shown.
- The petitioner points to GOT's responses alleging that they are deficient, but the record shows the GOT provided detailed explanations in its initial and supplemental responses. Through these submissions, the GOT provided responses to the best of its ability. The petitioner faults the GOT for deficiencies which were corrected in supplemental questionnaires, even though the process of issuing supplemental questionnaires is intrinsic to Commerce's fact-finding process, and this argument should be disregarded.
- Further, the petitioner ignores information placed on the record by Kaptan. This information combined with the GOT's responses create a full record upon which Commerce made its findings.
- As the petitioner failed to identify any gaps in the record, Commerce should dismiss the petitioner's argument with regard to the IPR program and continue to find that this program did not confer countervailable benefits, as in the previous segments of this proceeding.

[34] *See* Kaptan's Rebuttal Brief at 2-10.

Icdas' Rebuttal Brief[35]

- Consistent with its analysis in previous proceedings, Commerce found that the tax and duty exemptions provided to Icdas under the IPR program do 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. The petitioner claims that the findings that lead to this conclusion are not supported by the record.
- The record, in fact, contains complete information regarding Icdas' use of the IPR program in 2018. The petitioner ignores the extensive reporting by Icdas regarding the IPR program, including all documentation requested by Commerce which the petitioner deemed missing from the record.
- The petitioner first claims that the GOT did not provide a copy of at least one application and approval package; however, Icdas provided a complete translated sample application and approval document in its initial questionnaire response. Because this information was provided, the GOT's failure to provide a second copy of these documents is not relevant to Commerce's determination.
- The petitioner also contends that the GOT's responses related to usage, waste, and capacity lacked necessary detail. The petitioner ignores complete information on this topic provided by Icdas. Contrary to the petitioner's claims, the documents provided contain export quantities of finished products and the imported quantities of raw materials necessary for Commerce to confirm the use/waste ratios during the POR.
- The third deficiency pointed to by petitioner is alleged incomplete information regarding waste and scrap sold in Turkey. The petitioner overlooks record evidence from Icdas showing the declaration of secondary compensating products produced from the imported quantity under the IPC. Further, Icdas reported that the above documentation is governed by Article 20 of the Turkish IPR Regulation, which mandates that Icdas either export the goods or pay customs duties and other charges if they are sold in the domestic market. Consistent with the IPR Regulation, Icdas reported all imports exempted from duties and other charges.

Commerce Position: In the *Preliminary Results* we found that, consistent 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 reasonable for the purposes intended.[36] This finding is consistent with Commerce's determinations in prior proceedings.[37] We also found, consistent with Commerce's prior determinations,[38] that the

[35] *See* Icdas' Rebuttal Brief at 2-9.
[36] *See Preliminary Results* PDM at 15.
[37] *See, e.g.*, *Final Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey*, 71 FR 43111 (July 31, 2006), and accompanying IDM at 10-11; *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 11-13; and *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 47479 (October 12, 2017), and accompanying IDM at 7.
[38] *See, e.g.*, *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015*, 83 FR 16051 (April 13, 2018) (*Turkey Rebar 2015 Review*), and accompanying IDM at Inward Processing Regime.

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. We made the finding based on the explanations and supplementary materials reported by the GOT, along with reporting made by Kaptan and Icdas.

The petitioner argues that, given deficiencies in the administrative record, Commerce should apply AFA in finding that the GOT did not have a system or procedure in place to confirm which inputs were consumed in the production of exported products. We disagree.

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record *or* an interested party or any other person withholds information that has been requested; fails to provide information within the established deadlines or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding; or provides information that cannot be verified, as provided by section 782(i) of the Act. Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate. Section 776(b) of the Act provides that Commerce may use an adverse inference in applying 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.[39]

As an initial matter, contrary to the petitioner's arguments, there are no gaps in the record of this proceeding as outlined below.

First, the petitioner notes the lack of information about application and approval packages in the GOT's initial response.[40] The GOT provided an explanation of the application and approval process.[41] While the GOT did not provide supporting documentation at the time, partially translated copies were provided in a supplemental response.[42] The gap in the record in this instance is filled by Icdas, which provided a complete translated sample application and approval document in its initial questionnaire response.[43]

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[39] *See Trade Preferences Extension Act of 2015 (TPEA)*, Pub. L. No. 114-27, 129 Stat. 362 (2015). The numerous amendments to the antidumping duty and CVD laws under the *TPEA* apply to this proceeding. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Act of 2015*, 80 FR 46793, 46794-46795 (August 6, 2015) (*Applicability Notice*).

[40] *See* Petitioner's Case Brief at 4-5.

[41] *See* GOT's Letter, "Response of the Government of Turkey in 2018 Countervailing Duly Administrative Review on imports of Steel Concrete Reinforcing Bar from Turkey," dated July 2, 2020 (GOT July 2, 2020 IQR) at 58-59.

[42] *See* GOT's Letter, "Response of the Government of Turkey 2018 Countervailing Duty Administrative Review of Imports of Steel Concrete Reinforcing Bars from Turkey," dated December 11, 2020 (GOT December 11, 2020 SQR) at 75.

[43] *See* Icdas' Letter, "Steel Concrete Reinforcing Bar from the Republic of Turkey; Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.'s Response to the Department's Section III CVD Questionnaire," dated July 2, 2020 (Icdas July 2, 2020 IQR) at Exhibit CVD-26.

The petitioner also alleges that the GOT's responses regarding usage/waste rates and "capacity reports" are deficient.[44] The GOT provided an explanation that a company declares the projected input usage rate and, if applicable, waste rates regarding its production processes which are checked by the MOT in "Capacity Reports" and "Expense Reports."[45] The GOT also reported capacity calculation sections of Icdas' and Kaptan's capacity report samples showing input usage rate and maximum waste rates.[46] Further, Icdas provided information on use/waste ratios, including screenshots from the GOT's online "e-portal system" which is used to confirm that inputs are imported in quantities within the limits of the applicable waste/yield ratios.[47] Documents provided by Icdas and Kaptan contain the exported quantities of finished products and the imported quantities of raw materials necessary for Commerce to confirm the use/waste ratios during the POR.[48]

The petitioner also claims that the GOT did not provide information or explanation of how the GOT monitors waste and scrap sold in Turkey.[49] However, the GOT, in fact, provided an explanation that, in the context of the IPR, the GOT monitors waste and scrap via its "Capacity Reports" and Expense Reports," and that scrap would be considered a secondary compensating product in the system based on whether it has commercial value.[50] Further, Icdas provided clear evidence that waste and scrap is monitored in the system in the realized consumption table.[51] This reporting is governed by Article 20 of the Turkish IPR Regulation (Resolution No. 2005/8391), which mandates that companies either export the goods or pay the customs duties and other charges if they are sold in the domestic market.[52]

Finally, the petitioner points to the GOT's initial questionnaire response, where the GOT did not provide information regarding the duty/tax that would have been assessed on the imported items in 2018 absent exemptions under IPR.[53] While the GOT did not provide information on D-1 certificates or a list of customs duties in the initial questionnaire, the list of customs duties was provided in a supplemental questionnaire.[54] The petitioner claims that the supplemental supporting documentation is insufficient as portions are untranslated, and that this creates a gap in the record.[55] However, this information is available on the record, as Icdas provided an electronic realized import list for each IPC and provided customs duties, value-added tax (VAT) ratio, and a stamp tax that would have been paid in the absence of the IPC.[56] The documents in

[44] *See* Petitioner's Case Brief at 4-6.
[45] *See* GOT December 11, 2020 SQR at 75.
[46] *See* GOT's Letter, "Response of the Government of Turkey to the Second Supplemental Questionnaire in 2018 Countervailing Duly Administrative Review on Imports of Steel Concrete Reinforcing Bar from Turkey," dated February 17, 2021 (GOT February 17, 2021 2SQR) at Exhibit 5.
[47] *See* Icdas July 2, 2020 IQR at Exhibit CVD-27; *see also* GOT December 11, 2020 SQR at 75.
[48] *See* Icdas July 2, 2020 IQR at Exhibit CVD-27; *see also* Kaptan's Letter, "Kaptan Initial Questionnaire Response: Administrative Review of the Countervailing Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey (C-489-819) (POR: 2018)," dated July 6, 2020 at 36-37 and Exhibit 24.
[49] *See* Petitioner's Case Brief at 7-8.
[50] *See* GOT December 11, 2020 SQR at 75.
[51] *See* Icdas July 2, 2020 IQR at Exhibit CVD-27.
[52] *Id*. at CVD-63 and Exhibit CVD-28.
[53] *See* Petitioner's Case Brief at 8-10.
[54] *See* GOT July 2, 2020 IQR at 64; *see also* Exhibit 22.
[55] *See* Petitioner's Case Brief at 9.
[56] *See* Icdas July 2, 2020 IQR at CVD-60 and Exhibit CVD-28.

question are obtained by companies from the GOT and, thus, are sufficient to show that the program continues to operate as it did in previous reviews.[57] In this case, Icdas provided its copy of the fully translated documents.[58]

Given that the record is complete for purposes of our analysis and the respondents acted to the best of their ability in responding to Commerce's initial and supplemental questionnaires by the established deadlines, we determine that use of facts available pursuant to section 776(a) of the Act is not necessary. Furthermore, because the use of facts available is not necessary, we need not reach a decision under section 776(b) of the Act; specifically, whether an adverse inference is warranted in selecting from among the facts otherwise available.

As explained above, record evidence indicates that, consistent 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 reasonable for the purposes intended. Indeed, the petitioner fails to reference any record information to refute this finding.[59] Accordingly, we continue to find that D-1 certificates under the IPR program do not provide countervailable benefits.

Comment 2: Whether Commerce Should Countervail the Provision of Lignite for LTAR

Petitioner's Brief[60]

- Commerce preliminarily found the provision of lignite for LTAR to not be used by the respondents. This conclusion appears to be based on Icdas' claims that Turkish Hard Coal Enterprises (TTK) or Turkish Coal Enterprises (TKI) were involved in its purchase of lignite. However, Icdas failed to demonstrate this fact.
- In the investigation underlying this *Order*, Commerce found that TKI mines lignite while TTK does not. The GOT confirmed in its responses that there were no changes to this program since the investigation. Icdas claimed that it purchased lignite without the involvement of TTK or TKI. To support this assertion Icdas provided a list which identified 6 out of 10 coal vendors that Icdas used who confirmed they had not bought lignite coal from TTK or TKI. Icdas failed to rectify this omission in a supplementary questionnaire. As a result, Icdas' assertion is not conclusive, as it has not supported its claim that it purchased lignite from domestic producers without the involvement of TTK and TKI. As such, Commerce should apply AFA to find that Icdas received a benefit under the program pursuant to 771(5)(E)(iv).
- Consistent with the investigation, Commerce should find that TKI is a government authority what provides a financial contribution pursuant to sections 771(5)(B) and 771(5)(D)(iii) of the Act. Commerce should find that the program is specific within the meaning of section 771(5A)(D)(iii)(II) of the Act because thermal power plants, including plants belonging to and operated by steel enterprises for generating power, are the predominant users of lignite. Regarding the benefit under section 771(5)(E)(iv) of the Act, Commerce should determine that the GOT's involvement distorts the domestic

[57] *Id*.
[58] *Id*. at Exhibit CVD-26-CVD-29.
[59] *See, e.g.*, *Turkey Rebar 2015 Review* IDM at Inward Processing Regime.
[60] *See* Petitioner's Case Brief at 13-15.

market for lignite, thereby making domestic prices unusable as benchmarks under 19 CFR 351.511(a)(2)(i).

- Pursuant to 19 CFR 351.511(a)(2)(ii), Commerce should use the POR monthly world market prices from UN Comtrade that RTAC submitted in its benchmark submission to measure the benefit. Commerce should include the ocean freight expenses from RTAC's benchmark submission in the benchmark price, as well as the import duty and tax rates on lignite that the GOT reported in the investigation, given the GOT's response that no changes to the program have occurred.

Icdas' Rebuttal Brief[61]

- Commerce preliminarily determined that Icdas did not receive any benefit related to the purchase of lignite coal for LTAR during the current POR because Icdas did not purchase lignite from TTK, TKI, or any other GOT-owned entity. Despite this non-use, the petitioner argues that provision of lignite for LTAR should be found countervailable in this review because Icdas failed to sufficiently demonstrate that TTK or TKI were involved in its purchases of lignite.
- The petitioner's claim ignores Icdas' reporting which establishes that it did not receive any benefit from its purchases of lignite coal because it only directly purchased lignite coal from 10 domestic private mining companies during the POR. Out of the ten suppliers six confirmed that they did not purchase coal from a government entity, as demonstrated in the supporting documentation on the record, including mining/production licenses and correspondence. These six vendors provided an overwhelming majority of Icdas total lignite coal purchases from the domestic market during the POR. The GOT also confirmed that the other vendors did not directly or indirectly purchase lignite coal from TKI. As such, there is no basis for Commerce to find that Icdas' purchases of lignite are countervailable, and Commerce should continue to find non-use of this program.
- The petitioner's claim appears to focus on third-party reporting over which Icdas' has no control. Even if Commerce finds the GOT's reporting to be unreliable, which it is not, application of AFA to Icdas in this circumstance is unlawful given its lack of control over its unaffiliated suppliers for the small volume of lignite coal at issue.
- Moreover, the petitioner's suggested benchmark, POR monthly world market prices from UN Comtrade, is not a reasonable proxy to measure the adequacy of remuneration of Icdas' private lignite coal purchases or its maritime freight.

Commerce Position: In the underlying investigation of this *Order*, we examined two government-owned coal suppliers who we determined to be authorities that provided a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.[62] We found that one government-owned coal supplier, TTK, does not mine hard coal used to generate energy to operate coal-fired power plants (*i.e.*, steam coal), but extracts hard coal that is converted to coking coal used in the production of iron and steel.[63] Additionally, we found that the other

[61] *See* Icdas' Rebuttal Brief at 9-11.
[62] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination Final Affirmative Critical Circumstances Determination*, 79 FR 54963 (September 15, 2014) (*Rebar I Final Determination*), and accompanying IDM at 13-14.
[63] *Id*.

government coal supplier, TKI, mines only lignite.[64] Based on these findings, we determined that this program should focus solely on the provision of lignite by TKI to companies in the Turkish market. In the investigation, we found that Icdas purchased lignite from TKI, as well as from private domestic suppliers.

In the *Preliminary Results*, we found that provision of lignite for LTAR was not used by the respondents.[65] Although Icdas reported purchasing lignite during the POR,[66] the company explained that the lignite coal was purchased directly from 10 domestic private mining companies.[67] Icdas and the GOT also reported that Icdas' coal vendors did not purchase lignite from TKI.[68]

The petitioner claims we should apply AFA to Icdas for purposes of our analysis because Icdas failed to demonstrate that it did not purchase lignite without the involvement of TKI.[69] The petitioner points to the fact that Icdas did not receive confirmation from four of 10 domestic coal vendors that they did not purchase coal from TKI.[70] We disagree.

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record *or* an interested party or any other person withholds information that has been requested; fails to provide information within the established deadlines or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding; or provides information that cannot be verified, as provided by section 782(i) of the Act. Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate. Section 776(b) of the Act provides that Commerce may use an adverse inference in applying 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.[71]

Here, Icdas provided certifications for the vast majority of its lignite purchases during the POR.[72] The GOT also provided a list of Icdas' vendors and the corresponding private producers showing that TKI was not involved in the sale of lignite to any of the respondents or their affiliates, either

[64] *Id*.
[65] *See Preliminary Results* PDM at 17.
[66] *See* Icdas July 2, 2020 IQR at CVD-20.
[67] *Id*.
[68] *See* Icdas July 2, 2020 IQR at CVD-20 and Exhibit CVD-8; *see also* GOT December 11, 2020 SQR at 3 and Exhibit 1.
[69] *See* Petitioner's Case Brief at 13.
[70] *Id*.
[71] *See TPEA*, Pub. L. No. 114-27, 129 Stat. 362 (2015). The numerous amendments to the antidumping duty and CVD laws under the *TPEA* apply to this proceeding. *See Applicability Notice*, 80 FR at 46794-46795.
[72] *See* Icdas July 2, 2020 IQR at CVD-20 and Exhibit CVD-8.

directly or through a supplier.[73] Because the record is complete for purposes of our analysis – determining whether this program was used by the respondents during the POR – and the respondents acted to the best of their ability in responding to Commerce's requests for information by the established deadlines, there is no need to rely on facts available pursuant to section 776(a). Moreover, because the use of facts available is not necessary, we need not reach a decision under section 776(b) of the Act; specifically, whether an adverse inference is warranted in selecting from among the facts otherwise available.

Given that record evidence confirms this program was not used by the respondents during the POR, our analysis of this program remains unchanged from the *Preliminary Results*.[74]

Comment 3: Whether Commerce Should Countervail the Provision of Natural Gas for LTAR

Petitioner's Brief[75]

- In the *Preliminary Results*, Commerce found that Boru Hatlan Ile Petrol Tasima A.S.'s (BOTAS) sales of natural gas to Kaptan during the POR were not *de facto* specific pursuant to sections 771(5A)(D)(iii)(II) or (III) of the Act, and hence not countervailable. This finding is based on the GOT reporting that industrial users and the iron and steel industry accounted for 24 percent and 0.001 percent, respectively, of natural gas purchases in Turkey during the POR. This was consistent with the 2017 Administrative Review where Commerce found the provision natural gas for LTAR to be *de facto* specific to the power production (or conversion) sector under sections 771(5A)(D)(iii)(II) and (III) of the Act, but not specific to other sectors.
- Also consistent with the 2017 administrative review was the finding that BOTAS's sales of natural gas to Kaptan were not specific because Kaptan did not act as a power generator during POR. However, during the 2018 POR, the GOT refused to provide necessary information on natural gas usage in Turkey.
- In its initial questionnaire response, the GOT only provided a list with the volume of natural gas consumption by sector in Turkey during the POR. The GOT did not provide total by value, and it did not provide any of the supporting documentation that Commerce requested.
- In its second supplemental questionnaire, Commerce again requested this information on natural gas usage. The GOT, however, refused to provide the requested information. In response to Commerce's request for the values of natural gas purchased by industry, the GOT merely responded that its Energy Market Regulatory Authority does not keep records on the value of natural gas consumption. Instead of confirming that it used the resource or classification scheme the government normally relies upon to define industries and to classify companies within an industry, the GOT only referred to International Energy Agency (IEA) guidelines that it provided in its first supplemental questionnaire response without explanation.
- Information that Commerce requested is necessary to determine whether the program is *de facto* specific, but the GOT did not even attempt to provide the information. The GOT

[73] *See* GOT December 11, 2020 SQR at 3 and Exhibit 1.
[74] *See Preliminary Results* PDM at 17.
[75] *See* Petitioner's Case Brief 15-20.

made no attempt to comply with Commerce's instructions in the questionnaire or with the requirements of section 782(c) of the Act, which demonstrates a clear failure to cooperate to the best of its ability. Consequently, Commerce should determine as AFA that the program is specific within the meaning of section 771(5A)(D)(iii) of the Act, based on the GOT's failure to cooperate to the best of its ability.

- Consistent with past segments of this proceeding, Commerce should determine that the program provides a financial contribution from BOTAS within the meaning of section 771(5)(D)(iii) of the Act, in the form of the provision of a good. For determining the level of benefit that Kaptan received, Commerce should find that the domestic market for natural gas in Turkey is distorted by the GOT's actions, thereby making domestic prices unusable as benchmarks under 19 CFR 351.511(a)(2)(i). In the 2016 administrative review, Commerce used IEA pricing data for European Union (EU) countries as a tier-three benchmark under 19 CFR 351.511(a)(2)(iii), because world market prices under 19 CFR 351.511(a)(2)(ii) were not available. Accordingly, pursuant to 19 CFR 351.511(a)(2)(iii), Commerce should use the EU prices from the IEA that RTAC provided in its benchmark submission. In accordance with 19 CFR 351.511(a)(2)(iv), Commerce should add the VAT rate of 18 percent for imported natural gas to the benchmark.

GOT's Rebuttal Brief[76]

- Contrary to the petitioner's allegation, the GOT did not refuse to provide information to Commerce. In its first supplemental questionnaire, Commerce requested additional information regarding the Natural Gas industry. In response, the GOT provided IEA's sectoral natural gas consumption classification and explained that the Energy Market Regulatory Board (EMRA) industry classification relies on the document.
- In the second supplemental questionnaire, Commerce issued several more questions related to the Natural Gas for LTAR program, and the GOT responded to all the questions. However, because the GOT does not have information with regard to value of natural gas consumption and consumption/pricing, the GOT could not provide requested information under questions 1.a. and 1.e. In this regard, the GOT responded that EMRA does not keep records on the value of natural gas consumption by sectors as the values depend on the natural gas prices, which are determined in the market and applied by the companies.
- The GOT provided all existing information in its records that Commerce requested. Therefore, Commerce should not countervail this program nor apply AFA.

Kaptan's Rebuttal Brief

- The petitioner alleges that the GOT refused to provide necessary information on natural gas usage during the POR, and that Commerce should determine as AFA that the program is specific pursuant to section 771(5)(D)(iii) of the Act.
- An AFA finding must satisfy three criteria: (1) it must identify a gap in the record; (2) it must identify how the offending party failed to cooperate to the best of its ability; and (3) the overall AFA decision must be supported by substantial evidence. The petitioner

[76] *See* GOT's Rebuttal Brief at 2-3.

again has failed to satisfy these three criteria to demonstrate AFA is warranted with regard to the provision of natural gas for LTAR.

- Commerce found that industrial users and the iron and steel industry accounted for 24 percent and 0.001 percent, respectively, of natural gas purchases in Turkey during the POR. Further, Commerce found that BOTAS' provision of natural gas was not predominantly used by, and did not disproportionately benefit, industrial users or the iron and steel industry, within the meaning of sections 771(5A)(D)(iii)(II) and (III) of the Act and that BOTAS' sales of natural gas to Kaptan were not specific, and thus, not countervailable. This determination was consistent with Commerce's prior determinations. For example, in the preliminary results of the 2014 administrative review, Commerce found that the provision of natural gas was neither *de jure* nor *de facto* specific, this decision was affirmed in the final results of that review. Nothing on the record of the current case suggests that a different outcome is warranted in this proceeding.
- Section 771(5A)(D)(iii) of the Act provides that a subsidy is *de facto* "specific" under the following circumstances: (1) the actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number; (2) an enterprise or industry is a predominant user of the subsidy; (3) an enterprise or industry receives a disproportionately large amount of the subsidy; (4) the manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.
- In the instant segment, information on the record, provided by the GOT and Kaptan, demonstrates that the provision of natural gas was not specific under these criteria. Specifically, Kaptan provided the following information in its initial questionnaire response: (1) there were no changes to Kaptan's operating structure since the 2014 and 2016 reviews; and (2) all of Kaptan's purchases of natural gas were as an industrial user, for reheating furnaces in the rolling mills and not for the generation of electricity. Nothing on the record contradicts or calls this information into question. Kaptan nevertheless provided its natural gas purchase table for 2018 and contract with BOTAS to fully comply with Commerce's requests.
- Further, the GOT provided detailed information regarding the provision of natural gas in its initial and supplemental questionnaires in response to Commerce's questions, including a list of the respondents' natural gas suppliers, total volume of domestic consumption and production, detailed information regarding pricing of natural gas, membership lists in natural gas associations in Turkey, copies of relevant laws regarding export licensing, and more. Based on the record evidence provided, Commerce was able to conclude that because the iron/steel industry accounted for only 0.001 percent of natural gas usage and since Kaptan was only an industrial user and not a power producer, BOTAS' sales of natural gas to Kaptan were not specific pursuant to sections 771(5A)(D)(iii)(II) and (III) of the Act and thus, not countervailable.
- The petitioner does not point to anything on the record that would call into question this information provided by the GOT and Kaptan and, thus, has identified no gap in the record to warrant application of facts available, let alone AFA. Furthermore, a review of Kaptan's and the GOT's responses demonstrates that both cooperated with Commerce's detailed requests to the best of their ability.

- Moreover, it is well established that Commerce can only apply AFA under circumstances in which it is reasonable for Commerce to expect that more forthcoming responses should have been made, and in which it is reasonable to conclude that less than full cooperation has been shown.[77] The record does not support such a finding. As such, Commerce should continue to find, consistent with prior segments of this proceeding, that the provision of natural gas is not *de jure* or *de facto* specific based on the record of this proceeding.

Commerce Position: In the underlying investigation and past reviews of this *Order*, we examined whether the mandatory respondents received countervailable subsidies as a result of purchasing natural gas from BOTAS for LTAR.[78] In those prior segments, Commerce found BOTAS to be a government authority that provides a financial contribution within the meaning of section 771(5)(D)(iii) of the Act.[79] Commerce has also consistently determined that the provision of natural gas by BOTAS was predominantly used by, and/or disproportionately benefitted, the power production sector and, thus, found the program to be *de facto* specific to the power production (or conversion) sector under sections 771(5A)(D)(iii)(II) and/or (III) of the Act.[80]

In the *Preliminary Results*, we confirmed that the power sector is the predominant user or disproportionate beneficiary of gas from BOTAS, accounting for 37 percent of purchases during the POR. In contrast, we found that industrial users and the iron and steel industry accounted for 24 percent and 0.001 percent, respectively, of natural gas purchases.[81]

The petitioner argues that we should, as AFA, find this program specific pursuant to 771(5A)(D)(iii) of the Act.[82] According to the petitioner, the GOT provided neither information regarding natural gas usage in Turkey during the 2018 POR, including totals by value, nor the supporting documentation that was requested.[83] We disagree.

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record *or* an interested party or any other person withholds information that has been requested; fails to provide information within the established deadlines or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding; or provides information that cannot be verified, as provided by section 782(i) of the Act. Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party submitting the response and will, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, Commerce may disregard all or part of the original and subsequent responses, as appropriate.

[77] *See* Kaptan's Rebuttal Brief (citing *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (CIT 2003)).
[78] *See, e.g.*, *Rebar I Final Determination* IDM at 8-13.
[79] *Id*.
[80] *Id*.
[81] *See* GOT July 2, 2020 IQR at 6-7.
[82] *See* Petitioner's Case Brief at 15-17.
[83] *Id*.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying 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.[84]

In this case, the GOT provided Commerce with the quantity of natural gas purchased by industry categories in the initial questionnaire response.[85] Further, in a supplemental questionnaire response, the GOT explained that the agency compiling data on natural gas consumption, EMRA, does not keep records on natural gas prices, which are determined by the market.[86] Finally, the GOT explained that EMRA industry classification relies on the IEA's sectoral natural gas consumption classification, and in a supplemental response eventually provided the IEA's sectoral natural gas consumption classification.[87] This record information, together with the sectoral consumption volumes provided by the GOT,[88] allows for a substantive finding regarding this program.

Because the record is complete for purposes of our analysis and the respondents acted to the best of their ability in responding to Commerce's requests for information by the established deadlines, there is no need to rely on facts available pursuant to section 776(a). Moreover, because the use of facts available is not necessary, we need not reach a decision under section 776(b) of the Act; specifically, whether an adverse inference is warranted in selecting from among the facts otherwise available.

Given that the record demonstrates the share consumed by the iron and steel sector amounted to 0.001 percent of the total consumption in 2018,[89] we continue to find that BOTAS' sales of natural gas to Kaptan were not specific, and thus, not countervailable.

Comment 4: Whether Commerce Should Revise the Sales Denominators That It Used in the Preliminary Results for Icdas and Kaptan

Petitioner's Brief[90]

- Commerce should revise both Icdas' and Kaptan's sales denominators to remove certain sales.
- In *Wire Rod from Turkey*, Commerce stated the following: "we disagree with Icdas that these sales items should be included in the value of Icdas' downstream steel products, because they are not sales of steel to unaffiliated companies."[91]
- Commerce should follow its precedent in the investigation and *Wire Rod from Turkey* and exclude certain sales from the sales denominator.

[84] *See TPEA*, Pub. L. No. 114-27, 129 Stat. 362 (2015). The numerous amendments to the antidumping duty and CVD laws under the *TPEA* apply to this proceeding. *See Applicability Notice*, 80 FR at 46794-46795.
[85] *See* GOT July 2, 2020 IQR at 6-7.
[86] *See* GOT February 17, 2021 2SQR at 1.
[87] *See* GOT December 11, 2020 SQR at 71 and Exhibit 16.
[88] *See* GOT July 2, 2020 IQR at 6-7.
[89] *See* GOT July 2, 2020 IQR at 2-24 and Exhibits 2, 4, 5 6, 7; 8, *see also* GOT December 11, 2020 SQR at 2.
[90] *See* Petitioner's Case Brief at 20-25.
[91] *Id*. at 22 (citing *Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, in Part*; 83 FR 13239 (March 28, 2018) (*Wire Rod from Turkey*), and accompanying IDM at Comment 4.)

Kaptan's Rebuttal Brief[92]

- Commerce should not change the denominators used for Kaptan and its cross-owned affiliates.
- Commerce used the correct denominators. Pursuant to 19 CFR 351.525, for domestic subsidies, the rules state that Commerce should attribute a domestic subsidy to all products sold by a firm. Specifically, if the company that is receiving the subsidy is an input supplier, the sales denominator should be "the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations)." From these rules it can be derived that: (1) none of the rules require the removal of sales to non-cross-owned affiliates; and (2) the only instances where sales to cross-owned affiliates are removed is when the subsidy recipient is a input supplier or where there are two or more subject merchandise producers.
- Case law demonstrates that it is axiomatic to include a respondent's total sales, barring double counting.
- The petitioner's citation to the original investigation is inaccurate.
- In this case, since Kaptan is the subject merchandise producer, only its sales should be used to calculate subsides the company received, for the calculation of subsidies received by Kaptan. This is the only method that is consistent with the general attribution rules under 19 CFR 351.525.

Icdas' Rebuttal Brief[93]

- The petitioner's claim to exclude a portion of Icdas' sales from this review would be a change from Commerce's established practice in this proceeding.
- Icdas's reporting properly excluded certain sales which would result in double counting. As such, Icdas' sales reporting is correct and the petitioner's request to exclude *bona fide* sales is inconsistent with Commerce's regulations.
- The petitioner attempts to draw a parallel between the instant case and *Wire Rod from Turkey.* Commerce's analysis in that case involved attribution of benefits to Icdas's cross-owned suppliers of scrap metal products. Specifically, because two of Icdas' input suppliers "did not report the sales values of the inputs sold to Icdas," they were not included in the denominator.[94] Though Commerce included sales of downstream merchandise in the denominator in that case to calculate the benefit, Icdas argued that Commerce's calculation was inconsistent because it included certain sales, but excluded others. The issue is wholly distinguishable from the petitioner's request in this case.
- Exclusion of certain sales as outlined by the petitioner also contradicts Commerce's practice in other cases. For example, in *Common Alloy Aluminum Sheet from the Republic of Turkey*, Commerce found "sales that {respondent} booked as sales revenue in its financial systems" should be included in respondent's reported sales.[95]

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[92] *See* Kaptan's Rebuttal Brief at 15-19.
[93] *See* Icdas' Rebuttal Brief at 12-15.
[94] *Id*. (citing *Wire Rod from Turkey* IDM at 18 ("{W}e summed the value of those sales with Icdas's sales of downstream products.")
[95] *Id*. (citing *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 43).

Commerce Position: We disagree with the petitioner. Section 351.525(b)(3) of Commerce's regulations instructs that, for domestic subsidies, Commerce "… will attribute a domestic subsidy to all products sold by a firm, including products that are exported." To modify the denominator as the petitioner suggests would not allow Commerce to capture all respondent companies' sales during the POR. As such, the petitioner's request to exclude certain sales is in contravention of 19 CFR 351.525(b)(3). However, due to the business proprietary nature of the information involved, further discussion can be found in the calculation memorandum.[96]

Comment 5: Whether Commerce Should Revise its Finding that Nur is a Cross-Owned Input Supplier

Kaptan's Brief[97]

- Commerce preliminarily found that subsidies received by Kaptan's affiliate, Nur Gemicilik ve Tic. A.S. (Nur), were attributable to Kaptan based on the following preliminary findings: (1) the production of scrap is primarily dedicated to the production of the downstream product in accordance with 19 CFR 351.525(b)(6)(iv); and (2) Nur was involved in the production of rebar during the POR as a supplier of scrap for rebar production, satisfying the attribution criteria under 19 CFR 351.525(b)(6)(i) and (v). Record evidence demonstrates that Nur does not satisfy the input supplier attribution criteria as set forth in Commerce's regulations, the *Preamble*, as well as prior case law.[98]
- Section 351.525(b)(6)(iv) of the Act directs Commerce to attribute subsidies received by an input producer to the respondent if there is cross-ownership between the two, and the input product is primarily dedicated to production of the downstream product. The primarily dedicated language is further explained in the *Preamble* to Commerce's CVD regulations where it states "… a subsidy is provided to an input producer whose production is dedicated almost exclusively to the production of a higher value-added product— the type of input product that is merely a link in the overall production chain."[99] The *Preamble* also states "Where we are dealing with input products that are not primarily dedicated to the downstream products, however, it is not reasonable to assume that the purpose of a subsidy to the input product is to benefit the downstream product. For example, it would not be appropriate to attribute subsidies to a plastics company to the production of cross-owned corporations producing appliances and automobiles."[100]
- Record evidence does not support a finding that Nur is merely a link in the overall production chain for Kaptan's production of subject merchandise (or production in general). Nur is a shipbuilder that sold a *de minimis* quantity of scrap to Kaptan, as compared to the total steel scrap Kaptan purchased during the POR. Similarly, this sale of scrap by Nur represents a *de minimis* portion of that company's sales whose main production is the production and sales of ships and vessels. Thus, Nur's production is not

[96] *See* Memorandum "Final Results Calculation for Kaptan," dated September 21, 2021; *see also* Memorandum "Final Results Calculation for Icdas," dated September 21, 2021.
[97] *See* Kaptan's Case Brief at 3-12.
[98] *Id*. at 5 (citing *Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998) (*Preamble*)).
[99] *Id*.
[100] *Id*.

dedicated to Kaptan's production, and the company is a miniscule scrap supplier for Kaptan.

- Furthermore, the record demonstrates that Nur's sales of scrap are used by Kaptan to produce both subject and non-subject merchandise. The record demonstrates that Kaptan produces steel billets, reinforcing bars, angles, square bars, flat bars, and round bars from scrap. Thus, Nur is much like the plastics company referenced in the *Preamble*. It is not an input producer, it is a shipbuilder, and the fact that it supplied a miniscule amount of scrap, an incidental byproduct of its production of non-subject merchandise, does not make it an "input supplier" under 19 CFR 351.525(b)(6)(iv). There is no evidence on the record suggesting otherwise.
- In *FEBs from Germany*,[101] Commerce determined under analogous circumstances that it would not be appropriate to attribute the subsidies of two of the respondent's affiliates when those companies produced non-subject steel products and sold only small amounts of ingot and scrap to the respondent. There Commerce looked to the quantities of ingots and scrap and found they are so miniscule that they have a small impact on mandatory respondent's production costs.[102] Commerce has also arrived at the same conclusion in multiple other cases under similar circumstances.[103]
- Looking at *FEBs from Germany*, *Certain Cold-Rolled Steel Flat Products from Kore*a, and *Glass Containers from the People's Republic of China* in combination,[104] these cases confirm that Commerce, when deciding whether to attribute subsidies received by an affiliated input supplier, must take three steps into consideration: (1) make its decisions on a case-by-case basis depending on the particular input, the downstream product, and the production process; (2) consider the primary business activity of the affiliated company that is providing the input and whether that primary business activity relates to the production of the downstream product at issue in the case; and (3) determine whether it is reasonable to conclude that the purpose of the subsidy to that company would have been to benefit the production of the downstream product.[105]
- While Kaptan recognizes that Commerce has found that scrap can be a primarily dedicated input in these proceedings, this previous determination does not necessitate the same finding in this case given the very specific facts on the record in this review. Indeed, Commerce has consistently explained that it evaluates "cross-ownership on a

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[101] *See Forged Steel Fluid End Blocks from the Federal Republic of Germany: Final Affirmative Countervailing Duty Determination*, 85 FR 80011 (December 11, 2020) (*FEBs from Germany*), and accompanying IDM at Comment 14.

[102] *Id*.

[103] *See* Kaptan's Case Brief (citing *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Preliminary Results of Countervailing Duty Administrative Review, and Intent to Rescind Review, in Part; 2018*, 85 FR 45,185 (July 27, 2020), and accompanying IDM at "Attribution of Subsidies."; and *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 38361 (June 22, 2020), and accompanying IDM at Comment 2).

[104] *See* Kaptan's Case Brief (citing *FEBs from Germany*; *Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 38361 (June 22, 2020) (*Certain Cold-Rolled Steel Flat Products from Korea*), and accompanying IDM at Comment 2; and *Certain Glass Containers from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 85 FR 31141 (May 22, 2020) (*Glass Containers from the People's Republic of China*), and accompanying IDM at Comment 2).

[105] *Id*.

case-by-case basis by examining the facts of each case."[106] Circumstances can change between cases and from proceeding to proceeding, necessitating a new evaluation in each case and proceeding.

- While there may be circumstances where a company's scrap generation and sale to the respondent producer is primarily dedicated to the downstream product, the situation here is not one of them due to the unique relationship between Kaptan and Nur. Nur's production is focused on products that are significantly more downstream (*i.e.*, ships) than Kaptan's rebar, which is a commodity steel product. Nur's production is the end of production chain, not the beginning. Given these unique circumstances, it cannot be said that Nur's production is dedicated almost exclusively to the production of a higher value-added product. Nur's production is the higher value-added product.
- Given these unique circumstances, it cannot be said that Nur's scrap generation and sale is the type of input product that is merely a link in the overall production chain. It certainly cannot be said that one can reasonably conclude that the purpose of a subsidy to Nur (*i.e.*, land rent exemptions for its shipbuilding production) is to benefit Kaptan's commodity steel production.

Petitioner's Rebuttal Brief[107]

- Under Commerce's practice in prior reviews of this proceeding and in other proceedings, Nur's production of steel scrap is primarily dedicated to the production of the downstream product (*i.e.*, billet used to produce rebar), pursuant to 19 CFR 351.525(b)(6)(iv). Accordingly, Commerce should continue to find that subsidies to Nur are attributable to Kaptan pursuant to 19 CFR 351.525(b)(6)(iv).
- In the final results of the 2016 administrative review of this proceeding, Commerce stated that the attribution statute does not include a threshold for the amount of input supplied by a cross-owned company in order to meet our attribution standard. In the 2017 administrative review, Commerce again found that the production of scrap is primarily dedicated to the production of the downstream product in accordance with 19 CFR 351.525(b)(6)(iv). In the *Preliminary Results* of the current review, Commerce again reached the same conclusion. These determinations are consistent with the CVD *Preamble* and Commerce's longstanding practice in other cases. For example, in *OCTG from Turkey*, Commerce determined that steel scrap was dedicated exclusively to the production of a higher value-added product and was the type of input product that is merely a link in the overall production chain, and therefore primarily dedicated to the production of the downstream product.[108]
- While Kaptan points to *FEBs from Germany*, *CTL Plate from Korea*, and *Cold-Rolled Steel from Korea* to support its claim, these cases do not support its position. Specifically, Commerce made clear in those cases that "{t}he issue of whether production of the input product is primarily dedicated to production of the downstream

[106] *See* Kaptan's Case Brief at 7 (citing *Certain Carbon and Alloy Steel Cut-to-Length Plate from the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review, 2018*, 86 FR 15184 (March 22, 2021) (*CTL Plate from Korea 2018*).
[107] *See* Petitioner's Rebuttal Brief at 7-10.
[108] *Id*. at 8 (citing *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) (*OCTG from Turkey*), and accompanying IDM at 8).

product depends on the specific factual situations presented to Commerce, because the nature of input and downstream products and production processes vary among cases."[109]

- In *FEBs from Germany*, Commerce stated that it did not set a *de minimis* standard or requirement in determining whether subsidies that the input suppliers received were attributable to the subject merchandise producer.[110] Kaptan, however, is requesting that Commerce not apply 19 CFR 351.525(b)(6)(iv) to Nur on the basis that Nur sold a *de minimis* quantity of scrap of the total steel scrap Kaptan purchased during the POR. The cases cited provide no basis for Commerce to reverse its established practice in the current proceeding.
- Kaptan also states that the record demonstrates that Nur's sales of scrap are used by Kaptan to produce both subject and non-subject merchandise. On this basis, Kaptan argues that Nur does not qualify as an input supplier within the meaning of 19 CFR 351.525(b)(6)(iv). However, in *Seamless Pipe from China*, Commerce rejected a respondent's argument that a cross-owned company's production of an input must be primarily dedicated only to the production of subject merchandise.[111] In that case, a respondent claimed that a cross-owned input supplier had virtually nothing to do with the subject merchandise and that it used inputs from this supplier in a range of other products. Commerce explained that 19 CFR 351.525(b)(6)(iv) refers to "downstream products," which can encompass more than subject merchandise. Further, Commerce explained that the regulation leaves open the possibility that the products benefitting from the subsidy may include subject and non-subject merchandise.

Commerce Position: Kaptan claims that its cross owned affiliate Nur does not satisfy the attribution criteria as specified in Commerce's *Preliminary Results*. Specifically, Kaptan claims that there is no evidence on the record that the provision of scrap by Nur could be deemed to be primarily dedicated to Kaptan's downstream production under 19 CFR 351.525(b)(6)(iv), which states:

> If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, the Secretary will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding the sales between the two corporations).

In the *Preliminary Results*, Commerce found that the production of scrap is primarily dedicated to the production of the downstream product.[112] In previous segments of this proceeding, we considered scrap to be a type of input that is primarily dedicated to the production of the downstream steel production, regardless of the amount of scrap purchased from a cross-owned

[109] *Id*. (citing *FEBs from Germany* at Comment 14; *CTL Plate from Korea* at Comment 2; and *Cold-Rolled Steel from Korea* at Comment 2).
[110] *See FEBs from Germany* IDM at Comment 14.
[111] *See Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the People's Republic of China*, 75.FR 57444 (September 21, 2010) (*Seamless Pipe from China*) and the accompanying IDM at Comment 21.
[112] *See Preliminary Results* PDM at 9.

company.[113] The CIT affirmed this decision in upholding the final results of the 2016 administrative review, finding that Commerce is not required to look to the quantity of scrap provided to a downstream producer.[114] In the 2017 review, Commerce again found that the production of scrap is primarily dedicated to the production of the downstream product in accordance with 19 CFR 351.525(b)(6)(iv).[115]

Kaptan claims that the cases it cited, such *as FEBs from Germany*, *Certain Cold-rolled Steel Flat Products from Korea*, and *Glass Containers from the People's Republic of China*, in combination outline a three-step process by which Commerce determines whether to attribute subsidies received by an affiliated input supplier.[116] We disagree with the three-step analysis that Kaptan derived from these cases. Commerce made clear that the issue of whether production of the input product is primarily dedicated to the production of downstream product depends on the specific factual situations presented to Commerce, because the nature of input and downstream products and production processes vary among cases.[117]

With respect to the second "step" in the three-step analysis argued by Kaptan, we disagree that primary business activity of the affiliated company that is providing the input is a relevant factor in this case, or even most cases. In this review, there is no question that in producing ships, one of Nur's byproducts is steel scrap. Further, there is no question on the record that Nur sold that scrap to Kaptan during the POR and that Kaptan used that scrap in the manufacturing of the subject merchandise. Accordingly, whether or not Nur manufacturers scrap as its primary business or any other steel product matters little for purposes of our analysis of Nur's status as an input supplier to Kaptan. In addition, in this instance, there is no information on the record to show that Nur sells its scrap to anyone else besides Kaptan, indicating that this scrap supply is devoted to Kaptan's downstream steel production.[118]

With respect to Kaptan's *de minimis* argument, on *FEBs from Germany*, Commerce specifically stated that it did not set a *de minimis* standard or requirement in determining whether subsidies that the input suppliers received were attributable to the subject merchandise producer.[119] Kaptan's claim that Commerce should not apply 19 CFR 351.525(b)(6)(iv) to Nur on the basis

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[113] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016*, 84 FR 36051 (July 26, 2019) (*2016 Preliminary Results*), and accompanying PDM at 7-10.

[114] *See Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. v. US*, 498 F. Supp. 3d 1345, 1364 (CIT 2021) ("While the final quantity may be low, the regulations do not obligate Commerce to measure the impact of an input supplier's contributions when weighing whether to attribute its subsidies to the downstream producer.").

[115] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent to Rescind the Review in Part; 2017*, 85 FR 3030 (January 17, 2020) (*Turkey Rebar 2017 Preliminary Results*), and accompanying PDM.

[116] *See* Kaptan's Case Brief at 11.

[117] *See FEBs from Germany* IDM at Comment 14; *CTL Plate from Korea* IDM at Comment 2; *Cold-Rolled Steel from Korea* IDM at Comment 2.

[118] *See* Kaptan's Letter, "Kaptan Affiliation Response: Administrative Review of the Countervailing Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey (C-489-819) (POR: 2018)," dated June 5, 2020 at Exhibit 3; *see also* Kaptan's Letter, "Kaptan Supplemental Questionnaire Response: Administrative Review of the Countervailing Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey (C-489-819) (POR: 2018)," dated December 15, 2020 (Kaptan December 15, 2020 SQR) at Exhibit 11.

[119] *See FEBs from Germany* IDM at Comment 14.

that Nur sold a *de minimis* quantity of scrap of the total steel scrap Kaptan purchased during the POR is, thus, immaterial in this proceeding and not supported by *FEBs from Germany*.

Regardless of the amount of steel scrap manufactured by Nur and regardless of the fact that it was manufactured as a byproduct rather than as Nur's primary production activity, as previously stated, steel scrap has been found, in previous segments of this proceeding to be a product that is primarily dedicated to the production of downstream steel products.[120] Nothing Kaptan argues changes that fact. Accordingly, we continue to find that Nur's production of scrap is primarily dedicated to Kaptan's downstream steel production in accordance with 19 CFR 351.525(b)(6)(iv).

Comment 6: Whether Commerce Should Revise Its Finding That Nur's Land Rent Exemption is Countervailable

Kaptan's Brief[121]

- Commerce preliminarily found that Kaptan's cross-owned affiliate, Nur, entered into an agreement whereby it received rent-free land pursuant to Law 5084. Citing to the GOT's response, Commerce explained that the law provides support to entities operating in certain provinces and will allocate land for free use for 49 years for entities who make investments on the property. Commerce then concluded that this program was regionally specific pursuant to section 771(5A)(D)(iv) of the Act because Nur's land is located in one of the areas that qualifies for the exemption in Law 5084.
- Kaptan did not report that Nur received rent-free land pursuant to Law 5084. Kaptan stated in its response that it may have received benefits under this program pursuant to Law 5084. The reason that Kaptan did not state that it unequivocally received land rent exemptions under this program was because Kaptan was unclear on the specific legal authority under which Nur entered into the land agreement with the local authority. The land agreement does not identify the applicable Turkish law or regulation.
- The GOT also indicated in its supplemental response that while land rent exemptions have been historically available in the area in which Nur is located pursuant to Article 5 of Law 5084, this provision was repealed on February 18, 2009, with Law 5838. Because Nur entered into this land agreement in 2014, Article 5 of Law 5084 could not have applied.
- Whether or not Nur's rental exemption was given pursuant to Article 5 of Law 5084 is pertinent to Commerce's specificity finding of regional specificity based on the identification of specific areas in Turkey in Article 2 of 5084. If Law 5084 does not apply, then Commerce must find this program countervailable under some other specificity provisions within section 771(5A) of the Act. With no applicable law outlining limitations tied to this particular program, this specificity finding can only be made on a *de facto* basis, for which there are no facts on the record.
- The facts of this case show instead that the subsidy, at most, is tied to non-subject merchandise. Commerce's practice when analyzing attribution under 19 CFR

[120] *See, e.g.*, *2016 Preliminary Results* PDM at 7-10, unchanged in *Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016*, 84 FR 36051 (July 26, 2019) (*Turkey Rebar 2016 Review*), and accompanying IDM at Comment 6.
[121] *See* Kaptan's Case Brief at 13-23.

351.525(b)(5)(i) is not to rely on how a recipient uses a subsidy, but rather on the stated purpose of the subsidy. Based upon the terms of the agreement, this land was provided specifically for the development of a shipyard and related solely to non-subject merchandise.

Program Should be Viewed as Revenue Forgone instead of Provision of Goods or Services for LTAR

- If Commerce continues to find the program countervailable, Commerce should revise its financial contribution finding as it is improper to find that the GOT provided land for LTAR as this program should have been analyzed as revenue forgone under section 771(5)(D)(ii) of the Act. The facts on the record demonstrate that receiving an exemption from paying rent to the government on government-owned land constitutes revenue forgone, not the receipt of a good or service for LTAR. The contract outlining the rent-free land agreement is based on certain investment and employment milestones and the amount of rent Nur is exempted from paying if it meets the milestone criteria as stipulated in the contract.
- With the government setting a rental price for the land per the contract, the exemption from paying this amount is no different than the exemption for paying other taxes or fees under 19 CFR 351.509 and 19 CFR 351.510. Commerce explained that rent exemptions are normally treated as revenue not collected by the government and therefore are treated as revenue foregone.[122]
- Commerce explained that "{n}ormally, we would find a benefit from rent exemptions in the amount of the rent savings."[123] In contrast, the benefit for goods for LTAR is based on an entirely different analysis which seeks to evaluate whether the provision of goods or services were at preferential rates as governed by 19 CFR 351.511. This includes selection of a benchmark pursuant to the three-tier hierarchy set forth in 19 CFR 351.511, taking into account prevailing market conditions such as price, quality, availability, marketability, transportation, and other conditions of purchase or sale. While there may be some unique circumstances where the amount of rent that would be paid is not known, necessitating the use of a benchmark price, this is not one of them.[124] In instances where the rent that would have been paid is known, the benefit analysis indisputably equals that rent amount.
- In this case, Nur's land agreement outlines the specific rent that would be owed if the investment and employment obligations are not met. This is the rental amount that Nur would have to pay to continue to use the land for the term of the lease and therefore represents the amount of revenue that the government has foregone in providing Nur with a rental exemption. Therefore, to calculate the benefit for this program, Commerce should use the annual rental amount in the contract as the numerator.

[122] *Id*. at 17 (citing *Laminated Woven Sacks from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 84 FR 14647 (April 11, 2019; and *Non-Oriented Electrical Steel from Taiwan: Final Affirmative Countervailing Duty Determination*,79 FR 61602 (October 14, 2014) (*Non-Oriented Electrical Steel from Taiwan*) IDM at 8).
[123] *Id*. (citing *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Countervailing Duty Determination*, 78 FR 33342 (June 4, 2013) (*Shrimp from Vietnam*), and accompanying PDM).
[124] *Id*. (citing *Shrimp from Vietnam* PDM at 30).

Rental Benchmark

- Commerce used an improper benchmark when it chose rental prices contained in the 2019 Colliers International's Real Estate Market Turkey Review Report (CBRE Report) because these rental prices covered the used of land and facilities. If Commerce continues to view this as an LTAR program rather than a revenue forgone program, Commerce's failure to take into account these comparability factors in its benchmark renders its decision unlawful.
- The selection of benchmarks for LTAR programs is governed by 19 CFR 351.511 and section 771(5)(E)(iv) of the Act, which require Commerce to consider product similarity and other factors affecting comparability in its benchmark selection. In making this analysis, Commerce explained that the use of a commercial benchmark should be based on prices for goods or services that are reasonably comparable to those provided by the government.[125]
- With regard to land two factors affecting comparability are relevant: (1) the location of the land; and (2) whether the land price includes developed land with structure or undeveloped land. Consistent with Commerce's explanation in *Aluminum Sheet from Bahrain*, the CIT rejected Commerce's use of a land benchmark from fully-developed urban land to compare to the respondent's undeveloped land in *Zhaoqing New Zhongya Aluminum Co*.[126] Further, in recent decisions, Commerce considered the developed condition of the land and looked to the location to determine the appropriate benchmark.[127] In the remand redetermination of *Ozdemir Boru San. Ve Tic. Ltd. Sti. v. United States*, Commerce removed land prices from highly-developed provinces because the prices of these parcels deviated substantially from the other prices in the dataset.[128]
- Based on the above precedent, Commerce should make two adjustments to correct the land benchmark. First, Commerce must use a land only rental price that is exclusive of facility rental in order to compare the rental price that Nur would have paid on an apples-to-apples basis. Second, Commerce should consider the level of development of the land, consistent with its practice in *PVLT from Vietnam*, and it should use a rental benchmark for an area that is closest in population density to Surmene, Trabzon. The closest locality size to Surmene on the petitioner's rental list is Cerkezkoy, Tekirdag.

Petitioner's Rebuttal Brief[129]

- Kaptan's argument that Nur did not receive a rent exemption under Law 5084 is not consistent with information in the GOT's questionnaire response. Regardless of whether the GOT repealed the land rent exemption provision of Law 5084 prior to the date of

[125] *Id*. at 19 (citing *Common Alloy Aluminum Sheet from Bahrain: Final Affirmative Countervailing Duty Determination*, 86 FR 13333 (March 8, 2021) (*Aluminum Sheet from Bahrain*), and accompanying IDM at Comment 4; and *Final Results of Countervailing Duty New Shipper Review: Certain Softwood Lumber Products from Canada*, 70 FR 56640 (September 28, 2005), and accompanying IDM at Comment 1).
[126] *Id*. at 20 (citing *Zhaoqing New Zhongya Aluminum Co. v. United States*, 37 C.I.T. 1003, 1006 (2013), as amended (July 19, 2013) (*Zhaoqing New Zhongya Aluminum Co.*)).
[127] *Id*. (citing *Passenger Vehicle and Light Truck Tires from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 86 FR 28566 (May 27, 2021) (*PVLT from Vietnam*)).
[128] *Id*. (citing *Ozdemir Boru San. Ve Tic. Ltd. Sti. v. United States*, 273 F. Supp. 3d 1225, 1251 (CIT 2017)).
[129] *See* Petitioner's Case Brief at 10-18.

Nur's land agreement, the record shows that Kaptan continued to receive residual benefits under the program during the POR.

- While Kaptan cites to GOT's explanation that the rent exemption was repealed in 2009, the GOT also stated that the assistance under this program was provided to Nur pursuant to Article 5 of the Law 5084. The GOT, not Kaptan, is the agency that administers the program, and the GOT stated that it provided the exemption to Nur under that program. In addition, the GOT explained that the program "set forth in Article 5 of Law 5084 aims to promote investment and employment in provinces where the development level is relatively low."[130]
- Thus, Commerce appropriately determined that the program is regionally specific, pursuant to section 771(5A)(D)(iv) of the Act, based on facts on the record, specifically: the GOT acknowledged that it provided the exemptions to Nur under the program, and it explained that the program is limited to certain provinces.
- Further, 19 CFR 351.526(d) provides that benefits under a terminated subsidy program continue to be countervailable if a program provides residual benefits after termination of the program. Regardless of whether the GOT repealed the rent exemption provision under Law 5084, the record shows that Kaptan continued to receive residual benefits under the program during the POR. The GOT explained that the program provides recipients with free land-use permit rights for forty-nine years, and it stated that Nur received assistance under the program pursuant to Article 5 of Law 5084.
- The GOT and Kaptan did not address how these benefits are an exception to the rule under 19 CFR 351.526(d), even if the GOT repealed the specific provision in Law 5084 prior to the POR. Accordingly, Commerce should continue to find that Kaptan received a benefit pursuant to section 771(5)(E)(iv) of the Act, and that it is regionally specific, pursuant to section 771(5A)(D(iv) of the Act.

Program Should be Viewed as Revenue Foregone instead of Provision of Goods or Services for LTAR

- Kaptan's argument that the program constitutes revenue forgone is not consistent with its explanation of benefits received under the program or with Commerce's past practice regarding land rent exemptions.
- Specifically, Kaptan claims that the GOT exempted Nur from paying a fixed amount per year as stipulated in the contract. This claim is not consistent with Kaptan's explanation of the program as Kaptan stated that Nur was not required to pay rent on the land. In other words, rather than paying a certain amount of rent, the local government accepted other consideration for use of the land in the form of investment and employment commitments.[131] The local government thus did not exempt Nur from paying a certain amount of rent. The fixed fee in the contract thus does not refer to rent, but an incentive to continue investment and employment commitments.
- The GOT did not provide evidence to show that it establishes lease agreements with users when they fail to meet requisite employment and investment requirements under the program. Instead, the standard program application that the GOT provided is for a "free

[130] *Id*. at 12 (citing GOT February 17, 2021 2SQR at 6).
[131] *Id*. (citing Kaptan SQR2).

easement / free usage permit within the framework of Article 5 of the Law 5084 dated 29/01/2004," not an application for a lease. Kaptan's explanation is inconsistent with the record as the GOT described the program as a "free use permit", not as an exemption from fixed lease payments.

- As a result, cases cited by Kaptan as support for treating the program as revenue forgone under section 771(5)(D)(ii) of the Act are inapposite. For example, Kaptan cited *Non-Oriented Electrical Steel from Taiwan*, in which Commerce treated a "discount off standard lease rates" as revenue forgone under section 771(5)(D)(ii) of the Act. In that proceeding, Commerce stated that "{t}o calculate the benefit from this program, we calculated the difference between what DSC would have paid at the standard lease rate and what it actually paid."[132] In *PRCBs from Vietnam*, Commerce determined that the respondent's exemption from paying land rent constituted a financial contribution under section 771(5)(D)(iii) of the Act because the rented land-use rights constitute the provision of a good or service.[133] In *Steel Wire Garment Hangers from Vietnam* and *Frozen Warmwater Shrimp from Vietnam*, Commerce also found that land rent exemptions constituted financial contributions under section 771(5)(D)(iii) of the Act in the form of the provision of a good.[134]
- The three cases cited are analogous to Nur's land rent exemption because they involved a government's provision of land free of rental charges, not a discount from a specified rental charge under a lease agreement. Consistent with *PRCBs from Vietnam*, *Steel Wire Garment Hangers from Vietnam*, and *Frozen Warmwater Shrimp from Vietnam*, Commerce should continue to find that Nur's land rent exemption constitutes a financial contribution under section 771(5)(D)(iii) of the Act in the form of a provision of a good, not revenue forgone under section 771(5)(D)(ii) of the Act.

Rental Benchmark

- Kaptan proposed revising the benchmark to use Nur's rental price set forth in the land rental contract) but this is not a land rental contract and the amount is not suitable as a rent benchmark under 19 CFR 351.511(a)(2)(i). Second, Kaptan proposes that Commerce use Turkish land purchase prices that Kaptan provided in its rebuttal benchmark submission. As Kaptan acknowledged these prices reflect purchasing prices, not rental prices and are not appropriate land rent benchmarks. Third, Kaptan asserts that Commerce can adjust the land rental benchmark in the petitioner's benchmark submission by the rental ratio in Nur's land contract. However, this third method is not in accordance with 19 CFR 351.511(a)(2)(i) as the proposed benchmark is not a market determined price for a good but rather is a value that Kaptan calculated based on its

[132] *Id*. at 15 (citing *Non-Oriented Electrical Steel from Taiwan* IDM at 21).
[133] *Id*. (citing *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428 (April 1, 2010) (*PRCBs from Vietnam*), and accompanying IDM at 7-8).
[134] *Id*. at 16 (citing *Certain Steel Wire Garment Hangers from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determinatio*n, 77 FR 75973 (December 26, 2012) (*Steel Wire Garment Hangers from Vietnam*), and accompanying IDM at 13; and *Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 78 FR 50387 (August 19, 2013) (*Frozen Warmwater Shrimp from Vietnam*), and accompanying IDM at 23).

contention that the contract considers the land to be valued, at a percentage of Nur's investment to develop the land and build facilities on it.

- Kaptan also argues that Commerce should compare Nur's rental rates only to rental rates on the record for Tekirdag, the locality with the closest population density to Surmene, where Nur is located, citing *PVLT from Vietnam* as support. However, the situation there involved a land rental benchmark under a third tier analysis pursuant to 19 CFR 351.511(a)(2)(iii) in which Commerce compared land rental rates across two countries. This is not comparable to Commerce's selection of rental rates within Turkey under an in-country benchmark analysis pursuant to 19 CFR 351.511(a)(2)(i). Even under comparisons across countries pursuant to 19 CFR 351.511(a)(2)(iii), Commerce has not relied on population density as the sole factor for determining comparable land benchmarks but rather considered a number of factors, including national income levels, population density and producers' perceptions that Thailand is a reasonable alternative to China as a location for Asian production.[135] Here, Kaptan provided no basis for Commerce to remove prices from the benchmark solely because of differences in population density across Turkey.

Commerce Position:

Whether Land for LTAR is Specific Pursuant to Section 771(5A)(D)(iv) of the Act

In the *Preliminary Results*, Commerce found that the Land for LTAR under Law 5084 program was regionally specific pursuant to section 771(5A)(D)(iv) of the Act because Nur entered into an agreement whereby it received rent-free land pursuant to Law 5084.[136] Kaptan argues that, in making this determination, Commerce incorrectly cited to Kaptan's response because Kaptan explained that it was unsure what specific legal authority allowed Nur to enter into the rent-free land agreement with the local authority.[137] However, the GOT reported that the agreement was made pursuant to Law 5084.[138]

Kaptan also argues that Nur could not have entered into the agreement pursuant to Law 5084, pointing to the GOT's reporting that the law was repealed.[139] Again, the GOT reported that Nur entered into the rent-free land agreement with the GOT based on Law 5084.[140] Further, it appears that approval of the agreement with Nur occurred prior to the law being repealed.[141] As Kaptan acknowledges, this is a factual issue, with a clear answer on the record.[142] Due to the above-cited responses, we continue to find that the record supports our finding that Nur's rent-free land agreement with the local government was made pursuant to Law 5084, and that the program is regionally specific pursuant to section 771(5A)(D)(iv) of the Act.

[135] *Id*. at 17 (citing *Glass Containers from China* IDM at Comment 17).
[136] *See Preliminary Determination* PDM at 13.
[137] *See* Kaptan's Case Brief at 13.
[138] *See* GOT February 17, 2021 2SQR at 5.
[139] *See* Kaptan's Case Brief at 14.
[140] *See* GOT February 17, 2021 2SQR at 5-6.
[141] *Id*.
[142] *See* Kaptan's Case Brief at 14.

Whether Land for LTAR Was Incorrectly Found to Be a Provision of a Good for LTAR

We agree with Kaptan that Commerce has found discounts and exemptions from lease terms to be revenue forgone pursuant to section 771(5)(D)(ii) of the Act, as outlined in the cases which Kaptan cited. In the instant case, however, we find that the land contract is structured as a conditional easement to use government-controlled land for free.[143] As Kaptan admits in its case brief, the contract contains an easement fee which is based on Kaptan not fulfilling its investment and employment obligations.[144] Kaptan also explained that, "{i}n exchange for Nur developing the land, investing a pre-determined amount and employing a certain number of local employees, Nur was not required to pay rent on the land. In other words, rather than paying a certain amount of rent, the local government accepted other consideration for use of the land in the form of investment and employment commitments."[145] Further, the GOT described the program as a free use permit rather than an exemption from lease payments and provided application materials which also refer to the type of use as a free easement or free usage permit.[146] We find that the record shows that the agreement between Nur and the local authority is not a lease, and does not outline a lease term, but instead is a right to use land conditioned on fulfillment of obligations. Thus, we find that the cases cited by Kaptan are inapposite to the facts here and, therefore, we continue to find that the Land for LTAR Under Law 5084 Program constitutes a financial contribution under section 771(5)(D)(iii) of the Act in the form of the provision of a good.

Whether Commerce Should Make Benchmark Adjustments

Kaptan suggests that Commerce make one of three proposed adjustments. First, Kaptan contends that Commerce can use the conditionally payable fixed amount set forth in the land contract as equivalent to the rental price.[147] We disagree. As noted above, we find that the terms outlined in the contract do not constitute a lease, thus, there is no rental price as such being forgone by the government. Moreover, the referenced amount functions as a type of penalty if the company falls short of its investment commitments, thus it cannot be construed as a rental price.

Second, Kaptan proposes that Commerce use the Turkish land purchase prices provided by Kaptan in its benchmark submission.[148] However, Kaptan has acknowledged that the prices outlined in its benchmark submission are for purchases of land.[149] Commerce practice regarding comparisons of rent is to compare rental prices to other rental prices.[150] We find that the use of

[143] *See* Kaptan December 15, 2020 SQR at Exhibit 19.
[144] *See* Kaptan's Case Brief at 16.
[145] *See* Kaptan's Letter, "Kaptan Second Supplemental Questionnaire Response: Administrative Review of the Countervailing Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey (C-489-819) (POR: 2018)," dated February 16, 2021 (Kaptan February 16, 2021 2SQR) at 1.
[146] *See* GOT February 17, 2021 2SQR at 10 and Exhibit 3.
[147] *See* Kaptan's Case Brief at 21.
[148] *Id.* (citing Kaptan's Letter, "Kaptan Benchmark Rebuttal: Administrative Review of the Countervailing Duty Order on Steel Concrete Reinforcing Bar from the Republic of Turkey (C-489-819) (POR: 2018)," dated March 1, 2021 (Kaptan's Benchmark Submission)).
[149] *Id*.
[150] *See, e.g.*, *Glass Containers from the People's Republic of China* IDM at Comment 4.

purchase prices is inappropriate where rental benchmarks were provided by the petitioner on the record.

Lastly, Kaptan urges Commerce to adjust the petitioner's land rental benchmark consistent with recent precedent from *PVLT from Vietnam*, in which Commerce selected a benchmark price from a province which had the most similar population density to the area at issue.[151] We agree that this precedent from *PVLT from Vietnam* reflects current Commerce practice. Kaptan placed population density information on the record showing that the area in Surmene, Trabzon, where the land in question is located, is most similar in population density to Cerkezkoy, Tekirdag.[152] We are adjusting the land benchmark by limiting it to the rental prices from Cerkezkoy, Tekirdag.

Comment 7: Whether Commerce Should Reduce Its Calculation of Benefits Attributed to Icdas for Renewable Energy Sources Support Mechanism (YEKDEM) Support by the Amount Reclaimed

Icdas' Brief[153]

- Commerce preliminarily found that Icdas participated in the YEKDEM during the POR and that the support it received was countervailable.
- However, in 2017, the Ministry of Energy administering the program concluded that the equipment used by Icdas did not conform to the local equipment requirement and the local contribution was therefore decreased. Subsequently, in 2018, "the Ministry of Energy concluded that none of the equipment used conformed to the local equipment requirement and the local contribution was therefore cancelled. Accordingly, the total YEKDEM price was decreased, and the level of support provided to Icdas for electricity sales made in 2017 under the YEKDEM was reduced.
- As a result, in September 2017 and September 2018, EPIAS requested that Icdas repay the principal plus interest of the local contribution amount. In effect, EPIAS reclaimed benefits conferred to Icdas by invoicing Icdas for the excess benefits received, including accrued interest, and Icdas repaid those amounts.
- Because the reclaimed support amount related to Icdas' 2016 electricity sales, Icdas requested that Commerce offset the benefit to account for the payments from Icdas to the YEKDEM during the administrative review for 2016. There Commerce declined to adjust its calculation of the POR benefit in the 2016 administrative review because the repayments happened after the POR, and thus had no effect on Icdas' operations during the POR.
- In 2017, Commerce again declined to make an adjustment finding that the benefit analysis is correctly limited to the support amounts Icdas received for its participation in the program.
- After twice rejecting these claims in the 2016 and 2017 PORs because "{t}he letters referencing additional payment were dated after the POR{, }"[154] Commerce cannot now claim that the only means of reducing repaid benefits is if the repayment occurred during

[151] *See* Kaptan's Case Brief (citing *PVLT from Vietnam* IDM at Comment 12).
[152] *See* Kaptan's Benchmark Submission at Exhibit 2.
[153] *See* Icdas' Case Brief at 1-6.
[154] *Id*. at 5 (citing *Turkey Rebar 2017 Preliminary Results* IDM at 14).

the POR as the repayment was originally reported to Commerce during the 2016 POR where the YEKDEM support amount was countervailed. As such this case is analogous to those where respondents are required to repay a portion of a grant received, which Commerce treats the repaid amount as a contingent liability.[155] Commerce recognized, and the CIT affirmed, that "it would not be appropriate to countervail the full value of the grants" where the respondent "would not be able to enjoy the full benefit of the grants" due to repayment.[156]

- Commerce "may not calculate an assessment greater than the actual benefits received" as it has done in this case.[157] Here, Commerce was notified of the reclaimed portion of the benefit amount in 2016 and the amount was repaid in 2017 and 2018. Commerce is thus obligated to account for this known repayment and its failure to do so via reduction to the benefit provided by the amount of those reclaimed funds violates the statutory mandate to calculate accurate subsidy margins.

Petitioner's Rebuttal Brief[158]

- Commerce rejected Icdas' argument in previous segments of this proceeding, and Icdas has not provided a basis for Commerce to change its practice. Accordingly, Commerce should make no changes to the benefit calculation for the YEKDEM program in the final results.
- In the final results of the 2016 administrative review of this proceeding, Commerce determined that "the benefit Icdas receives under this program is limited to the payment it receives from EPIAS for its participation in (the) YEKDEM, regardless of any payments it makes to EPIAS."[159]
- In 2016, Commerce disagreed with Icdas that the funds reclaimed by EPIAS should factor into the calculation of the POR benefit because the repayments happened after the POR. Importantly Commerce noted that the Act provides three statutorily prescribed offsets: (1) the deduction of application fees, deposits, or similar payments necessary to qualify for or receive a subsidy; (2) accounting for value losses due to deferred receipt of a subsidy; and (3) the subtraction of export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy. Commerce determined that Icdas' repayments to EPIAS did not constitute one of these permissible offsets specified in the Act.
- In 2017, Commerce again determined that Icdas' repayments to EPIAS did not constitute a permissible offset. Commerce acknowledged that EPIAS requested repayments from Icdas after the 2017 POR but found that this information did not change its decision. Notably, Commerce found that it was not appropriate to adjust the benefit in the POR for

[155] *Id*. at 5-6 (citing, *e.g.*, *LTV Steel Co. v. United States*, 985 F. Supp. 95, 109 (CIT 1997) (treating a portion of a grant as a contingent liability where repayment would be required and a repayment schedule "should be set soon," even though repayment had not actually been effected during the POR) (*LTV Steel Co. v. United States*), and *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Partial Rescission of Countervailing Duty Administrative Review*, 76 FR 4291 (January 25, 2011), and accompanying IDM at 2 (this methodology has been described as "consistent with {Commerce's} practice.")).
[156] *Id*. (citing *LTV Steel Co. v. United States*).
[157] *Id*. (citing *Pure Magnesium and Alloy Magnesium: Final Results of Countervailing Duty Administrative Reviews*, 68 FR 53962 (September 15, 2003), and accompanying IDM at 5).
[158] *See* Petitioner's Rebuttal Brief at 3-5.
[159] *Id*. at 3 (citing *Turkey Rebar 2016 Review* IDM at Comment 5).

changes or adjustments made to a prior period's benefits in the case of recurring subsidies, unless adjustment qualifies as a permissible offset within the meaning of section 771(6) of the Act.

- Here, Icdas has provided no basis for Commerce to change its practice from the previous two administrative reviews. Notably, Icdas failed to demonstrate how its claimed adjustment is consistent with the limited offsets Commerce is permitted to make under the statute. Thus, Icdas has failed to establish why Commerce should deviate from its prior determinations.

Commerce Position: Consistent with our previous decisions, we continue to find that the benefit Icdas receives under this program is limited to the payment it receives from EPIAS for its participation in the YEKDEM, regardless of any payments it makes to EPIAS.[160] Icdas acknowledges that the reclaimed amount relates to Icdas' 2016 electricity sales, but argues that the reclamation must be credited to future sales.[161] Icdas provided no legal or factual basis for Commerce to depart from the methodology employed in the *Preliminary Results* and to reduce its benefit under the YEKDEM program.

In its brief, Icdas touches on the fact that the Act provides for certain allowable offsets to a subsidy, but fails to show how the reclaimed payment qualifies as an allowable offset.[162] The Act defines the "net countervailable subsidy" as the gross countervailable subsidy amount less three statutorily prescribed offsets: (1) the deduction of application fees, deposits or similar payments necessary to qualify for or receive a subsidy, (2) accounting for value losses due to deferred receipt of the subsidy, and (3) the subtraction of export taxes, duties or other charges levied on the export of merchandise to the U.S. specifically intended to offset the countervailable subsidy.[163] Both Congress and the courts have indicated that Commerce is limited in the offsets it can make under the statute.[164] As noted in *Turkey Rebar 2017 Review*, all fossil fuel power producers are required to support the YEKDEM system through payments made to EPIAS; however, only the YEKDEM participants receive YEKDEM support payments.[165] Thus, while Icdas, like all fossil fuel power producers in Turkey, made obligated payments to support the YEKDEM system, our benefit analysis is correctly limited to the support amounts Icdas received for its participation in the program.[166] The record does not support treating Icdas' payments into the YEKDEM system as allowable offsets within the meaning of section 771(6) of the Act. In particular, the record demonstrates that the only requirement to apply for and benefit from the YEKDEM program is to sell electricity produced from renewable sources.[167]

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[160] *See Turkey Rebar 2016 Review* IDM at Comment 5; *see also Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2017*, 85 FR 42353 (July 14, 2020) (*Turkey Rebar 2017 Review*), and accompanying IDM at Comment 3.
[161] *See* Icdas' Case Brief at 3.
[162] *Id*. at 4.
[163] *See* section 771(6) of the Act.
[164] *See Trade Agreements Act of 1979*, U.S. Senate Report No. 96-249 (1979) at 86 ("{t}he list is narrowly drawn and is all inclusive."); *see also Kajaria Iron Castings Pvt. Ltd. v. United States*, 156 F.3d 1163, 1174 (Fed. Cir. 1998) (*Kajaria Iron Castings*) ("we agree that 19 U.S.C. § 1677(6) provides the exclusive list of permissible offsets.…"); and *Geneva Steel v. United States*, 914 F. Supp. 563 (CIT 1996) (explaining that section 771(6) "provides an exclusive list of offsets that may be deducted from the amount of a gross subsidy …").
[165] *See Turkey Rebar 2017 Review* IDM at 32.
[166] *Id*.
[167] *See* Icdas July 2, 2020 IQR at CVD-25, CVD-26; *see also* GOT July 2, 2020 IQR at 25-26.

In sum, Icdas' payments and repayments to EPIAS are not among the permissible offsets enumerated in our statute. To conclude otherwise would conflict with Commerce's established methodology and practice.[168] Accordingly, we agree with the petitioner that our benefit calculation is consistent with our practice and regulations and are thus not making any adjustments to our subsidy calculation as argued by Icdas.

Comment 8: Whether Commerce Should Revise Its Benchmark Interest Rate Calculations to Include All Short-Term Commercial Loans in Effect During the POR

Icdas' Brief[169]

- Commerce improperly disregarded short-term commercial loans made in the fourth quarter of 2017, and it was improper to only include the loans originating in 2018. In accordance with section 771(5)(E)(ii) of the Act, Commerce should use loans which are comparable to ones that the recipient could actually obtain on the market. Further claiming that the regulations do not specify whether this period refers to loans originating or in effect in the year the government-provided loan was taken out but rather that Commerce should rely on the actual experience of the firm in question.
- Commerce previously used loans outstanding during the POR as a benchmark, as seen in *Corrosion Resistant Carbon Steel Flat Products from Korea*.[170]
- Icdas notes that Commerce stated in the *Preliminary Determination* that "Icdas reported paying interest on rediscount export loans which were outstanding during the POR" and that the benchmark should mirror Icdas' experience in that a benchmark should be based on paying interest on rediscount loans.

Petitioner's Brief[171]

- The petitioner points to 19 CFR 351.505(a)(2)(iv), which states that Commerce: "normally will use an annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out, weighted by the principal amount of each loan."
- Icdas' claim that the regulations do not state whether Commerce should use loans originating in or in effect in the year of the government-provided loan is incorrect. The *Preamble* states that "{w}e also wish to clarify that we intend to follow our practice of calculating short-term benchmarks on a calendar-year basis. In most instances, the period of investigation or review is a calendar year, so the short-term benchmark will be calculated using commercial loans that were obtained (or could have been obtained) during the period of investigation or review. In situations where the loans under investigation span two calendar years, we will calculate two annual benchmarks corresponding to the two years."

[168] *See, e.g.*, *Kajaria Iron Castings*.
[169] *See* Icdas' Case Brief at 6-9/
[170] *Id*. at 5 (citing *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Partial Rescission of Countervailing Duty Administrative Review*, 76 FR 4291 (January 25, 2011), and accompanying IDM at 2).
[171] *See* Petitioner's Rebuttal Brief at 5-6.

- In *Corrosion Resistant Steel from Korea*, Commerce explains that Commerce will base the benchmark on the year that the government loans are taken out for benchmark purposes.

Commerce Position: Icdas correctly notes that 19 CFR 351.505(a)(2)(iv) instructs Commerce to use an annual average of the interest rates on comparable commercial loans during the year in which the government-provided loan was taken out.[172] However, Icdas is incorrect that Commerce has no instruction on whether the period refers to loans "originating", or "in effect" in the year that the government-provided loan was taken out.[173]

The *Preamble* states that "{i}n most instances, the period of investigation or review is a calendar year, so the short-term benchmark will be calculated using commercial loans that were obtained (or could have been obtained) during the period of investigation or review."[174] The POR in this review is calendar year 2018. Further, we have consistently stated our intention to follow the practice described in the *Preamble*.[175]

Icdas has not outlined any reason why Commerce should depart from its practice as set forth in the *Preamble* and consistently followed in its proceedings. Icdas is incorrect to argue that the regulations and Commerce practice are unclear or ambivalent as to whether the loan benchmark must be limited to loans originating in the POR or may include loans in effect in the POR. The *Preamble* is clear on this point. Commerce correctly limited the benchmark to the short-term loans that originated in the POR, calendar year 2018.

[172] *Id*. at 7.
[173] *Id*.
[174] *See Preamble*, 63 FR at 65364.
[175] *See, e.g.*, *Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review*, 77 FR 13093 (March 5, 2012), and accompanying IDM at Comment 1.

IX. RECOMMENDATION:

We recommend approving all of the above positions. If these positions are accepted, we will publish the final results in the *Federal Register*.

☒	☐
Agree	Disagree

9/21/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance