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MEMORANDUM TO: David M. Spooner
Assistant Secretary
for Import Administration

FROM: Stephen J. Claeys
Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum: Final Results of Administrative Review of the Countervailing Duty Order on Certain Welded Carbon Steel Standard Pipe from Turkey

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SUMMARY

We have analyzed the case brief comments submitted by the Borusan Group ("Borusan") in the administrative review of the countervailing duty ("CVD") order on certain welded carbon steel standard pipe from Turkey for the period January 1, 2004 through December 31, 2004.[1] After analyzing the comments, we have made no modifications to the Preliminary Results of Countervailing Duty Administrative Review: Certain Welded Carbon Steel Standard Pipe from Turkey, 71 FR 17445 (April 6, 2006) ("Turkey Pipe 2004 Preliminary"). The "Subsidies Valuation Information" and "Analysis of Programs" sections below describe the methodology followed in this review with respect to Borusan, the producer/exporter of subject merchandise covered by this review. Also below is the "Analysis of Comments" section, which contains the Department of Commerce's ("Department's") response to the issues raised in Borusan's case brief. We recommend that you approve the positions, which we have developed in this memorandum.

We received comments on the following issues:

Comment 1: Benchmark Interest Rate for Turkish Lira Loans
Comment 2: Indirect Exports

[1] Neither petitioners (Allied Tube & Conduit Corporation and Wheatland Tube Company) nor the Government of the Republic of Turkey ("GOT") submitted either a case or rebuttal brief.

METHODOLOGY AND BACKGROUND INFORMATION

I. COMPANY INFORMATION

During the period of review ("the POR"), Borusan was comprised of Borusan Birlesik Boru Fabrikalari A.S. ("BBBF"), Mannesmann Boru Endustrisi T.A.S. ("MB"), Borusan Mannesmann Boru Sanayi ve Ticaret A.S. ("BMB"), and Borusan Istikbal Ticaret T.A.S. ("Istikbal"). During the POR, BBBF produced the subject merchandise, which was first sold to Istikbal, an export sales company, and then resold to an unaffiliated customer in the United States. MB ceased production of the subject merchandise in November 2003, and a year later, was merged into BBBF on November 30, 2004. BBBF was subsequently renamed Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (i.e., BMB) on December 13, 2004, and continued to produce the subject merchandise and export the merchandise through Istikbal.

Prior to the November 2004 merger, BBBF and MB were affiliated through their parent company, Borusan Mannesmann Boru Yatirim Holding A.S. ("BMBYH"). BMBYH, a holding company, is majority-owned by Borusan Holding A.S.[2] Post merger and company name change, BMB continued to be owned by BMBYH. During the POR, Istikbal was majority-owned by Borusan Holding A.S.

II. SUBSIDIES VALUATION INFORMATION

A. Calculation of Ad Valorem Rate

Consistent with our approach in the Turkey Pipe 2004 Preliminary, we treated BBBF, MB, BMB, and Istikbal as a single company, Borusan. For the export subsidy benefits enjoyed by Istikbal, the affiliated export trading company, we attributed those benefits in accordance with 19 CFR 351.525(c). We, therefore, have calculated a single countervailing duty ad valorem rate for Borusan by dividing the combined subsidy benefits by the companies' consolidated total sales, or consolidated total export sales, as appropriate. Our review of the record and our findings at verification have not led us to reconsider this approach. Further, this approach is consistent with the Department's practice. See e.g., Final Affirmative Countervailing Duty Determination of Bottle-Grade Polyethylene Terephthalate ("PET") Resin from India, 70 FR 13460 (March 21, 2005), and accompanying Issues and Decision Memorandum, at 4.

B. Benchmark Interest Rates

To determine whether government-provided loans under review conferred a benefit, the Department uses, where possible, company-specific interest rates for comparable commercial loans. See Section 771(5)(E)(ii) of the Tariff Act of 1930, as amended ("the Act"); and 19 CFR 351.505(a). Borusan provided the interest rates it paid on short-term Turkish Lira ("TL")-denominated and foreign currency ("FX")-denominated commercial loans. We find that the

[2] Mannesmannrohren-Werke A.G., a publicly traded company in Germany, also has ownership in BMBYH.

company-specific FX-denominated short-term loans are comparable to the export credit FX-denominated loans against which Borusan paid interest during the POR. Therefore, we used Borusan's weighted-average interest rate for loans denominated in foreign currency as our benchmark to determine the benefit from government-provided FX-denominated export credits. However, Borusan's short-term TL-denominated commercial loans outstanding during the POR were revolving, open account loans and not comparable to the maturity of the export financing loans that Borusan received from the Export Credit Bank of Turkey ("Export Bank").

Where no company-specific benchmark interest rates are available, the Department's regulations direct us to use a national average interest rate as the benchmark. See 19 CFR 351.505(a)(3)(ii). According to the GOT, however, there is no official national average short-term interest rate available. See Memorandum to the File concerning the Verification of the Questionnaire Responses Submitted by the Government of the Republic of Turkey, at 3 (March 31, 2006) ("GOT Verification Report").[3] Therefore, we calculated a benchmark interest rate for short-term TL-denominated loans based on short-term interest rate data for 2004, as reported by The Economist. Specifically, we sourced a short-term interest rate for each quarter of 2004 from issues of The Economist.[4] We then simple averaged those quarterly rates to calculate an annual short-term interest rate for Turkey. See Memorandum to the File concerning the Calculations for the Preliminary Results of Review of the Countervailing Duty Order on Certain Welded Carbon Steel Standard Pipe from Turkey (March 31, 2006). This methodology is consistent with the Department's practice. See e.g., Certain Welded Carbon Steel Pipes and Tubes From Turkey: Preliminary Results of Countervailing Duty Administrative Review, 65 FR 18070 at 18072 (April 6, 2000), which was unchanged in Certain Welded Carbon Steel Pipes and Tubes from Turkey; Final Results of Countervailing Duty Administrative Review, 65 FR 49230 (August 11, 2000) ("1998 Pipe Final"); and Certain Pasta from Turkey: Final Results of Countervailing Duty Administrative Review, 66 FR 64398 (December 13, 2001) ("1999 Pasta from Turkey"), and accompanying Issues and Decision Memorandum, at 2 ("1999 Pasta Memorandum"); and Carbon and Certain Alloy Steel Wire Rod from Turkey; Final Negative Countervailing Duty Determination, 67 FR 55815 (August 30, 2002) ("Wire Rod"), and accompanying Issues and Decision Memorandum, at 3-4 ("Wire Rod Memorandum"). In these earlier proceedings, the Department treated the short-term interest rate data for Turkey reported by The Economist as nominal interest rate data.

It is the Department's practice to normally compare effective interest rates rather than nominal rates in making the loan comparison. See 19 CFR 351.505(a)(1); and Countervailing Duties; Final Rule, 63 FR 65348, 65362 (November 25, 1998) ("Preamble"). However, where effective rates are not available, in this case for short-term TL-denominated loans, the Preamble explains that the Department's practice is to compare nominal rates or, as a last resort, nominal to effective rates. For Pre-Export Credit loans and Foreign Trade Companies Short-Term Export Credit loans (in Turkish Lira), we continue to do the loan comparison on a nominal basis for

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[3] A public version of the verification report is available in the public file in the Department's Central Records Unit ("CRU") (room B-099).

[4] In each issue, The Economist reports short-term interest data on a percentage per annum basis for select countries.

these final results.

With regard to Pre-Shipment Export Credits, denominated in Turkish Lira, commercial banks, through which the loans are extended, can add 2.0 percent to the interest rate for TL-denominated loans as their commission. See GOT Verification Report, at 4. In the preliminary results, we compared The Economist benchmark Turkish Lira interest rate, inclusive of a 2.0 percent commission, to the interest rate that Borusan was charged on the Pre-Shipment Export Credit TL-denominated loans to make the comparison on an effective interest rate basis.[5]

We received a comment on our use of The Economist interest rate data to construct the benchmark to determine the benefit from the Pre-Shipment Export Credit TL-denominated loans. See Comment 1, infra. After considering the argument made by Borusan, we have not made any modifications to the benchmark interest rate used to calculate the benefit from the Pre-Shipment Export Credit TL-denominated loans. See Comment 1 for a more detailed discussion.

ANALYSIS OF PROGRAMS

I. Programs Determined To Be Countervailable

A. Deduction from Taxable Income for Export Revenue

Addendum 4108 of Article 40 of the Income Tax Law allows companies that operate internationally to claim, directly on their corporate income tax returns, a tax deduction equal to 0.5 percent of the foreign exchange revenue earned from exports and other international activities.[6] The income tax deduction for export earnings may either be taken as a lump sum or be used to cover certain undocumented expenses, which were incurred through international activities, and would otherwise be non-deductible for tax purposes (e.g., expenses paid in cash, such as for lodging, gasoline, and food).

Consistent with Wire Rod, we find that this tax deduction is a countervailable subsidy. See Wire Rod Memorandum, at 4; see also, Certain Welded Carbon Steel Pipe and Tube and Welded Carbon Steel Line Pipe from Turkey; Final Results and Partial Rescission of Countervailing Duty Administrative Reviews, 63 FR 18885, 18886-87 (April 16, 1998) ("1996 Pipe Final"). The deduction provides a financial contribution within the meaning of section 771(5)(D)(ii) of the Act because it represents revenue forgone by the GOT. The deduction provides a benefit in the amount of the tax savings to the company pursuant to section 771(5)(E) of the Act. It is specific under section 771(5A)(B) of the Act because its receipt is contingent upon export performance. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of the Department's prior findings.

During the POR, BBBF, MB, and Istikbal filed separate corporate income tax returns for

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[5] Borusan also received TL-denominated export credit loans under the Foreign Trade Companies Short-Term Export Credit program and the Pre-Export Credit program (see infra). However, those loans are extended directly by Turkey's Export Bank and, therefore, are not subject to a commission charge by an intermediary bank.

[6] These actions include construction, repair, installation, and transportation activities that occur abroad.

tax year 2003. However, only Istikbal utilized the deduction for export earnings on its 2003 tax return. BBBF and MB did not have direct exports of merchandise during 2003, and, therefore, could not claim the deduction for export earnings on their respective 2003 tax returns.

The Department typically treats a tax deduction as a recurring benefit in accordance with 19 CFR 351.524(c)(1). To calculate the countervailable subsidy rate for this program, we computed the tax savings realized by Istikbal in 2004, as a result of the deduction for export earnings. We then divided that benefit amount by Borusan's total export sales for 2004. On this basis, we determine that the net countervailable subsidy for this program is 0.09 percent ad valorem.

B. Pre-Shipment Export Credits

Turkey's Export Bank provides short-term pre-shipment export loans to exporters through intermediary commercial banks.[7] This loan program is designed to support export-related firms. Loans are made to exporters who commit to export within a specified period of time. Generally, loans are extended for a period of up to 180 days, and cover up to 100 percent of the FOB export value. These loans are denominated in either Turkish Lira or foreign currency. The interest rates charged on these pre-shipment loans are set by the Export Bank. In several previous determinations, the Department found this program to be countervailable because receipt of the loans is contingent upon export performance and the interest rates paid on these loans are less than the amount the recipient would pay on comparable commercial loans. See 1998 Pipe Final, 65 FR at 49231; and 1999 Pasta Memorandum, at 3-4.

We also found that the pre-shipment loan program is an untied export loan program because the loans are not specifically tied to a particular destination at the time of approval and the borrower only has to show that the export commitment was satisfied (i.e., exports amounting to the FOB value of the credit) during the credit period to close out the loan with the bank. See e.g., Wire Rod Memorandum, at 5. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of the Department's prior findings. See GOT Verification Report, at 3.

During the POR, BBBF paid interest against pre-shipment export loans denominated in both Turkish Lira and foreign currency. MB paid interest against pre-shipment TL-denominated loans.

Pursuant to section 771(5)(E)(ii) of the Act, a benefit shall be treated as conferred "in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." To calculate the amount of interest the recipient would pay on a comparable TL-denominated commercial loan, in absence of a company-specific interest rate on comparable TL-denominated commercial loans, we have used, as the benchmark rate, a simple average of the 2004 quarterly short-term interest rates for Turkey as reported by The Economist. See "Benchmark Interest Rates" section, supra, for more information. To calculate

[7] As discussed in the "Benchmark Interest Rates" section, supra, the intermediary bank can add a commission fee rate to the loan program's interest rate, which is set by the Export Bank.

the amount of interest the recipient would pay on a comparable FX-denominated commercial loan, we have used a company-specific interest rate as the benchmark rate. See Id.

Using these benchmark rates, we continue to find the pre-shipment export loans countervailable because the interest rate charged is less than the rate for comparable commercial loans that the company could actually obtain on the market. Therefore, the loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between the payments of interest that BBBF and MB made on their loans during the POR and the payments each company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because, as noted above, receipt of the loans is contingent upon export performance.

To determine the benefit, we calculated the countervailable subsidy as the difference between the actual interest paid on the pre-shipment loans during the POR and the interest that would have been paid using the benchmark interest rates. We then added the benefits and divided the sum by Borusan's total export sales for 2004. On this basis, we determine that the net countervailable subsidy for this program is 0.07 percent ad valorem.

C. Foreign Trade Companies Short-Term Export Credits[8]

The Foreign Trade Company ("FTC") loan program was implemented to assist large export trading companies with their export financing needs. This program is specifically designed to benefit Foreign Trade Corporate Companies ("FTCC") and Sectoral Foreign Trade Companies ("SFTC").[9] An FTCC is a company whose export performance was at least U.S. $75 million in the previous year. For eligible companies, the Export Bank will provide short-term export credits based on their past export performance. Under this credit program, the Export Bank extends short-term export credits directly to exporters in Turkish Lira and foreign currency, of up to 100 percent of their FOB export commitment. The program's interest rates are set by the Export Bank and the maturity of the loans is usually 180 days. To qualify for a FTC loan, in addition to submitting the necessary application documents, a company must provide a bank letter of guarantee, equivalent to the loan's principal and interest amount.

Istikbal acquired FTCC status in April 2003, and was the only Borusan company to receive FTC credits. During the POR, Istikbal paid interest against FTC loans denominated in both Turkish Lira and foreign currency.

Consistent with previous determinations, we find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. See e.g., Wire Rod Memorandum, at 6-7. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between the payments of interest that Istikbal made on the

[8] This program was previously known as "Export Credit Through the Foreign Trade Corporate Companies Rediscount Credit Facility" or "Foreign Trade Corporate Companies Credit Facility."

[9] A grouping of small- and medium-sized companies that operate together in a similar sector.

loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

Further, like the pre-shipment loans, the FTC loans are not tied to a particular export destination. See GOT Verification Report, at 3. Therefore, we have treated this program as an untied export loan program, which renders it countervailable regardless of whether the loans were used for exports to the United States. See Wire Rod Memorandum, at 6-7.

Pursuant to 19 CFR 351.505(a)(1), we have calculated the benefit as the difference between the payments of interest that Istikbal made on its FTC loans during the POR and the payments the company would have made on comparable commercial loans.[10] In accordance with section 771(6)(A) of the Act, we subtracted from the benefit amount the fees that Istikbal paid to commercial banks for the required letters of guarantee. We then divided the resulting benefit amount by Borusan's total export sales for 2004. On this basis, we find that the net countervailable subsidy for this program is 0.09 percent ad valorem.

D. Pre-Export Credits[11]

This program is similar to the FTC credit program described above. However, companies classified as either FTC or SFTC are not eligible for pre-export loans. Under the pre-export credit program, a company's past export performance is considered in evaluating its eligibility and establishing a credit limit. Like FTC loans, the Export Bank directly extends to companies pre-export loans, which are denominated in either Turkish Lira or foreign currency and have a maturity of 180 days.[12] To qualify for a pre-export loan, in addition to submitting the necessary application documents, a company must provide a bank letter of guarantee, equivalent to the loan's principal and interest amount. During the POR, BBBF paid interest against pre-export loans that were denominated in both Turkish Lira and foreign currency.

Consistent with previous determinations, we find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. See e.g., Wire Rod Memorandum, at 7-8. The loans constitute a financial contribution in the form of a direct transfer of funds from the GOT, under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act in the amount of the difference between the payments of interest that BBBF made on its loans during the POR and the payments the company would have made on comparable commercial loans. The program is also specific in accordance with section 771(5A)(B) of the Act because receipt of the loans is contingent upon export performance.

Further, these loans are not tied to a particular export destination. See GOT Verification Report, at 3. Therefore, we have treated this program as an untied export loan program, which renders it countervailable regardless of whether the loans were used for exports to the United

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10 See "Benchmark Interest Rates," supra, (discussing the benchmark rates used in these final results).

11 This loan program was formerly known as "Past Performance Related Export Credits."

12 The Export Bank also sets the interest rates for this export loan program.

States.

Pursuant to 19 CFR 351.505(a)(1), we have calculated the benefit as the difference between the payments of interest that BBBF made on its pre-export loans during the POR and the payments the company would have made on comparable commercial loans.[13] In accordance with section 771(6)(A) of the Act, we subtracted from the benefit amount the fees that BBBF paid to commercial banks for the required letters of guarantee. We then divided the resulting benefit amount by Borusan's total export sales for 2004. On this basis, we find that the net countervailable subsidy for this program is 0.02 percent ad valorem.

II. Programs Determined To Be Not Countervailable

A. Investment Allowance Under Article 19 of Law 4842

In Wire Rod, the Department investigated investment allowances provided for under Investment Incentive Certificates, which were granted under the General Incentives Encouragement Program ("GIEP"), and found certain investment allowances to be countervailable and others to be non-countervailable.[14]

During the POR of the instant review, investment allowances were no longer provided for under the GIEP via an Investment Incentive Certificate. With Article 19 of Law 4842, published on April 24, 2003, the obligation to have an Investment Incentive Certificate to benefit from an investment allowance was abolished and the ability to claim an investment allowance on a corporate income tax return was made available to all taxpayers at a uniform rate.[15] Specifically, by the provisions of Article 19, taxpayers without regard to region or sector, and without any requirement of an Investment Incentive Certificate, are eligible to claim an investment allowance at the rate of 40 percent. There is no special application or approval process to claim and receive the investment allowance. The amount of the investment allowance is indicated on a company's tax return. The amount of the deduction is 40 percent of the costs of depreciable economic assets that are purchased or produced for use in the company's operations. See GOT Verification Report, at 8.

BBBF and MB both took an Article 19 investment allowance deduction on their respective 2003 tax returns that were filed during the POR. We analyzed whether this

[13] See "Benchmark Interest Rates," supra (discussing the benchmark rates used in these final results).

[14] Specifically, in Wire Rod, we determined that because the criteria governing the minimum investment allowance (i.e., 40 percent) were identical to those of the GIEP itself, our analysis of the minimum investment allowance was the same as for the GIEP, which we found to be non-countervailable. Therefore, because we found that the GIEP is not countervailable, we also found that the minimum investment allowance is not countervailable. See Wire Rod Memorandum, at 14-16. Investment allowances greater than 40 percent were found to be countervailable. See Id., at 8-11.

[15] Expenses for investments covered by an Investment Incentive Certificate continued to be subject to the previous investment allowance rules, if the application for the certificate was made before the effective date of Law 4842.

investment allowance is de jure specific, within the meaning of section 771(5A)(D) of the Act. As discussed above, Article 19 of Law 4842 does not limit access to the investment allowance deduction to an enterprise, industry, group of industries, or region. Eligibility for the investment allowance is automatic; a company calculates the 40 percent deduction of its depreciable economic assets and reports that amount on its income tax return. A company's annual income tax return is subject to a statutory tax audit. The conditions under which a company can enjoy the investment allowance are delineated in the law and use of the investment allowance is clearly indicated in the income tax return and accompanying tax audit report.

At verification, we confirmed BBBF's and MB's usage of the investment allowance provided for under Article 19 through an examination of each company's 2003 annual income tax return and accompanying 2003 tax audit report. See Memorandum to the File concerning the Verification of the Questionnaire Responses Submitted by the Borusan Group, at 11-12 (March 31, 2006 ("Borusan Verification Report").[16]

Based on our analysis of Article 19 of Law 4842 and the process by which companies realize the investment allowance, we determine that the investment allowance under Article 19 of Law 4842 is not specific under section 771(5A)(D) of the Act and, therefore, is not countervailable.

B. Investment Allowance Under Investment Incentive Certificate

In Wire Rod, the Department determined that the threshold requirement for eligibility of any GIEP benefit is the receipt of an Investment Incentive Certificate, which specifies the benefit programs (e.g., investment allowance and customs duty exemption) a certificate holder can receive. The Department further determined that particular investment allowances extended under the GIEP are countervailable and others are non-countervailable. See Wire Rod Memorandum, at 8-11 and 14-16. During the POR, MB had an Investment Incentive Certificate, received prior to the effective date of Article 19 of Law 4842 that provided for a 40 percent investment allowance, which the company claimed on its 2003 income tax return filed during the POR. MB was eligible for a 40 percent investment allowance because of its location in a developed region.[17]

In Wire Rod, we determined that because the criteria governing the minimum investment allowance (i.e., 40 percent for a developed region) were identical to those of the GIEP itself, our analysis of the minimum investment allowance was the same as for the GIEP, which we found to be non-countervailable. Therefore, because we found that the GIEP was not countervailable, we also found the minimum investment allowance to be not countervailable. See Id., at 14-16. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of the Department's prior findings.

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[16] A public version of the verification report is available on the public file in the CRU.

[17] Companies located in a normal region received a 60 percent allowance and those in a priority region received a 100 percent allowance. The different regions were determined by the GOT.

III. Programs Determined To Not Confer Countervailable Benefits

A. Export Credit Insurance

Through this program, exporters can obtain export credit insurance from Turkey's Export Bank. These are one-year blanket insurance policies that cover up to 90 percent of losses incurred due to political risk (e.g., loss resulting from a war) and commercial risk (e.g., insolvency of the buyer). The insurance provided under this program is post-shipment insurance because the Export Bank becomes liable only if the loss occurs on or after the date of shipment. Beginning in February 1997, use of the export credit insurance program became voluntary for borrowers under the pre-shipment export financing programs.

During the POR, Istikbal had an export credit insurance policy. We verified that the company did not submit an insurance claim or receive a reimbursement under the program in 2004. We also verified with the Export Bank that for 2002, 2003, and 2004, the premiums paid for the export credit insurance and other income generated by the program exceeded the insurance claims paid to participating companies and operating costs of the program. See GOT Verification Report, at 5. On this basis, consistent with Wire Rod and 1999 Pasta Final, and in accordance with 19 CFR 351.520(a)(1), we find that the export credit insurance program did not confer countervailable benefits during the POR. See Wire Rod Memorandum, at 18; and 1999 Pasta Memorandum, at 7.

B. Inward Processing Certificate Exemption

Under the Inward Processing Certificate Exemption program,[18] companies are exempt from paying customs duties and value added taxes ("VAT") on raw material imports to be used in the production of exported goods. Companies may choose whether to be exempted from the applicable duties and taxes or have them refunded upon export. Under the exemption system, companies provide a letter of guarantee that is returned to the companies upon fulfillment of the committed export.

To participate in this program, a company must hold an Inward Processing Certificate ("IPC"), which lists the amount of raw materials to be imported and the amount of product to be exported. The input/output usage rates listed on the IPC are set by the GOT working in conjunction with Turkey's Exporter Associations, which are quasi-governmental organizations whose leadership are subject to GOT approval. The input/output usage rates vary by product and industry and are determined using data from capacity reports submitted by companies that apply for IPCs. The input/output usage rates are subject to periodic review and verification by the GOT. In the case of the pipe and tube industry, the input/output usage rates were last modified in June 2001. See Borusan Verification Report, at 12-13. The GOT uses the input/output usage rates to ensure that a company's expected export quantities are sufficient to cover the quantity of inputs imported duty-free under the program. An IPC specifies the maximum quantity of inputs

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[18] This program is governed by the following GOT provisions: Customs Code No. 4458 (Articles 80, 108, 111, 115, and 121), IPC Council of Ministers' Decree No. 2005/8391, and Communique of IPR No. Export 2005/1.

that can be imported under the program. Further, under the IPC program, the value of imported inputs may not exceed the value of the exported products.

Pursuant to 19 CFR 351.519(a)(1)(ii), a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowances for waste, or if the exemption covers charges other than imported charges that are imposed on the input. With regard to the VAT exemption granted under this program, pursuant to 19 CFR 351.517(a), in the case of the exemption upon export of indirect taxes, a benefit exists to the extent that the Department determines that the amount exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

During the POR, Borusan used IPCs to receive duty and VAT exemptions on certain imported inputs used in the production of steel pipes and tubes. Borusan did not receive any duty or VAT refunds under the program during the POR. There is no evidence that Borusan used the imported inputs for any other products besides those exported or that the amount of exempted inputs imported under the program was excessive.

At verification, we learned that the GOT sets the waste/usage rate for each imported raw material.[19] The usage ratios are developed on an industry and product basis. These rates are used to determine the amount of each raw material input required to produce a given unit of exported product. In setting the rates, the GOT relies on company capacity reports and conducts on-site inspections of production facilities. The GOT periodically reviews the waste/usage rates. A company may request that a raw material ratio be modified if there have been improvements in productivity and efficiency of the company's facilities. At verification, we confirmed, through examination of the company's production records, that the waste rate established by the GOT, in June 2001, reflects Borusan's actual production experience. See Borusan Verification Report, at 12-14, and GOT Verification Report, at 10-11. Therefore, based on our examination, we find that, in accordance with 19 CFR 351.519(a)(4)(i), the GOT has a system in place to confirm which inputs are consumed in the production of the exported product and in what amounts, and that the system is reasonable for the purposes intended.

On this basis, we determine that the IPC program did not confer countervailable benefits as Borusan consumed the imported inputs in the production of the exported product, making normal allowance for waste. We further find that the VAT exemption did not confer countervailable benefits on Borusan because the exemption does not exceed the amount levied with respect to the production and distribution of like products when sold for domestic consumption.

Also, during our verification meeting with the GOT, we learned of a previously unreported form of IPC, i.e., a D3 license, in which the GOT provides exemptions and refunds

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[19] Specifically, the Undersecretariat for Foreign Trade ("UFT") works in conjunction with various exporter associations (quasi-governmental organizations comprised of industry officials) and the Chamber of Industries (independent non-governmental organization) to set the waste/loss ratios. For example, the Chamber of Industries issues the company-specific capacity reports, which a company must submit to the UFT for consideration of a certificate. To obtain a capacity report, a company first establishes a production plan and then requests an inspection of its production facilities to confirm production capability, efficiency, annual consumption, and production capacity. Each capacity report has an expiration date and an updated capacity report is generated every three or four years.

on quantities of imported inputs that are incorporated into products sold on the domestic market. Using records available at the GOT's UFT, we identified Borusan's D3 licenses that were in effect during the POR. See GOT Verification Report, at 12. During Borusan's verification, we examined each of the licenses. We confirmed that Borusan did not use the licenses to import any raw materials during the POR. See Borusan Verification Report, at 13-14.

As the issuance of a D3 license is not based on exportation, we find that this aspect of the IPC program is not an export program but rather falls under 19 CFR 351.510. Pursuant to 19 CFR 351.510(a)(1), in the case of a program, other than an export program, that provides for the full or partial exemption or remission of an indirect tax or an import charge, a benefit exists to the extent that the taxes or import charges paid by a firm are less than the taxes the firm would have paid in the absence of the program. Further, under 19 CFR 351.510(b)(1), the Department normally will consider the benefit as having been received at the time the recipient firm otherwise would be required to pay the indirect tax or import charge. Because Borusan did not import any goods under a D3 license during the POR, we determine that this aspect of the IPC program was not used. We will, however, continue to examine the use of D3 licenses under the IPC program in future proceedings of CVD orders involving Turkey.

IV. Programs Determined To Not Be Used

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

A. VAT Support Program (Incentive Premium on Domestically Obtained Goods)[20]
B. Post-Shipment Export Loans
C. Pre-Shipment Rediscount Loans
D. Subsidized Turkish Lira Credit Facilities
E. Subsidized Credit for Proportion of Fixed Expenditures
F. Regional Subsidies.

TOTAL AD VALOREM RATE

For the period January 1, 2004, through December 31, 2004, the total net subsidy rate for Borusan is 0.27 percent ad valorem, which is de minimis, pursuant to 19 CFR 351.106(c).

ANALYSIS OF COMMENTS

Comment 1: Benchmark Interest Rate for Turkish Lira Loans

Borusan disagrees with the Department's preliminary decision to add a 2.0 percent commission to the interest rate reported in The Economist, which is used as the benchmark

[20] Although we found this program to be terminated in Wire Rod, on December 31, 1996, residual payments for purchases made prior to the program's termination were permitted. See Wire Rod Memorandum, at 11.

interest rate to determine the benefit from the pre-shipment export credit loans denominated in Turkish Lira. Borusan discusses that commercial banks, which extend the pre-shipment loans, borrow from the Export Bank at a fixed, published interest rate and then lend those funds to exporters at the same rate plus a commission of up to 2.0 percent per annum. Borusan states that these pre-shipment loans are re-pass loans. Because the commercial bank is limited in its mark-up of the interest rate, Borusan contends that there is no evidence that the charging of a 2.0 percent commission is normal banking practice in setting commercial interest rates.

Borusan further submits that there is no evidence on the record of this review or Wire Rod to support the Department's conclusion that the interest rate data for Turkey published by The Economist are nominal, rather than effective. Therefore, in the absence of record evidence that either commercial banks in Turkey normally charge a 2.0 percent commission or that the interest rates reported in The Economist are not effective interest rates, Borusan argues that the Department should use, as the benchmark, the rate published in The Economist without an adjustment.

Department's Position

It has been the Department's longstanding practice to source short-term interest rate data for Turkey from The Economist to construct a benchmark interest rate for TL-denominated loans. See "Benchmark Interest Rates" section, at 2-4, supra. In prior proceedings, the Department has consistently treated the interest rates as nominal rates. Although Borusan asserts that such rates must be effective rather than nominal, Borusan did not offer any evidence to persuade the Department to alter its approach to treat the interest rates as nominal rates. Absent such information, we find no basis to depart from our longstanding treatment of the rates as nominal rates, for these final results.

Comment 2: Indirect Exports

Borusan disagrees with the Department's preliminary decision to exclude from the denominator the sales that the company made to unaffiliated domestic Turkish trading companies. Borusan explains that these sales were classified as export sales in the company's ledger because it knew, at the time of sale, that the merchandise would be exported by the purchaser. Specifically, the purchaser notifies Borusan of its intent to export the merchandise so the sale can be made on a VAT-exempt basis. Borusan adds that, because the sales are VAT-exempt, both the company and the GOT classify the sales as export sales.

Borusan also states that these indirect export sales qualify Borusan for certain benefits, specifically the income tax deduction for export earnings. Borusan explains that the benefit it received under the income tax deduction for export earnings program was earned on all sales that were classified as export sales. Borusan submits that if the Department divides the benefit for that program by a denominator that does not include the indirect export sales that generate the benefit, it will skew the benefit calculation. Borusan further argues that in prior cases the Department has included indirect export sales in total export sales and should do so in this case. See Borusan Case Brief, at 4 (citing Final Negative Countervailing Duty Determination: Welded

Carbon Steel Line Pipe from Taiwan, 50 FR 53363 (December 31, 1985), and accompanying Issues and Decision Memorandum, at Comment 7; and Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination: Carbazole Violet Pigment-23 from India, 68 FR 22763, 22776 (April 27, 2004)).

Department's Position

The Department's subsidy calculation methodology requires the use of a compatible numerator and denominator. We disagree with Borusan that a portion of the benefit received under the "Deduction from Taxable Income for Export Revenue" program was generated by "indirect export sales." Record evidence demonstrates that only direct exports are eligible for benefits under this program. Specifically, Article 40 of the Income Tax Law,[21] which provides for the deduction from taxable income for export revenue, does not reference indirect export sales as an activity eligible for the deduction. In fact, Article 40 makes it clear that the amount of the deduction is limited to 0.5 percent of *foreign exchange revenue* obtained from *activities abroad* (e.g., exports, construction, and transportation) (emphasis added). In addition, at verification, Borusan officials explained that only exporters can claim the income tax deduction, and not manufacturers. See Borusan Verification Report, at 6.

Moreover, information submitted on the record by Borusan supports the fact that indirect exports were not eligible for benefits under this program. As discussed in the "Deduction from Taxable Income for Export Revenue,"[22] BBBF, MB, and Istikbal filed separate 2003 corporate income tax returns during the POR. These tax returns, as verified, confirm that Istikbal was the only company eligible to claim the deduction for export earnings, and that neither BBBF nor MB claimed a deduction from taxable income for export revenue in their respective 2003 income tax returns, which were filed in 2004. See Borusan Verification Report, at 7; and Borusan's Supplemental Questionnaire Response, at Exhibit 4 (November 25, 2005). Further, information on the record demonstrates that, contrary to Borusan's argument, neither the company nor the GOT recognizes sales to Turkish trading companies as export sales eligible for the income tax deduction. Additional facts on which the Department's reasoning is based are proprietary and cannot be further discussed in this document. See Memorandum to the File regarding Proprietary Comment on Indirect Exports, at 2-3 (July 25, 2006).

We further find that the prior cases cited by Borusan are inapposite because these indirect export sales are not eligible to receive benefits under the program.

Because no portion of the POR benefit for the program "Deduction from Taxable Income for Export Revenue," was generated by "indirect export sales," we conclude that the inclusion of such sales in the denominator is inappropriate and inconsistent with the methodology used to calculate the numerator. Therefore, for these final results, we continue to exclude from the

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[21] Income Tax Law No. 193 (January 6, 1961), amended by Law No. 4108 (June 2, 1995). See GOT's Questionnaire Response, at Exhibit 33 for a copy of the law and pages 53-56 for a discussion of the tax income program (August 22, 2005). See also GOT Verification Report, at 9 (March 31, 2006).

[22] See "Programs Determined To Be Countervailable" under "Analysis of Programs," at 4-5, supra.

denominator the indirect export sales made in 2004.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If these recommendations are accepted, we will publish the final results of the review in the Federal Register.

________ Agree   ________ Disagree

____
David M. Spooner
Assistant Secretary
for Import Administration

____
Date