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Investigation
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MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh 
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Certain Hot-Rolled Steel
Flat Products from the Republic of Turkey

I. SUMMARY

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of hot-rolled steel flat products (hot-rolled steel) from the Republic of Turkey (Turkey), within the meaning of section 705 of the Tariff Act of 1930, as amended (the Act).¹ Below is the complete list of issues in this investigation for which we received comments from interested parties.

Issues:

- Comment 1: Whether Changes in the Ownership (CIO) of Erdemir's Affiliates Resulted in Countervailable Subsidies to Erdemir
- Comment 2: Whether the Government of Turkey's (GOT's) Sale of Erdemir to OYAK Resulted in a Privatization that Extinguished the Benefits of Prior Subsidies to Erdemir
- Comment 3: Export Sales Denominator for COTAS and Colakoglu Metalurji
- Comment 4: COTAS's Rediscount Program Benchmark
- Comment 5: Whether the Department Should Correct Certain Errors in Erdemir's Preliminary Calculations

¹ See also section 701(f) of the Act.



II. BACKGROUND

A. Case History

The cooperating mandatory company respondents in this proceeding are Colakoglu Dis Ticaret A.S. (COTAS) and Eregli Demir ve Celik Fabrikalari T.A.S. (Erdemir). COTAS and Erdemir provided countervailing duty (CVD) questionnaire responses on behalf of themselves and their cross-owned affiliates, *i.e.*, COTAS's affiliate, Colakoglu Metalurji, A.S. (Colakoglu), a producer of subject merchandise, and Erdemir's affiliates (Iskenderun Demir ve Celik A.S. (Isdemir), an integrated producer of subject merchandise; Erdemir Celik Servis Merkezi San. ve Tic. A.S. (Ersem), also a producer of subject merchandise; and Erdemir Madencilik San. ve Tic. A.S. (Ermaden), a provider of inputs to Erdemir and to Isdemir for the production of subject merchandise). On January 15, 2016, the Department published the *Preliminary Determination* in this proceeding.²

Between March 14 and March 25, 2016, we conducted verification of the questionnaire responses submitted by the GOT, COTAS, and Erdemir.³ Interested parties submitted case and rebuttal briefs between May 27 and June 3, 2016.⁴ We conducted a public hearing in this case on June 22, 2016.

B. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2014, through December 31, 2014.

III. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain hot-rolled, flat-rolled steel products, with or without patterns in relief, and whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances. The products covered do not include those that are clad, plated, or coated with metal. The products covered include coils that have a width or other lateral measurement ("width") of 12.7 mm or greater, regardless of thickness, and regardless of

² See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 81 FR 2166 (January 15, 2016) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

³ See Memoranda, "Verification of the Questionnaire Responses Submitted by the Government of the Republic of Turkey," May 10, 2016 (GOT Verification Report), "Verification of the Questionnaire Responses Submitted by Colakoglu Dis Ticaret A.S.," May 10 2016 (COTAS Verification Report), and "Verification of the Questionnaire Responses Submitted by Eregli Demir ve Celik Fabrikalari T.A.S.," May 10, 2016 (Erdemir Verification Report).

⁴ See Letter from Petitioners, "Hot-Rolled Steel Flat Products From Turkey; Petitioner's Case Brief," May 27, 2016 (Petitioners' Case Brief); Letter from Erdemir, "Hot-Rolled Steel Flat Products from Turkey; Erdemir case brief," May 27, 2016 (Erdemir's Case Brief); Letter from COTAS, "Certain Hot-Rolled Steel Flat Products from Turkey: Colakoglu Metalurji A.S.'s Case Brief," May 27, 2016 (COTAS's Case Brief); Letter from Erdemir, "Rebuttal Brief of Eregli Demir Ve Celik Fabrikalari T.A.S.," June 1, 2016 (Erdemir's Rebuttal Brief); and Letter from Petitioners, "Hot-Rolled Steel Flat Products From Turkey; Petitioner's Rebuttal Brief," June 3, 2016 (Petitioners' Rebuttal Brief).

form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process, *i.e.*, products which have been “worked after rolling” (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above unless the resulting measurement makes the product covered by the existing antidumping⁵ or countervailing duty⁶ orders on Certain Cut-To-Length Carbon-Quality Steel Plate Products From the Republic of Korea (A-580-836; C-580-837), and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

⁵ See *Notice of Amendment of Final Determinations of Sales at Less Than Fair Value and Antidumping Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate Products From France, India, Indonesia, Italy, Japan and the Republic of Korea*, 65 FR 6585 (February 10, 2000).

⁶ See *Notice of Amended Final Determinations: Certain Cut-to-Length Carbon-Quality Steel Plate From India and the Republic of Korea; and Notice of Countervailing Duty Orders: Certain Cut-To-Length Carbon-Quality Steel Plate From France, India, Indonesia, Italy, and the Republic of Korea*, 65 FR 6587 (February 10, 2000).

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, the substrate for motor lamination steels, Advanced High Strength Steels (AHSS), and Ultra High Strength Steels (UHSS). IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum. AHSS and UHSS are considered high tensile strength and high elongation steels, although AHSS and UHSS are covered whether or not they are high tensile strength or high elongation steels.

Subject merchandise includes hot-rolled steel that has been further processed in a third country, including but not limited to pickling, oiling, levelling, annealing, tempering, temper rolling, skin passing, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the hot-rolled steel.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Universal mill plates (*i.e.*, hot-rolled, flat-rolled products not in coils that have been rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, of a thickness not less than 4.0 mm, and without patterns in relief);
- Products that have been cold-rolled (cold-reduced) after hot-rolling;⁷

⁷ For purposes of this scope exclusion, rolling operations such as a skin pass, levelling, temper rolling or other minor rolling operations after the hot-rolling process for purposes of surface finish, flatness, shape control, or gauge control do not constitute cold-rolling sufficient to meet this exclusion.

- Ball bearing steels;⁸
- Tool steels;⁹ and
- Silico-manganese steels;¹⁰

The products subject to this investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7208.10.1500, 7208.10.3000, 7208.10.6000, 7208.25.3000, 7208.25.6000, 7208.26.0030, 7208.26.0060, 7208.27.0030, 7208.27.0060, 7208.36.0030, 7208.36.0060, 7208.37.0030, 7208.37.0060, 7208.38.0015, 7208.38.0030, 7208.38.0090, 7208.39.0015, 7208.39.0030, 7208.39.0090, 7208.40.6030, 7208.40.6060, 7208.53.0000, 7208.54.0000, 7208.90.0000, 7210.70.3000, 7211.14.0030, 7211.14.0090, 7211.19.1500, 7211.19.2000, 7211.19.3000, 7211.19.4500, 7211.19.6000, 7211.19.7530, 7211.19.7560, 7211.19.7590, 7225.11.0000, 7225.19.0000, 7225.30.3050, 7225.30.7000, 7225.40.7000, 7225.99.0090, 7226.11.1000, 7226.11.9030, 7226.11.9060, 7226.19.1000, 7226.19.9000, 7226.91.5000, 7226.91.7000, and 7226.91.8000. The products subject to the investigation may also enter under the following HTSUS numbers: 7210.90.9000, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.91.0015, 7214.91.0060, 7214.91.0090, 7214.99.0060, 7214.99.0075, 7214.99.0090, 7215.90.5000, 7226.99.0180, and 7228.60.6000.

The HTSUS subheadings above are provided for convenience and U.S. Customs and Border Protection purposes only. The written description of the scope of the investigation is dispositive.

IV. SCOPE COMMENTS

In the *Preliminary Determination*, we did not modify the scope language as it appeared in the *Initiation Notice*.¹¹ No interested parties submitted scope comments in case or rebuttal briefs; therefore, the scope of this investigation remains unchanged for this final determination.

⁸ Ball bearing steels are defined as steels which contain, in addition to iron, each of the following elements by weight in the amount specified: (i) not less than 0.95 nor more than 1.13 percent of carbon; (ii) not less than 0.22 nor more than 0.48 percent of manganese; (iii) none, or not more than 0.03 percent of sulfur; (iv) none, or not more than 0.03 percent of phosphorus; (v) not less than 0.18 nor more than 0.37 percent of silicon; (vi) not less than 1.25 nor more than 1.65 percent of chromium; (vii) none, or not more than 0.28 percent of nickel; (viii) none, or not more than 0.38 percent of copper; and (ix) none, or not more than 0.09 percent of molybdenum.

⁹ Tool steels are defined as steels which contain the following combinations of elements in the quantity by weight respectively indicated: (i) more than 1.2 percent carbon and more than 10.5 percent chromium; or (ii) not less than 0.3 percent carbon and 1.25 percent or more but less than 10.5 percent chromium; or (iii) not less than 0.85 percent carbon and 1 percent to 1.8 percent, inclusive, manganese; or (iv) 0.9 percent to 1.2 percent, inclusive, chromium and 0.9 percent to 1.4 percent, inclusive, molybdenum; or (v) not less than 0.5 percent carbon and not less than 3.5 percent molybdenum; or (vi) not less than 0.5 percent carbon and not less than 5.5 percent tungsten.

¹⁰ Silico-manganese steel is defined as steels containing by weight: (i) not more than 0.7 percent of carbon; (ii) 0.5 percent or more but not more than 1.9 percent of manganese, and (iii) 0.6 percent or more but not more than 2.3 percent of silicon.

¹¹ See PDM at “Scope Comments;” see also *Certain Hot-Rolled Steel Flat Products from Brazil, the Republic of Korea, and Turkey: Initiation of Countervailing Duty Investigations*, 80 FR 54267 (September 9, 2015) (*Initiation Notice*).

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

The Department has made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation period or the allocation methodology used in the *Preliminary Determination*. For a description of the allocation period and the methodology used for this final determination, *see the Preliminary Determination*.¹²

B. Attribution of Subsidies

The Department has made no changes to, and interested parties raised no issues in their case briefs regarding, the attribution of subsidies.¹³ For descriptions of the methodologies used for this final determination, *see the Preliminary Determination*.¹⁴

C. Denominators

In accordance with 19 CFR 351.525(b), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the "Final Analysis Memorandum," prepared for this final determination.¹⁵ Based on comments raised by COTAS in its case brief, we have revised the export sales values for COTAS and Colakoglu Metalurji used to calculate the subsidy rates in this final determination.¹⁶

VI. BENCHMARKS AND INTEREST RATES

The Department has made one change to the calculated interest payment benchmark for COTAS and Colakoglu Metalurji based on a comment from interested parties raised in case briefs,¹⁷ as well as using the companies' short-term interest rate benchmark provided during minor corrections.¹⁸ For a description of the benchmarks and interest rates used for this final determination, *see the Preliminary Determination* and the Final Analysis Memorandum.

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

In a change from the *Preliminary Determination*, we are now relying on adverse facts available (AFA) in finding that Erdemir benefitted from countervailable subsidies when it purchased

¹² *See* PDM at 7.

¹³ *Id.*, at 8-10.

¹⁴ *Id.*

¹⁵ *See* Memoranda, "Final Determination Analysis for Colakoglu Dis Ticaret A.S.," August 4, 2016, and "Final Determination Analysis for Eregli Demir ve Celik Fabrikalari T.A.S.," August 4, 2016 (collectively, Final Analysis Memoranda).

¹⁶ *See* Comment 1.

¹⁷ *See* Comment 2.

¹⁸ *See* COTAS Verification Report, at 2.

mining operator Divhan A.S. (subsequently renamed Ermaden) from the GOT. Sections 776(a)(1) and (2) of the Act provide that the Department 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: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.¹⁹

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

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained during the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent resources that are reasonably at its disposal. Secondary information is “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”²² The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.²³ In analyzing whether

¹⁹ On June 29, 2015, the President of the United States signed into law the Trade Preferences Act of 2015, which made numerous amendments to the antidumping duty and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). This 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretive rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015). Therefore, the amendments apply to this investigation.

²⁰ *See, e.g., Drill Pipe from the People’s Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); *see also Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016) (*CORE from the PRC*).

²¹ *See Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Doc. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA), at 870.²² *Id.*, at 870.

²² *Id.*, at 870.

²³ *Id.*

information has probative value, it is the Department's practice to examine the reliability and relevance of the information to be used.²⁴ However, the SAA emphasizes that the Department need not prove that the selected facts available are the best alternative information.²⁵

Finally, under the new section 776(d) of the Act, the Department may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, the Department is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailable subsidy rate would have been if the non-cooperating interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.²⁶

As discussed below and in response to Comment 1, the GOT refused to provide requested information in its questionnaire response²⁷ and at verification regarding the valuation assessment it relied on when it sold Erdemir's affiliate, Divhan A.S. (Divhan),²⁸ to Erdemir. The Department requested this information from the GOT to determine whether the sale was at fair market value or if any concurrent subsidies were created and disbursed to Divhan or Erdemir through the CIO.²⁹ We again requested to examine this valuation assessment at verification.³⁰ Pursuant to sections 776(a)(2)(A), (2)(C) and (2)(D) of the Act, when an interested party withholds information that has been requested, significantly impedes a proceeding, and/or does not provide information that can be verified, the Department applies facts otherwise available. Accordingly, application of facts otherwise available is appropriate here.

We also determine that an adverse inference is warranted for the GOT, pursuant to section 776(b) of the Act. By refusing to provide the requested valuation assessment, the GOT did not cooperate to the best of its ability in this investigation. We believe this valuation assessment would have provided critical information regarding the extent, if any, to which Divhan's debts or liabilities were forgiven prior to the sale, as Petitioners argue and as discussed below in response

²⁴ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan, and Tapered Roller Bearings Four Inches or Less in Outside Diameter and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

²⁵ See SAA at 896-870.

²⁶ See section 776(d)(3) of the Act.

²⁷ See Letter to the GOT, "Supplemental Questionnaire for the Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey," December 2, 2015, at A-2, A-3, CIO-3.

²⁸ Divhan was subsequently renamed Ermaden after it was purchased by Erdemir.

²⁹ See Letter to the GOT, "Supplemental Questionnaire for the Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey," December 2, 2015, at A-2.

³⁰ See Letter to the GOT, "Verification Agenda for the Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey," March 4, 2016 (GOT Verification Agenda), at 6; see also GOT Verification Report, at 3-4.

to Comment 1.³¹ For example, the public tender announcement for Divhan indicates that, as with the sale of Isdemir,³² the transaction involved a final settlement of outstanding current debt (*e.g.*, taxes payable) and current assets (*e.g.*, accounts receivable).³³ At verification, the Department was provided with all documentation requested concerning the Isdemir transaction and was able to confirm that the current accounts settlement was properly conducted and did not involve the GOT assuming debt owed by Isdemir without the compensating appropriation of assets (*i.e.*, current assets had been taken in an amount necessary to pay for any current debt taken as well). However, the failure to provide the valuation report for Divhan prohibited the Department from determining whether the process was conducted in a manner that did not result in a subsidy to Divhan.³⁴ In general, the sale of assets may include or exclude associated debt and the valuation report correspondingly will assess the net value of the assets or not. If debts are excluded, or if debts are assumed by the government-seller, the report would likely indicate which debts and why. Thus the report is a critical tool in determining what exactly was transferred to Erdemir and what might have been left behind with the GOT. Therefore the GOT's failure to provide the valuation report impeded the Department's ability to determine the extent to which debt may have been forgiven when Divhan was "spun off" from the Turkiye Demir ve Celik Isletmeleri (TDCI).³⁵ Likewise, the Divhan sales contract refers to the "gratis assignment of operating licenses to the company for mine sites under responsibility of" TDCI.³⁶ While the GOT claims that Erdemir paid "for the transfer of 100% shares of Divhan A.S. as well as assignment of operating licenses of 14 mining sites," despite the use of the term "gratis" in the contract, the GOT's failure to provide the valuation report impeded the Department's ability to confirm that the mining sites were included in the total value determined by that report, rather than being provided at less than adequate remuneration (LTAR), as Petitioners argue and as discussed below in response to Comment 1. Accordingly, we find that AFA is warranted to ensure that Erdemir does not obtain a more favorable result because of the GOT's failure to provide information requested by the Department.

³¹ Petitioners are AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, SSAB Enterprises, LLC, Steel Dynamics, Inc., and United States Steel Corporation (collectively, Petitioners).

³² See GOT Verification Report at 2-3.

³³ See Letter from GOT, "First Supplemental Questionnaire Response of the Government of Turkey in CVD Investigation on Imports of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey," December 16, 2016 (GOT December 16 SQR), at Exhibit 5 (paragraph 6 of the tender announcement).

³⁴ The existence of the report is not in dispute. The GOT states clearly that such analysis was completed on February 23, 2004 and submitted by the Value Assessment Commission to the Tender Commission on the same day. See GOT December 16 SQR at CIO-11. By contrast, the GOT explained that there was no "valuation commission or tender commission undertaken" for the Isdemir transaction and indicated the value was established through negotiation. However, a balance sheet for Isdemir was prepared as of the date of the share transfer which was reviewed at verification and compared to the Share Assignment Contract and "Decision No. 2001/08," both of which discuss the settlement of Isdemir's current accounts. Thus the Department was able to obtain details regarding the possible assumption of debt by the GOT through the Isdemir CIO and confirm that no debt forgiveness had taken place.

³⁵ See GOT Verification Report at 2-3. The existence of the report is not in dispute. The GOT states clearly that such analysis was completed on February 23, 2004 and submitted to the Tender Commission on the same day. See GOT December 16 SQR at CIO-11.

³⁶ See GOT December 16 SQR at Exhibit 6 (under "definitions" and at article 5 of the sales agreement).

Consistent with section 776(d) of the Act and our established practice (*i.e.*, the CVD AFA hierarchy), we selected the highest calculated rate for the same or similar program as AFA.³⁷ When selecting AFA rates, we first determine if there is an identical program in the investigation and use the highest calculated rate for the identical program (excluding zero rates). If there is no identical program rate above zero in the investigation, we then determine if an identical program was used in another CVD proceeding involving the same country, and apply the highest calculated rate for the identical program (excluding rates that are *de minimis*).³⁸ If no identical program exists, we then determine if there is a similar/comparable program (based on the treatment of the benefit) in another CVD proceeding involving the same country and we apply the highest calculated rate for the similar/comparable program. Where there is no comparable program, we apply the highest calculated rate from any non-company specific program in a CVD case involving the same country, but we do not use a rate from a program if the industry in the instant proceeding cannot use that program.³⁹ In applying AFA in determining Erdemir's benefit from debt forgiveness and the provision of mining rights for LTAR, we are guided by the Department's methodology detailed above. Because the GOT failed to act to the best of its ability in this investigation, as discussed at Comment 1 below, we made an adverse inference that the GOT forgave Divhan's debts and provided mining assets for LTAR prior to Erdemir's purchase of Divhan from the GOT, and that Erdemir benefited from this government assistance through its purchase of Divhan from the GOT. Relying on AFA, we are applying AFA rates of 3.79 percent *ad valorem* for the GOT debt forgiveness, and 2.08 percent *ad valorem* for the provision of mining rights for LTAR. These are highest rates determined for similar programs, *i.e.*, a grant and an LTAR program, respectively, in a prior CVD proceeding regarding Turkey.⁴⁰

With regard to the reliability aspect of corroboration, we note that the rate on which we are applying as AFA is a subsidy rate calculated in another CVD proceeding with respect to Turkey. Further, the calculated rate was based on information about the same or similar programs. Moreover, no information has been presented that calls into question the reliability of the calculated rate that we are applying as AFA for this program. Finally, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. With respect to the relevance aspect of corroborating the rates selected, the Department will consider information reasonably

³⁷ See, e.g., *Welded Line Pipe From the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015), and accompanying Issues and Decision Memorandum (IDM) at 2-8; see also *Essar Steel v. United States*, 753 F.3d 1368, 1373-1374 (Fed. Cir. 2014) (upholding "hierarchical methodology for selecting an AFA rate").

³⁸ For purposes of selecting AFA program rates, we normally treat rates less than 0.5 percent to be *de minimis*. See, e.g., *Pre-Stressed Concrete Steel Wire Strand from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 28557 (May 21, 2010), and accompanying IDM at "1. Grant Under the Tertiary Technological Renovation Grants for Discounts Program" and "2. Grant Under the Elimination of Backward Production Capacity Award Fund."

³⁹ See, e.g., *CORE from the PRC* and accompanying IDM at 7-10.

⁴⁰ See *Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") from Turkey*, 61 FR 30366 (June 14, 1996) calculated for respondent Maktas Makarnacilik ve Ticaret (Maktas) for the grant program, "Pasta Export Grants;" see also *Final Results of Remand Redetermination, Borusan Mannesmann Boru Sanayi Ve Ticaret A.S. and Borusan Istikbal Ticaret v. United States*, Consol. Ct. No. 14-00229, 61 F. Supp. 3d 1306 and Slip Op. 15-59, 2.08 percent calculated for respondent Borusan for the program, "Provision of Hot-Rolled Steel for LTAR."

at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Where circumstances indicate that the information is not appropriate as AFA, the Department will not use it.⁴¹

As discussed below, due to the GOT's failure to cooperate to the best of its ability, the Department relied on information concerning subsidy programs from other Turkey CVD proceedings. Because this rate reflects the actual behavior of the GOT with respect to similar subsidy programs, and lacking adequate verified information from the GOT demonstrating otherwise, the Department corroborated the rate selected as AFA for this program to the extent practicable.

VIII. ANALYSIS OF PROGRAMS

A. Programs Determined To Be Countervailable and Used by the Respondents

The Department made no changes to its *Preliminary Determination* with regard to the methodology used to calculate the subsidy rates for the following programs. For the descriptions, analyses, and calculation methodologies of these programs, see the *Preliminary Determination*. Except where noted, no issues were raised by interested parties in case briefs regarding these programs. Therefore, the only changes in the final company-specific program rates from the *Preliminary Determination* for each of the following programs is the incorporation of COTAS's and Colakoglu Metalurji corrected export sales denominator, and certain corrections regarding Erdemir including correcting its total sales denominator and adjustment for its Rediscount Program benchmark.⁴² The final program rates for the respondents are as follows.

1. Deductions from Taxable Income for Export Revenue

COTAS: 0.02 percent *ad valorem*

2. Social Security Premium Exemptions

Erdemir: 0.04 percent *ad valorem*

⁴¹ See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996); see also *CORE from the PRC* and accompanying IDM at 10.

⁴² See Final Analysis Memoranda.

3. Rediscount Program

COTAS and Erdemir submitted comments in their case briefs regarding this program.⁴³ As explained below, the Department changed the loan benchmark calculation for COTAS, its affiliate, Colakoglu Metalurji, and for Erdemir. However, we have not changed our methodology for calculating a subsidy rate for this program from the *Preliminary Determination*.

COTAS: 0.11 percent *ad valorem*

Erdemir: 0.01 percent *ad valorem*

4. Provision of Natural Gas for Less than Adequate Remuneration (LTAR)

COTAS: 0.21 percent *ad valorem*

Erdemir: 0.09 percent *ad valorem*

On November 23, 2015, Petitioners submitted comments concerning the questionnaire responses of Erdemir and the GOT.⁴⁴ The Department's analysis of these comments and the underlying questionnaire responses, through supplemental questionnaires and verification at Erdemir and the GOT led to the discovery of possible additional subsidy practices. Pursuant to the Department's authority under section 775 of the Act and 19 CFR 351.311(b), the Department examined these practices and has determined as AFA, as discussed in detail above and also in response to Comment 1 below, that the practices, described as follows, constitute countervailable subsidies.

5. Government Debt Forgiveness

Erdemir and the GOT explained that the GOT sold Divhan to Erdemir in 2004. According to the GOT, "as Turkey moved to a free market economy, privatization of SOEs was a general policy. . . . {P}ublic companies became a burden on the economy due to operational inefficiencies. . . . Divhan was removed (*i.e.*, "spun off") from TDCI so that Divhan could eventually be privatized."⁴⁵ The Department's analysis of the documents placed on the record by Erdemir and the GOT in their discussion of this "spin-off" indicated the possibility that the GOT, through its Privatization Authority, forgave debt held by Divhan either immediately preceding or concurrently with the sale of the company to Erdemir. For example, the public tender announcement for Divhan indicates that, as with the sale of Isdemir, the transaction involved a final settlement of outstanding current debt (*e.g.*, taxes payable) and current assets (*e.g.*, accounts receivable). Specifically, the public tender announcement states: "Current debts of the company to the administration and amounts of debt to be transferred to the company until date of assignment by the administration together with their interests shall be offset from capital increase

⁴³ See Erdemir's Case Brief; *see also* COTAS's Case Brief.

⁴⁴ See Letter from Petitioners, "Hot-Rolled Steel Flat Products from Turkey Comments on Erdemir's CVD Questionnaire Response," November 23, 2015; *see also* Letter from Petitioners, "Hot-Rolled Steel Flat Products from Turkey - Petitioners' Deficiency Comments on the Government of Turkey's CVD Questionnaire Response," November 23, 2015.

⁴⁵ See GOT Verification Report at 4. TDIC refers to the state authority tasked with administering the GOT's interests in the iron and steel industry.

to be carried out by the administration.”⁴⁶ As described above and also below in response to Comment 1, the GOT’s failure to provide a relevant valuation report leads the Department to conclude that such a program of debt forgiveness exists and that Erdemir benefitted from the program.

Debt forgiveness constitutes a financial contribution under section 771(5)(D)(i) of the Act, as a direct transfer of funds from an authority (in this case, the Privatization Authority tasked with disposing of state-owned enterprises in Turkey’s iron and steel industry).⁴⁷ In accordance with Department practice, debt forgiveness is typically specific under section 771(5A)(D)(iii)(I) of the Act as it is limited to a specific enterprise, the recipient of the forgiveness (*i.e.*, Divhan). A benefit exists equal to the amount of principal and accrued interest forgiven under 19 CFR 351.508(a). The GOT’s failure to provide the valuation report discussed above prevents the Department from determining the exact amount of debt forgiveness. As AFA, the Department determines a countervailable subsidy rate for Erdemir under this program of 3.79 percent *ad valorem*.

6. Government Provision of Mining Rights for LTAR

The Department’s analysis indicated that Divhan or Erdemir may have been provided with free mining rights as part of the same “spin-off” transaction. Divhan (currently named Ermaden), is an iron ore mining company that supplies iron ore to Erdemir. The sales contract between the Privatization Authority (the GOT’s principal authority responsible for privatizing state-owned assets) and Erdemir refers to the “gratis assignment of operating licenses to the company for mine sites under responsibility of” TDCI.⁴⁸ The reference to “gratis assignment” is a clear indication of the possibility that the mines (or the rights to operate the mines) were provided to Divhan or to Erdemir immediately preceding or concurrently with the “privatization” for free or for only a nominal transfer fee that does not equate with the value of the mines or the operating rights. As described above and also below in response to Comment 1, the GOT’s failure to provide the valuation report leads the Department to conclude that such a program of debt forgiveness exists and that Erdemir benefitted from the program.

The GOT’s provision of mining rights for LTAR constitutes a financial contribution under section 771(5)(D)(iii) of the Act and is specific under section 771(5A)(D)(iii)(I) of the Act, as it is limited to a specific enterprise (*i.e.*, Divhan or Erdemir) or group of enterprises (*i.e.*, the iron ore industry). A benefit exists pursuant to section 771(5)(E)(iv) of the Act in that recipients of the subsidy are able to obtain a good (*i.e.*, mining rights) for LTAR. While the GOT claims it collects revenue for mining rights per a standard per hectare formula, the GOT’s failure to provide the valuation report prevents the Department from determining whether this amount is adequate remuneration given the value of such rights that might have been detailed in the report. Therefore, as noted above, our determination of rates for Erdemir under both programs is through application of our CVD AFA hierarchy as detailed above, and is not a calculation based

⁴⁶ See GOT December 16 SQR at Exhibit 5 (article 6 of the English version of the public tender announcement).

⁴⁷ The GOT refers to the Privatization Authority as the responsible “government agency.” See GOT December 16 SQR at CIO-9.

⁴⁸ See GOT December 16 SQR at Exhibit 6 (under “definitions” and at article 5 of the sales agreement).

on record information. As AFA, the Department determines a countervailable subsidy rate for Erdemir under this program of 2.08 percent *ad valorem*.

B. Programs Determined to Be Not Used by, or to Not Confer a Measurable Benefit to, Respondents during the POI

1. Provision of Hard Coal for LTAR
2. Investment Encouragement Program (IEP) Customs Duty and VAT Exemptions
3. Provision of Electricity for LTAR/Law 5084 Energy Support
4. Incentives Under the R&D Law No. 5746
5. TUBITAK and TTGV Grants and Loans
6. Exemption from Property Tax
7. Pre-Shipment Export Credit Program
8. Provision of Land for LTAR
9. Provision of Lignite Coal for LTAR
10. Water Subsidy in the Izmir OIZ
11. Regional Investment Incentive Scheme
12. Large Scale Investment Incentive Scheme
13. Strategic Investment Incentive Scheme

C. Programs Determined To Not Exist

1. GOT's Equity Infusion in Erdemir's "Privatization"

IX. ANALYSIS OF COMMENTS

Comment 1: Whether Changes in the Ownership (CIO) of Erdemir's Affiliates Resulted in Countervailable Subsidies to Erdemir

A. Erdemir's Acquisition of Isdemir

Petitioners' Comments:

- In 2002, the GOT sold wholly state-owned Isdemir to partly state-owned Erdemir for less than the fair value of the GOT's equity stake in Isdemir, resulting in a significant countervailable benefit to Erdemir.
- The GOT did not assess Isdemir's value; the amount paid by Erdemir for Isdemir did not reflect a fair market price, nor was this an arm's-length transaction.
- As facts available, the Department should calculate a countervailable benefit equal to the difference between the price Erdemir paid for Isdemir and the GOT's equity in Isdemir at the time of the sale.

Erdemir's Rebuttal Comments:

- The nominal value of the GOT's total equity in Isdemir bore little relationship to the value of the company upon its sale to Erdemir. A large portion of Isdemir's book assets had minimal value considering the investment needed to transform the company into a viable steel producer.
- In any case, consistent with the Department's *CIO Methodology*,⁴⁹ the auction process by which the GOT subsequently sold Erdemir to OYAK in 2005 extinguished any subsidy that Erdemir may have derived from its earlier acquisition of Isdemir.

B. Erdemir's Acquisition of Divhan

Petitioners' Comments:

- The GOT forgave certain of Divhan's debts before it sold Divhan to Erdemir in 2004.
- Because the GOT partly owned Erdemir and wholly owned Divhan at the time, this sale was not at arm's-length or for fair market value as described by the Department's *CIO Methodology*, and thus did not extinguish the benefit from the debt forgiveness.
- The Department has countervailed debt forgiveness provided by a government prior to, or during, a privatization or CIO in cases such as *CASWR from Trinidad and Tobago*⁵⁰ and *OTR Tires from the PRC*.⁵¹
- The Department should find that the record lacks evidence on whether the GOT undertook objective valuation analyses for Divhan prior to its sale, and as AFA countervail the debt forgiveness benefit attributable to Erdemir through its acquisition of Divhan.

Erdemir's Rebuttal Comments:

- The Department did not reach the issue of whether debt forgiveness was extinguished by the privatization in *OTR Tires from the PRC*. Instead, the Department found that the debt forgiveness happened concurrently with the CIO and that the *CIO Methodology* was therefore irrelevant. *CASWR from Trinidad and Tobago* predates the Department's *CIO Methodology* and is not applicable to the instant investigation. Thus, neither case is relevant to the facts of the current investigation.
- In any case, as with Erdemir's acquisition of Isdemir, the auction process by which the GOT subsequently sold Erdemir to OYAK in 2005 extinguished the benefit from any prior subsidies provided to Divhan.

Department's Position: With regard to Isdemir, as part of our analysis into an alleged equity infusion when the GOT sold its stake in Erdemir to OYAK, we gathered certain information related to the GOT's sale of Isdemir to Erdemir. However, neither respondent nor the Petitioners

⁴⁹ See *Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125 (June 23, 2003) (*CIO Methodology*).

⁵⁰ See *Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Trinidad and Tobago*, 67 FR 55810 (August 30, 2002) (*CASWR from Trinidad and Tobago*).

⁵¹ See *Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Negative Determination of Critical Circumstances*, 73 FR 40480 (July 15, 2008) (*OTR Tires from the PRC*).

suggested we conduct a CIO analysis or otherwise raised concerns with the latter transaction until after verification.⁵² Moreover, unlike the Divhan CIO, our own analysis indicated no basis for conducting a CIO analysis. The Department typically conducts a CIO analysis when a respondent claims prior subsidies have been extinguished through a CIO and thus do not benefit the current owner of the subsidized assets or when there is evidence that new subsidies were provided concurrently with the CIO transaction. In the case of the Isdemir CIO, Erdemir reported no prior subsidies received by Isdemir and thus the extinguishment issue was moot. In addition, the Department saw no indication that the sale of Isdemir to Erdemir gave rise to new concurrent subsidies. What information we have on the record, gathered during our analysis of the equity infusion, provides no clear indication that the price paid for Isdemir was less than fair market value.

Regarding Divhan, Erdemir's 2005 Annual Report indicated that Erdemir acquired Divhan through a Share Transfer Agreement with the GOT's Privatization Authority. Thus, the Department sought information on whether any non-recurring, allocable subsidies may have been provided to Divhan prior to the 2004 sale. Accordingly, to determine whether any benefit from such subsidies had passed to Erdemir, or if additional subsidies had been provided pursuant to the CIO, we asked the GOT to complete our standard CIO questionnaire regarding this sale and to provide any valuation study or analysis of Divhan conducted by the GOT prior to the sale.⁵³ Such valuation studies are central to our *CIO Methodology*, and we normally would consider the absence of such studies to be "highly probative" that the transaction was not for fair market value."⁵⁴ The GOT reported that an assessment commission had conducted such an analysis; however, the GOT did not provide the commission's report in its questionnaire response or, when given another opportunity, at verification.⁵⁵ When we sought to examine this assessment report at verification, the GOT instead offered to show us a summary it had prepared specifically for the verification, which we declined, consistent with our practice and as noted in the verification report.⁵⁶ In failing to provide this valuation report, the GOT thus failed to rebut the "baseline presumption" under our *CIO Methodology*, i.e., that absent a showing that the CIO was at arm's-length and for fair market value, prior allocable subsidies were not extinguished and thus continue to provide a countervailable benefit over time attributable to the new owner (Erdemir). Thus, because the baseline presumption has not been rebutted, subsidies provided to Divhan, such as the debt forgiveness and the provision of mining rights at LTAR determined to be countervailable above as AFA, are attributable to Erdemir.⁵⁷

⁵² By "CIO analysis," the Department refers to the standard questionnaire appendix it has developed since the issuance of the issuance of the *CIO Methodology*. The appendix collects information under the several analytical prongs outlined in the *CIO Methodology*. As discussed below, such an appendix was issued to Erdemir regarding the Divhan transaction.

⁵³ See Letter to the GOT, "Supplemental Questionnaire for the Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Turkey," December 2, 2015, at A-2, A-3, CIO-3.

⁵⁴ See *CIO Methodology*, 68 FR at 37131-37132.

⁵⁵ See GOT December 16 SQR, at CIO-7 – CIO-21; see also GOT Verification Report at 3-4.

⁵⁶ See GOT Verification Report at 3-4.

⁵⁷ Arguably, the CIO and "extinguishment" are irrelevant to the provision of mining rights at LTAR in any case. This subsidy appears to be the result of the CIO itself and not something provided to Divhan beforehand. The rights appear to have been assigned "gratis" to Erdemir when it purchased Divhan. See GOT December 16 SQR at Exhibit 6 (under "definitions" and at article 5 of the sales agreement). Thus, Erdemir benefited directly through the provision of the rights "gratis" and not indirectly as the successor to Divhan. By contrast, the debt determined to be

As explained above, the valuation report would have provided critical information on the extent to which any of Divhan's debts were forgiven prior to the sale, and may have also included information on the value of the iron ore mining operation rights assigned to Divhan prior to the sale and whether those rights were obtained by Erdemir for free.

Comment 2: Whether the Government of Turkey's (GOT's) Sale of Erdemir to OYAK Resulted in a Privatization that Extinguished the Benefits of Prior Subsidies to Erdemir

Petitioners' Comments:

- The Department should find that the GOT's sale of Erdemir to OYAK did not extinguish the substantial debt forgiveness provided to Divhan prior to its sale and should countervail the debt forgiveness as a subsidy to Erdemir and Ermaden.

Erdemir's Rebuttal Comments:

- The auction process by which the Privatization Authority sold its shares in Erdemir to OYAK is a CIO that extinguished any subsidies that may have been granted to Erdemir or its constituent companies prior to the CIO.

Department's Position: Erdemir argues that the auction process by which OYAK (the Turkish military pension fund) acquired Erdemir in 2005 extinguished any subsidies that Erdemir may have derived from its earlier acquisitions of subsidiaries Isdemir and Divhan. In this auction, the GOT's Privatization Authority transferred its entire 49 percent stake in Erdemir to OYAK. In prior proceedings, we found that OYAK is a public body in that the GOT maintains meaningful control over OYAK's governance and OYAK implements government policies.⁵⁸ Moreover, in *Borusan*, the CIT upheld our determination that both OYAK and Erdemir are "authorities" within the meaning of section 771(5)(B) of the Act.⁵⁹ Our analysis of the instant record leads us to reach the same conclusion on this issue. For example, record information states that the GOT created OYAK as an "institution related to the Ministry of National Defense"⁶⁰ and that OYAK's General Assembly shall be composed of members including, Turkey's Ministers of Defense and Finance, the Chief of the General Staff, and the Commanders of the Land, Naval, and Air Forces, or their Chiefs of Staff.⁶¹ The Representative Assembly elects 20 of the 40 members of OYAK's General Assembly.⁶² Of the General Assembly's other 20 members, 17 are by statute

forgiven appears to have been taken off the books of Divhan before the transaction and thus passes through to Erdemir as the successor. See GOT December 16 SQR at Exhibit 7.

⁵⁸ See, e.g., *Heavy-Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016), and accompanying IDM at 11-12; *Welded Line Pipe from the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 80 FR 61371 (October 13, 2015) and accompanying IDM at 33; and *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) and accompanying IDM at 31-35.

⁵⁹ See *Borusan v. Mannesmann v. United States*, Slip Op. 15-36 at 13-28 (CIT 2015) (*Borusan*).

⁶⁰ See Letter from Erdemir, "Hot-Rolled Steel Flat Products from Turkey; Erdemir response to questionnaire," November 13, 2015 (Erdemir's November 13 QR), at Exhibit 1, "OYAK Founding Law."

⁶¹ *Id.*

⁶² *Id.*

government officials (*e.g.*, Ministers of Finance and Defense).⁶³ Members of the General Assembly elect the eight-person Board of Directors.⁶⁴ Also, because OYAK's property has by law the "same rights and privileges as state property," OYAK is exempt from corporate and other taxes, and members of the armed forces must by law contribute part of their salaries to OYAK.⁶⁵

Record evidence shows that the GOT's significant involvement in OYAK extends to Erdemir and Isdemir. For example, Erdemir's 2013 Annual Report states, "Through...flat steel sales to exporting industries," Erdemir "made a major contribution to the 4.6% increase in Turkey's manufacturing exports in 2013" and "continues to create value added for Turkish industry through its initiatives to increase the use of domestic sources of raw materials."⁶⁶ Moreover, the GOT explained that the Privatization Authority holds veto power over any decisions related to the closedown, sale, merger, or liquidation of both Erdemir and Isdemir.⁶⁷ Further, Erdemir's 2013 Annual Report shows that OYAK and the Privatization Authority both have members on Erdemir's Board of Directors.⁶⁸

Therefore, we find that the GOT was the principal party on both sides of the transaction as both seller and buyer and, thus, that this was not a transaction in which "a government sold its ownership of all or substantially all" of the company as described in the *CIO Methodology*. Consequently, we find that this transaction did not meet the initial threshold that normally triggers a full analysis under the *CIO Methodology* and, thus, that there is no cause for a party to rebut our baseline presumption that prior subsidies continue to benefit the relevant entity, *i.e.*, Erdemir, over time beyond the "change in ownership" at issue.

Comment 3: Export Sales Denominator for COTAS and Colakoglu Metalurji

COTAS's Comments:

- The export sales value used in the *Preliminary Determination* understates the total actual FOB export sales because it excludes resales from COTAS to its affiliated company, Medtrade.
- The Department should use the verified export sales values for the final determination.

Petitioners' Rebuttal Comments:

- The Department should not include "other sales," *e.g.*, foreign exchange gains/losses, price adjustments, and due date differences, in the export sales denominator for Colakoglu Metalurji.

Department's Position: The Department has corrected the export sales denominator for COTAS and Colakoglu Metalurji. As explained in COTAS's verification report,

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See Erdemir's November 13 QR, at Exhibit 3.

⁶⁷ *Id.*

⁶⁸ *Id.*

“Department officials asked for more details regarding COTAS’s reported “resales of affiliated companies,” which COTAS claims should be included in its total sales denominator for its subsidy benefit calculation. COTAS representatives stated that these sales were COTAS’s sales to Medtrade, its U.S. sales company, that were not otherwise captured in its total or export sales figures used by the Department. According to the company, a sale to Medtrade is booked as follows in COMAS and COTAS’s records. First, the sale from COMAS to COTAS for sales to Medtrade is booked in COMAS’s records as a domestic sale. Then, when COTAS sells this same product to Medtrade, the sale is entered as an export sale in COTAS’s records. Company officials provided sales invoices demonstrating how they could trace each transaction from COMAS’s records, to COTAS’s recorded sales, to Medtrade. COMAS officials provided a working trial balance for account numbers 600 through 605, created by Deloitte, which was used to create the consolidated sales of COMAS in the POI. We tied the total revenue for domestic and export sales from this working trial balance to COMAS’s audited consolidated financial statements without error. From this trial balance, we observed that sales to Medtrade were included in COMAS’s total domestic sales in its consolidated financial statements.”⁶⁹

Based on this discussion at verification, it is clear that COTAS’s export sales value used in the *Preliminary Determination* was understated, and should include resales of affiliated companies. Therefore, to calculate the correct export sales value for COTAS, we have summed all of the export sales reported under “Total FOB Values Excluding Sales to Affiliates but Including Resales of Affiliated Companies” column.⁷⁰

As part of the sales section during verification, Department officials also reviewed Colakoglu Metalurji’s export sales values, and, similar to the discussion above regarding COTAS’s export sales value, we discovered that their resales to affiliated companies were also not included in the *Preliminary Determination*, and were also understated.⁷¹ Therefore, we have used the same methodology applied to COTAS to Colakoglu’s Metalurji export sales value. As requested by Petitioners, we have not included any “other sales,” such as foreign exchange gains/losses, price adjustments, and due date differences, in Colakoglu’s Metalurji’s corrected export sales. We note that these “other sales” were reported in separate line items by the company, and not part of the “export” sales line items.⁷²

Comment 4: COTAS’s Rediscount Program Benchmark

COTAS’s Comments:

- The principal amount used in the *Preliminary Determination* included a prepaid interest component. To determine the benchmark interest payment, the Department should calculate its benchmark based on the principal of the loan only to avoid overstating the benchmark amount.

⁶⁹ See COTAS Verification Report at 6 (citations omitted).

⁷⁰ See Letter from COTAS, “Certain Hot-Rolled Steel Flat Products from Turkey: Colakoglu Response to Sections III of the CVD Questionnaire,” December 14, 2015, at Exhibit CVD2S-5.

⁷¹ See COTAS Verification Report at 6.

⁷² *Id.*

Department’s Position: The Department is correcting the interest payment benchmark calculated for COTAS and Colakoglu Metalurji. During verification, Department officials asked COTAS to explain how the companies knew the values reported under the header “Initial Loan Amount (Principal in Original Currency)” included a prepaid interest component. Company officials noted that the company reported the actual principal amount under “Amount of Principal Payment(s)” in the loan chart. Company officials explained this rationale for the reporting as follows: the “company requests and receives, for example, a 20 million dollar loan. The company receives a certain amount right away, and the rest of the loan, called the ‘blockage amount’ at a later date. However, the amount the company receives immediately includes an interest payment. We requested and reviewed several EX-IM Bank ‘Usage Receipts’ to track and calculate the actual principal of the loan. In all instances the actual loan principal was the amount reported in the loan chart under ‘Amount of Principal Payment(s).’”⁷³ This explanation is consistent with the Department’s understanding of this program in other investigations, namely that a borrower pays some interest when the loan is received.⁷⁴ We have therefore corrected the calculated interest payment benchmark using the principal reported under “Amount(s) of Interest Paid (USD)” for each company.

Additionally, as noted by COTAS, the company submitted an updated short-term interest rate benchmark chart during verification, which we accepted.⁷⁵ We have used the corrected interest rate to calculate the benefit under this program for the final determination.

Comment 5: Whether the Department Should Correct Certain Errors in Erdemir’s Preliminary Calculations

Erdemir’s Comments:

- With respect to Erdemir, the Department should correct certain errors regarding sales, loans, and the natural gas benchmark.
- Cross-owned company Ermaden originally reported a VAT exemption under the IEP, but the company did actually pay VAT on all purchases under this program. As a result, Ermaden’s benefit under the IEP program should be zero.
- The Department should rely on the sales provided as minor corrections at verification.

Petitioners’ Rebuttal:

- Erdemir’s requests are moot because they would have no effect on its overall subsidy rate.
- Specifically, the Department should continue to consider all 25 loans in its derivation of the short-term benchmark interest rate for the final determination because the loans at issue actually are short-term loans.

⁷³ *Id.*, at 10.

⁷⁴ See, e.g., *Steel Concrete Reinforcing Bar From Turkey: Final Negative Determination of Sales at Less Than Fair Value and Final Determination of Critical Circumstances*, 79 FR 21986 (September 15, 2014), and accompanying IDM at 17.

⁷⁵ See COTAS Verification Report at 2.

Department's Position: We have revised Erdemir's subsidy calculations for the final determination. We revised the benchmark for this program by omitting non-short terms loans from the benchmark calculations. Erdemir raised this issue as a minor correction at the outset of verification. The Department verified that Erdemir was eliminating loans that were of a duration of more than one year from its short-term loan benchmark only.⁷⁶

X. RECOMMENDATION

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

✓

Agree Disagree

Ronald K. Lorentzen

Ronald K. Lorentzen
Acting Assistant Secretary
For Enforcement and Compliance

August 4, 2016

Date

⁷⁶ See Erdemir's Verification Report at 2; see also Erdemir's Final Analysis Memorandum.