PUBLIC RECORD

15 May 2019

The Director - Investigations 3
Anti-Dumping Commission
GPO Box 2013
Canberra ACT 2601

BY EMAIL:
investigations3@adcommission.gov.au

Dear Director,

Dumping and subsidisation investigation No. 495 concerning steel reinforcing bar (rebar) exported from the Republic of Turkey (Turkey)

AUSTRALIAN INDUSTRY SUBMISSION – RESPONSE TO SEF 495

Liberty OneSteel (Newcastle) Pty Ltd (**Liberty Steel**), the applicant and a member of the Australian industry producing like goods to the goods the subject of the application, refers to *Statement of Essential Facts No. 495* (**SEF 495**) and makes the following observations concerning the Commission's preliminary findings and conclusions.

SUMMARY

Liberty Steel contends that the Commission has reached the incorrect preliminary conclusion in SEF 495 insofar as it has found that dumping has not occurred in relation to exports of rebar from Turkey, and that subsidies received in relation to those exports did not exceed negligible levels. Specifically, Liberty Steel submits that the Commission's preliminarily conclusions and findings are incorrect due the following errors in its assessment of the available evidence, namely the Commission:

- incorrectly assessed the suitability of the exporters' domestic sales in OCOT for the determination of normal values under s.269TAC(1),[1] on a model-by-model and quarter-by-quarter basis. There is no support for this practice either in s.269TAC(14) or the *Anti-Dumping Agreement*;[2]
- wrongly applied a domestic credit expense adjustment under s.269TAC(9) for domestic credit costs incurred outside the agreed credit terms of the exporters to their domestic customers;
- failed to examine suitable grade specification adjustments and determine the normal value under s.269TAC(1);

[1] All legislative reference are to the Customs Act 1901, unless otherwise stated.
[2] References to the *Anti-Dumping Agreement* are references to the *Anti-Dumping Agreement (Implementation of Article VI of the GATT)*, and references to 'Articles' are references to Articles appearing in that Agreement.

- assuming it was appropriate to determine normal values under s.269TAC(2)(c), the Commission nevertheless failed to correctly calculate the normal value under that provision by ignoring the exporters' domestic credit costs in the calculation of administrative, selling and general costs associated with sales of like goods and the costs of ACRS certification incurred as a cost in the production or manufacture of the goods;
- ought to have determined export prices under s.269TAB(3) and using a deductive methodology;
- failed to properly assess the model control codes and make a proper comparison between the like goods and the goods exported. This was largely due to omission and errors by the exporters that were not remedied during verification;
- failed to compare Habas' constructed normal value and export price at the same level of trade;
- erred in calculating an average value of the subsidy and the apportionment of the value of the subsidy in the case of Program 5;
- erred in apportioning the value of the subsidy in the case of Programs 8 and 23;
- erred in apportioning the value of the subsidy as it applies to VAT in the case of Program 25;
- erred in apportioning the value of the subsidy as it applies to the tax reduction for port facilities;
- erred in the calculation and apportioning the value of the subsidy as it applies to the tax reduction for gas facilities;
- erred in determining that the exporters had not received a subsidy in the case of Program 22, given that all the available evidence supports the conclusion that the exporters are entitled to the subsidy and have claimed benefits from this program in previous years. The benefit should be calculated on the value of the exports to Australia during the investigation and apportioned on the grossed-up value relative to the export price; and
- erred in the comparison of the loans from the GoT to those offered by commercial banks in the case of Programs 17 and 26, as it has not taken into account exemptions provided under these programs from taxes and duties that would normally apply. The Commission does not also appear to have taken into account whether there is a cross guarantee on those commercial loans from the GoT that would affect such comparisons. The Commission further does not appear to have taken into account the flexibility to repay in the currency of choice and the grace period for loans under the programs.

A. DUMPING INVESTIGATION

1. Incorrect assessment of suitability of domestic sales under s.269TAC(14)

In the case of each verified exporter, the Commission determined those domestic sales that were in the ordinary course of trade (**OCOT**). The testing and identification of relevant domestic sales suitable for the determination of the normal value under s.269TAC(1) found that for Çolakoğlu Metalurji A.Ş. (**Colakoglu**) and Habaş Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.Ş. (**Habas**), domestic sales of all models satisfied the OCOT test by having unprofitable and unrecoverable sales not exceeding 20 per cent for the particular model (as identified under the Model Control Codes (**MCCs**).[3] In the case of the remaining two verified exporters - Kroman Celik Sanayii A.S. (**Kroman Celik**) and Diler Demir Celik

[3] EPR Folio No. 495/028 at [5.3] and EPR Folio No. 495/029 at [5.3].

Endustri ve Ticaret A.S. (**Diler**) – the majority of models sold domestically satisfied the OCOT test. In the case of Kroman Celik, 26 out of a total 31 models sold domestically were in OCOT,[4] and for Diler, 8 out of 9 models were sold to domestic customers in the ordinary course of trade.[5]
The assessment of the profitability and recoverability of like goods sold in the country of export is appropriately made on a model-by-model basis for the purpose of OCOT testing. Indeed, s.269TAAD(4), which refers to the "cost of production or manufacture of those goods in the country of export", as opposed to 'like goods' generally, necessarily requires the cost of the goods (by model) to be determined for the purpose of comparison of "sales of goods at a price that is less than the cost of such goods" under s.269TAAD(2).

Having determined relevant domestic sales suitable for the normal value of any goods exported to Australia under s.269TAC(1), that is, "like goods" that are sold in OCOT, the Commission then proceeded to test the suitability of those domestic sales on a model-by-model basis, purportedly under s.269TAC(14) for each verified exporter. Not only did the Commission test for 'low volume' sales of like goods on a model-by-model basis, but it appears to have also done so on a quarter-by-quarter basis.[6]

In so far, as the Commission has performed the 'low-volume' suitability of domestic sales test on both a model-by-model and quarter-by-quarter basis, it has erred in its interpretation of s.269TAC(14). Specifically, the provision reads, in relevant part:

> If:
> …
> (b) goods the subject of the application are exported to Australia; but
> (c) the volume of sales of like goods for home consumption in the country of export by the exporter… is less than 5% of the volume of goods the subject of the application that are exported to Australia by the exporter;
> the volume of sales referred to in paragraph (c) is taken, for the purposes of paragraph (2)(a), to be a low volume unless the Minister is satisfied that it is still large enough to permit a proper comparison for the purposes of assessing a dumping margin under section 269TACB. [emphasis added]

Nothing in s.269TAC(14) requires the Minister to assess the suitability of domestic sales for normal value determination on a model-by-model basis. The definition of the exported goods and domestically sold goods are broad and generic – respectively, "goods the subject of the application" and "like goods for home consumption". On the question of suitability of domestic sales for normal value determination, the language of each provision is equally broad. For example, s.269TAC(2)(a)(i), again refers to "sales of like goods in the market of the country of export".

Furthermore, contrary to the Commission's assessment of the suitability of domestic sales by reference to the volume of OCOT sales sold on a quarterly basis, the language in s.269TAC(14) in fact directs the Commission to assess the "volume of goods the subject of the application", which by operation of s.269T(1), is the volume of goods exported across the investigation period specified by the Commissioner in a notice under subsections.269TC(4).

In contrast the language of the OCOT provisions of the Act, especially in relation to testing the profitability and recoverability of domestic sales is no longer broadly or generically a reference to "like goods" or "goods the subject of the application", but specifically to "sales of goods at a price" and "the

[4] EPR Folio No. 495/026 at [7.2].
[5] EPR Folio No. 495/027 at [7.2].
[6] EPR Folio No. 495/028 at [5.4].

cost of production or manufacture of those goods in the country of export". In other words, whereas s.269TAAD supports the Commission's model-by-model analysis of domestic sales sold in OCOT, s.269TAC(14) does not support the same model-by-model approach and quarter-by-quarter approach followed by the Commission in relation to testing the suitability of those relevant (in-OCOT) domestic sales.

SEF 495 reveals the following process of reasoning. First, the Commission accepted that all the verified exporters made domestic sales of like goods at arms length. Secondly, it found that some of those domestic sales were unprofitable and unrecoverable and therefore should be ignored for the purpose of calculating normal value under subs 269TAC(1). Thirdly, the Commission appears satisfied that there were insufficient domestic sales of comparable models to determine normal values under subs 269TAC(1) except in the case of two domestic models.[7] Fourthly, in the case of all but the two models in respect of which the domestic sales were insufficient in volume to establish normal values under subs 269TAC(1), it considered it appropriate to construct normal values under subs 269TAC(2)(c) which included an amount for profit.

This approach is not supported by the language of the Act which is consistent with footnote 2 to Article 2.2 of the *Anti-Dumping Agreement* that the quantity of sales of the like product is sufficient to determine normal value 'if such sales constitute 5% or more of the sales of the product under consideration'. The question is, then, whether the model-by-model (including quarter-by-quarter) approach of the Commission is in conformity with Article 2.2 and footnote 2.

Textually, domestic sales of the like goods take place in a sufficient quantity if they constitute 5% or more of the sales of the "product under consideration to the importing Member".[8] The denominator to the equation is sales of the *'product under consideration'* (goods the subject of the application or 'Goods under Consideration', GUC), and based on this the percentage of the like product is determined. The WTO Appellate Body was clear in *EC- Bed linen*, that the 'product under consideration' is the product defined by the investigating authorities upon initiation of the investigation, and the investigating authorities are bound by that definition. On any ordinary construction of the text of Article 2.2 (including its footnote), upon defining a product as the *'product under investigation'*, that definition must also be reflected when applying the 5% rule. As it is not provided in the footnote that the 5% calculation may be made for specific models under the general category of the product under consideration, a model-based test is inconsistent with the WTO Agreement. This is not to say that investigating authorities are prohibited from dividing the product under investigation into different types for other steps under an anti-dumping investigation, for example testing the relevance of domestic sales in OCOT for the determination of the normal value and the comparison between normal value and export price may be made more easily by dividing the product into models. However, Article 2.2 does not, on the other hand, allow investigating authorities to depart from the wording in footnote 2. Even though several steps in the anti-dumping investigation may be made through a model-by-model comparison, this does not imply that the 5% test may be used on specific models or time-periods less than the *'investigation period'* as determined upon initiation.

Therefore, by testing the 5% rule on a model-by-model and quarter-by-quarter basis to determine whether the domestic sales volume in OCOT is sufficient to be representative for the exporters'

[7] EPR Folio No. 495/026 at p. 18 (for export MCCs P-C-S-B-2 and P-C-S-C-2).
[8] Article 2.2, *Anti-Dumping Agreement*, fn 2.

domestic market has resulted in the Commission disregarding almost all the domestic sales by the verified exporters, even though the overall sales of the like goods found to be in the OCOT are in sufficient volumes when compared to the volumes of the goods the subject of the application (the GUC). This is neither the purpose or intention of s.269TAC(14), nor Article 2.2 (including footnote 2). Therefore, the Commission has wrongly interpreted the 5% test under s.269TAC(14) and is in non-conformance with the *Anti-Dumping Agreement*. The correct or preferable conclusion for the Commission to now reach is to find that the volume of sales found to be in OCOT are not in low-volumes, and therefore suitable for use in the determination of the normal value under s.269TAC(1).

2. Domestic credit expense adjustment not supported by s.269TAC(9)

In SEF 495, the Commission unequivocally expresses its finding in the case of all but one (Habas) of the verified exporters that a domestic credit expense adjustment be made for the domestic credit costs of those exporters under s.269TAC(9),[9] without once testing whether the adjustments are *'necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods'*.

Subsections 269TAC(8) and (9) together enact the obligation under Article 2.4 of the *Anti-Dumping Agreement* to make a fair comparison between the export price and normal value when determining dumping. The language of s.269TAC(8) is different to that of s.269TAC(9), in order to reflect the former's role in relevantly enacting the due allowance provisions for cases where *'the normal value of goods exported to Australia is the price paid or payable for like goods'* (such as in circumstances where the normal value is determined under s.269TAC(1)). As such s.269TAC(8) refers to the making of adjustments in circumstances where "price paid or payable for like goods is to be taken to be such a price adjusted in accordance with directions by the Minister so that those differences would not affect its comparison with that export price". On the other hand, s.269TAC(9) enacts the obligation to make a fair comparison between the export price and normal value in circumstances where the normal value has been 'constructed' either under ss.269TAC(2)(c) or (4)(e). Accordingly, the language of s.269TAC(9) reflects the reality that the normal value has been made using a costs of production methodology:

> (9) Where the normal value of goods exported to Australia is to be ascertained in accordance with paragraph (2)(c) or (4)(e), the Minister must make such adjustments, in determining the costs to be determined under that paragraph, as are necessary to ensure that the normal value so ascertained is properly comparable with the export price of those goods.

However, irrespective of whether the adjustments to the normal value are made under either ss.269TAC(8) or (9), the WTO jurisprudence on the circumstances in which the adjustments are to be made must be related to differences which are demonstrated to affect price comparability.[10] So it was that the Panel in *US – Softwood Lumber V* considered that there is no requirement to adjust for any and all differences but rather only those differences demonstrated to have affected the price comparability:

> We consider that Article 2.4 does not require that an adjustment be made automatically in all cases where a difference is found to exist, but only where – based on the merits of the case – that difference is demonstrated to affect price comparability. An interpretation that an adjustment would have to be made automatically where a difference in physical characteristics is found to exist would render the term 'which affect price comparability'

[9] SEF 495 at [6.7.4], [6.8.4] and [6.10.4].

[10] Appellate Body Report, *US – Hot-rolled Steel*, at [177].

> nugatory. Further, such an interpretation would make little sense in practice, as not all differences in physical characteristics necessarily affect price comparability.[11]

Applied here, in the case of three verified exporters,[12] the Commission does not appear to have examined whether differences in credit terms do in fact affect the prices of like goods sold in the ordinary course of trade for home consumption in Turkey, and the export price of the goods exported to Australia. At best the Commission assesses that *"[f]or domestic sales… payment terms ranged from pre-payment to deferred payment terms"* and that *"[f]or Australian sales… payment terms were letter of credit at sight"* and concludes that *"[a]s such, the verification team is satisfied that Diler did not incur credit expenses on sales of the goods to Australia. Accordingly, the verification team considers that no adjustment is warranted for export credit expenses"*.[13] This indicates that the Commission asked the wrong question when assessing whether due allowance for differences affecting price comparability are to be made – not whether there is a difference in credit costs between domestic sales and export sales to Australia, but rather whether these differences affect price. The Commission's stated calculation methodology does nothing to explore this question, but rather confirms that the decision was based on implied costs, not price:

> [Diler] Weighted average interest rate of the Central Bank of the Republic of Turkey for the investigation period, applied to the weighted average number of payment days.[14]

There are several errors with this approach. Firstly, there is no examination of the agreed payment terms on which domestic sales were made, that is, the payment terms settled in the ordinary course of trade. These agreed payment terms may be the only credit terms that can on any logical or evidentiary construction be said to affect the price paid for like goods sold in the ordinary course of trade for home consumption in Turkey. Anything outside those agreed payment terms cannot be said to affect price, as they are unanticipated and in fact represent an unintended breach of the terms and conditions of sale. Therefore, the calculation of the actual credit costs of domestic sales of like goods, should properly be allocated to the construction of the exporter's administrative, selling and general costs associated with the sale of the goods domestically in Turkey under s.269TAC(2)(c)(ii), where the normal value is determined under s.269(2)(c), as the Commission has sought to do in this case, but not to the calculation of an adjustment under s.269TAC(9). Even if the Commission was correct to determine the exporters' normal values under s.269TAC(1), then the actual domestic credit expenses of the exporters should also be applied to the calculation of the cost of goods sold for home consumption in the country of export under s.269TAAD(4)(b). Secondly, in the case of (at least) Diler, the Commission has not applied the exporter's actual credit costs, but rather an implied rate, *'weighted average interest rate of the Central Bank of the Republic of Turkey'*, thus further divorcing the decision to assess the effect of different credit terms on price comparability.

The principle that expenses incurred outside the agreed terms and conditions of sale cannot factually support a conclusion that those breaches of contract give rise to a difference that affects price comparability has support in WTO jurisprudence.

[11] Panel Report, *US – Softwood Lumber V*, at [7.165].
[12] Kroman Celik, Diler and Colakoglu. No domestic credit expense adjustment was made for Habas.
[13] EPR Folio No. 495/027 at p. 20.
[14] EPR Folio No. 495/027 at p. 20.

In *US – Stainless Steel (Korea)*, the Panel examined Korea's argument that in violation of the third sentence of Article 2.4, which permits an adjustment *"for differences affecting price comparability, including differences in conditions and terms of sales …"*, the United States treated export sales which had not been paid because the customer had gone bankrupt later, as 'direct selling expenses', and allocated these direct selling expenses over all United States' sales. The Panel rejected the United States' argument that bad debts are expenses directly related to the payment terms of the contract, and stated:

> We do not consider that the phrase 'differences in conditions and terms of sale', interpreted in accordance with customary rules of interpretation of public international law, can be understood to encompass differences arising from the unforeseen bankruptcy of a customer and consequent failure to pay for certain sales. In this respect, we note that Article 2.4 refers to the 'terms and conditions of sale'. Although of course both words – 'term' and 'condition' – have many meanings, both are commonly used in relation to contracts and agreements. Thus, 'term' is defined, inter alia, to mean 'conditions with regard to payment for goods or services', while 'condition' is defined, inter alia, as 'a provision in a will, contract, etc., on which the force or effect of the document depends'. Thus, we consider that, read as a whole, the phrase 'conditions and terms of sale' refers to the bundle of rights and obligations created by the sales agreement, and 'differences in conditions and terms of sale' refers to differences in that bundle of contractual rights and obligations. Thus, to the extent that there are, for example, differences in payment terms in the two markets, a difference in the conditions and terms of sale exists. The failure of a customer to pay is not a condition or term of sale in this sense, however. Rather, non-payment involves a situation where the purchaser has violated the 'conditions and terms of sale' by breaching its obligation to pay for the merchandise in question. [emphasis added][15]

Applied here, late payment and payment outside the agreed payment terms cannot permissibly be interpreted to support the view that the phrase 'differences in conditions and terms of sale' in Article 2.4, can in these circumstances affect price comparability.

The correct approach for the Commission to follow when assessing whether or not differences in sales credit expenses affect the price paid or payable for like goods and the export price of the goods exported is to assess the agreed terms applicable to each transaction and calculate on the basis of the number of agreed days (not including periods of credit default by the domestic customer) the actual domestic and export credit expenses calculated on the basis of the exporter's actual short-term financing interest rate, and should they not have any short-term borrowings, their short-term cash deposit rate with their principal commercial/business banking entity.

3. Failure to examine suitable grade specification adjustments and determine the normal value under s.269TAC(1)

Even if the Commission was correct to test the suitability of domestic sale for normal value determination on a model-by-model basis, the Commission was nevertheless wrong to depart from a determination of normal values under s.269TAC(1) with a grade specification adjustment under s.269TAC(8).

It is observed under *Section F* of the *Exporter Questionnaires*, that each of the verified exporters provided details of third-country sales. Even if the Commission is not able to determine the grade price premium for comparable sales to Australia from the exporter's own domestic sales, then it is submitted that an assessment of price premiums for comparable grades to those exported to Australia may be determined from the exporter's third country sales disclosures.

[15] Panel Report, *US – Stainless Steel (Korea)*, at [6.75].

4. Failure to correctly calculate the normal value under s.269TAC(2)(c)

(a) Administrative, selling and general costs associated with sales of like goods - Domestic credit costs

Assuming that the Commission was correct to determine the normal values for the verified exporters under s.269TAC(2)(c), it appears from its explanation of the calculation methodology for the credit expense adjustment that it has not included the verified exporter's actual credit expense associated with the sale of like goods in the country of export under s.269TAC(2)(c)(ii). As this involves an assessment of the exporter's actual expenses, the calculation of credit costs are the actual credit costs incurred on domestic sales and as such should properly including periods of credit default by domestic customers.

Similarly, inclusion of actual domestic credit expenses should be applied to the calculation of the 'costs of goods' of like goods are sold in the country of export under s.269TAAD(4)(b) for the purpose of testing domestic sales within OCOT.

(b) cost of production or manufacture of the goods in the country of export – ACRS certification expenses

In the applicant's *Exporter Visit Briefing*,[16] the Commission was advised that each verified exporter held ACRS certification, and that in the case of Colakoglu,[17] Kroman[18] and Diler,[19] certification was attained during the investigation period. It is not clear to the applicant whether the costs of ACRS certification were added to the verified exporters' cost of production or manufacturing of the goods under s.269TAC(2)(c)(i). Furthermore, whether ACRS certification of the goods exported affects the export price does not appear to have been considered by the Commission as a possible adjustment to the normal value under s.269TAC(9).

5. Export price should properly be determined under s.269TAB(3)

The export price for all but one verified exporter was determined under s.269TAB(1)(c). This preliminary finding is on the basis that Colakoglu, Diler and Kroman each exported the goods to Australia via a related party intermediary.[20] Given that in each case a related-party intermediary was used, it is not clear to the applicant how the Commission satisfied itself that the conditions of non-arms length transactions under s.269TAA(1) were not met in this case, specifically, how the Commission tested to verify that there was no evidence that:

- there was any consideration payable for or in respect of the goods other than their price; or
- the price was influenced by a commercial or other relationship between the buyer, or an associate of the buyer, and the seller, or an associate of the seller; or
- the buyer, or an associate of the buyer, was, subsequent to the purchase or sale, directly or indirectly, reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

[16] EPR Folio No. 495/014 at p. 11.
[17] Certificate No. 180702 (12/07/2018)
[18] Certificate No. 171001 (16/10/2017)
[19] Certificate No. 180701 (12/07/2018)
[20] The export price for Habas was determined under s.269TAB(1)(a).

Unless the Commission is able to be entirely satisfied that any one or more of the above conditions of non-arms length transactions have not been found, then the Commission ought properly conclude that the Minister be satisfied that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under s.269TAB(1)(c), and that the export price of those goods ought to be such amount as is determined by the Minister having regard to all relevant information. The applicant considers that an export price determined deductively as the price at which the goods were sold by the importer to the first arms length purchaser less the prescribed deductions under s.269TAB(2), would be the correct or preferable conclusion in the circumstances of this case.

6. Habas failed to properly apply the Model Control Codes to its models of like goods sold

In its *Exporter Visit Briefing,*[21] the applicant alerted the Commission to a violation of the MCCs specified in the *Exporter Questionnaire* by Habas in its response:

> With respect to the MCC for yield strength differences, these are imparted by minor variations in the quenching process which are not separately costed. They are marginal at best and are not susceptible to the same financial reconstruction as can be done for rolling times.
> On that basis Habaş sees no reason to differentiate between the MCC's B and C in the yield strength category of the MCCs for like goods comparison.[22] [emphasis added]

The applicant reminded the Commission at the *Exporter Visit Briefing* that "Grade 420 [is] **NOT** the same as Grade 500, even if the same cost to make. Sales price comparability needs to be considered".[23]

There is no indication, by way of exception, in the *Exporter Benchmark Verification Report* for Habas, that its unilateral violation of the MCC reporting protocol was corrected at 'verification' by either the exporter or the Commission.

The below comparison of the domestic and export MCCs provided by Habas and accepted by the Commission in the Habas verification report clearly shows that Habas has managed to designate yield strength grade C for export sales where presumably grade C domestic sales have in fact been designated grade B as Habas saw "*no reason to differentiate between the MCC's B and C in the yield strength category of the MCCs for like goods comparison*". Without proper disclosure of domestic models by the exporter, a legitimate model matching exercise will not be possible.

[21] EPR Folio No. 495/014 at p. 11.
[22] EPR Folio No. 495/008 at p. 12.
[23] EPR Folio No. 495/014 at p. 19.

Domestic sales models - Habas

	Prime	Non-Prime	Min yield strength				Form		Diameter				Length			
			<=300	300-480	>480-550	>=550	Straights	Coil	<12mm	12-16mm	>16-32mm	>32mm	<=6m	>6-12m	>12m	Coil
	P	N	A	B	C	D	S	C	A	B	C	D	1	2	3	C
1	X		X					X	X							X
2	X			X				X	X							X
3	X			X				X		X						X
4	X			X			X		X					X		
5	X			X			X			X			X			
6	X			X			X			X				X		
7	X			X			X			X					X	
8	X			X			X				X		X			
9	X			X			X				X			X		
10	X			X			X				X				X	

Export sales models - Habas

	Prime	Non-Prime	Min yield strength				Form		Diameter				Length			
			<=300	300-480	>480-550	>=550	Straights	Coil	<12mm	12-16mm	>16-32mm	>32mm	<=6m	>6-12m	>12m	Coil
	P	N	A	B	C	D	S	C	A	B	C	D	1	2	3	C
1	X				X			X	X							X
2	X				X			X		X						X
3	X				X		X			X			X			
4	X				X		X			X				X		
5	X				X		X				X		X			
6	X				X		X				X			X		
7	X				X		X					X		X		

Liberty Steel also questions whether appropriate MCC disclosure for domestic sales has been provided to the Commission by Diler. Similar to Habas, a comparison of the MCCs shows no yield strength grade C produced for domestic straight rebar MCCs while all export straight rebar models have been designated as grade C. Has Diler also seen "no reason to differentiate" between yield strength grade B and C for domestic rebar straights sales MCC codes and designated them all as grade B? These errors or omissions by the exporters seriously undermines the accuracy of the Commission's attempt to properly compare models sold, and has compromised the Commission's assessment of OCOT and suitability of domestic sales (assuming the Commission's model-by-model approach is correct).

Domestic sales models - Diler

	Prime	Non-Prime	Min yield strength				Form		Diameter				Length			
			<=300	300-480	>480-550	>=550	Straights	Coil	<12mm	12-16mm	>16-32mm	>32mm	<=6m	>6-12m	>12m	Coil
	P	N	A	B	C	D	S	C	A	B	C	D	1	2	3	C
1	X			X			X		X					X		
2	X			X			X			X				X		
3	X			X			X				X			X		
4	X			X			X					X		X		
5	X			X				X	X							X
6	X			X				X		X						X
7	X				X			X	X							X
8	*Non-prime mixed lengths in straight and coil form															

Export sales models - Diler

	Prime	Non-Prime	Min yield strength				Form		Diameter				Length			
			<=300	300-480	>480-550	>=550	Straights	Coil	<12mm	12-16mm	>16-32mm	>32mm	<=6m	>6-12m	>12m	Coil
	P	N	A	B	C	D	S	C	A	B	C	D	1	2	3	C
1	X				X		X			X			X			
2	X				X		X			X				X		
3	X				X		X				X		X			
4	X				X		X				X			X		
5	X				X		X					X		X		

Furthermore, a comparison of the domestic and export sales MCCs provided by Kroman shows a direct match for 4 of the 5 export models with domestic models. The only non-matching model (item 30 below) had a different length to the export model. This different in length between models could have been adjusted for given other models (items 26 and 27) which are a direct match and have the same difference in length are also present.

Domestic sales models - Kroman

	Prime	Non-Prime	Min yield strength				Form		Diameter				Length			
			<=300	300-480	>480-550	>=550	Straights	Coil	<12mm	12-16mm	>16-32mm	>32mm	<=6m	>6-12m	>12m	Coil
	P	N	A	B	C	D	S	C	A	B	C	D	1	2	3	C
1		X	X					X		X						X
2		X		X				X	X							X
3		X		X				X		X						X
4		X			X			X	X							X
5		X			X			X		X						X
6	X		X					X	X							X
7	X		X					X		X						X
8	X		X				X		X					X		
9	X		X				X			X				X		
10	X		X				X				X			X		
11	X			X				X	X							X
12	X			X				X		X						X
13	X			X			X		X				X			
14	X			X			X		X					X		
15	X			X			X			X			X			
16	X			X			X			X				X		
17	X			X			X			X					X	
18	X			X			X				X		X			
19	X			X			X				X			X		
20	X			X			X				X				X	
21	X			X			X					X		X		
22	X			X			X					X			X	
23	X				X			X	X							X
24	X				X			X		X						X
25	X				X		X		X					X		
26	X				X		X			X			X			
27	X				X		X			X				X		
28	X				X		X			X					X	
29	X				X		X				X			X		
30	X				X		X				X				X	
31	X				X		X					X		X		
	*Non-prime mix lengths in straight															

Export sales models - Kroman

	Prime	Non-Prime	Min yield strength				Form		Diameter				Length			
			<=300	300-480	>480-550	>=550	Straights	Coil	<12mm	12-16mm	>16-32mm	>32mm	<=6m	>6-12m	>12m	Coil
	P	N	A	B	C	D	S	C	A	B	C	D	1	2	3	C
1	X				X			X		X						X
2	X				X		X			X			X			
3	X				X		X			X				X		
4	X				X		X				X		X			
5	X				X		X				X			X		

Similarly, for Colakoglu, two of the four export models had a direct match to the domestic models with the other two only differing on bar length (for which an adjustment could presumably have been made).

Domestic sales models - Colakoglu

	Prime	Non-Prime	Min yield strength				Form		Diameter				Length			
			<=300	300-480	>480-550	>=550	Straights	Coil	<12mm	12-16mm	>16-32mm	>32mm	<=6m	>6-12m	>12m	Coil
	P	N	A	B	C	D	S	C	A	B	C	D	1	2	3	C
1	X			X			X		X					X		
2	X			X			X			X				X		
3	X			X			X			X					X	
4	X			X			X				X			X		
5	X			X			X				X				X	
6	X			X			X					X		X		
7	X				X		X		X					X		
8	X				X		X			X				X		
9	X				X		X				X			X		
10	X				X		X					X		X		
11	*Non-prime mixed lengths in straight form															

Export sales models - Colakoglu

	Prime	Non-Prime	Min yield strength				Form		Diameter				Length			
			<=300	300-480	>480-550	>=550	Straights	Coil	<12mm	12-16mm	>16-32mm	>32mm	<=6m	>6-12m	>12m	Coil
	P	N	A	B	C	D	S	C	A	B	C	D	1	2	3	C
1	X				X		X			X			X			
2	X				X		X			X				X		
4	X				X		X				X		X			
5	X				X		X				X			X		

7. Failure to apply an inland transportation upward adjustment to Habas' normal value

It is not clear to the applicant whether the Commission has applied an upward adjustment to Habas' normal value on account of inland transportation value obtained in the export price of the goods exported, but not the price paid or payable for the like goods. In SEF 495, the Commission reports an upward adjustment for "export handling and other".[24] In contrast in Habas' *Exporter Benchmark Verification Report*, the Commission records that:

> Habas reported that it did not incur inland transport expenses for any of its domestic or Australian sales… At A-2.7 in its REQ Habas reported that sales to Australia were exported via its related party owned port facilities at Izmir which is located four miles from the rolling mill producing the rebar. Given the proximity of the port of export to the Habas rolling mill the verification team was satisfied that inland transport costs, if any, incurred by Habas in relation to its Australian sales would likely be negligible.[25]

As such, the Commission decided not to make the adjustment. However, it is unlikely that Habas did not incur inland transportation costs from its EXW point to its related party port of discharge for export. In fact, the Commission observes that Habas "arranged inland transport of the goods to the port of export".[26]

Article 2.4 and ss.269TAC(8) and (9) refer to the comparison of export price and normal value, i.e., the calculation of the dumping margin, and in particular, require that such a comparison shall be 'fair'. The second sentence of the Article elaborates on considerations pertaining to the 'comparison', namely level of trade and timing of sales on both the normal value and export price sides of the dumping margin equation. The third sentence has to do with allowances for 'differences which affect price comparability'. Adjustments for inland transport come with the obligation[27] to ensure fair comparison of the level of trade between the normal value (in this case, constructed, and necessarily at the EXW-level) and the export price (determined at the FOB-level). Therefore, it is not open to the Commission to dismiss making the adjustment based on the exporter's inland freight costs. If this information is not available to the Commission, then an estimate of Habas' inland freight costs may be based on the average fixed charges incurred by the other verified exporters together with a pro-rate of their average (variable) distances charges. If it is indeed true that Habas did not incur "inland transportation expenses", then this goes to the question of what consideration other than price was paid for the goods, or whether the price was influenced by any other relationships under s.269TAA(1)(a) and (b) and may affect the Commission's assessment of arms length nature of the transactions and ultimately the correct or preferable conclusion with respect to how the export price ought properly to be determined.

B. SUBSIDY INVESTIGATION

Note: Calculations demonstrating the effect of the alternative methodology proposed below are provided in two attachments. Program calculations which have not included confidential source information ie. Information obtained on a subscription basis, are provided as NON-CONFIDENTIAL ATTACHMENT 1 (Programs 17, 25 and 26). Program calculations using subscriber-only data are

[24] SEF 495 at p. 44.
[25] EPR Folio No. 495/029 at 17.
[26] EPR Folio No. 495/029 at [4.2].
[27] In *US – Hot-Rolled Steel*, the Appellate Body considered that "the obligation to ensure a 'fair comparison'" under Article 2.4 "lies on the investigating authorities" (Appellate Body Report, *US – Hot-Rolled Steel* at [178]).

necessarily considered confidential and are provided as CONFIDENTIAL ATTACHMENT 2 (Programs 5, 8, 22, 23, 27) .

1. Program 5: Deductions from Taxable Income for Export Revenue

SEF findings

In accordance with s.269TACD(1), the amount of the subsidy has been determined for each cooperative exporter by:

- taking one quarter of the 2017 deducted amount as reported in each exporter's annual corporate tax return, being that part of 2017 which overlapped with the investigation period; and

- taking the total export turnover data to all countries provided by each exporter for 2018, multiplied by 0.5 per cent, being the maximum deductible amount available under the program, multiplied by 22 per cent, being the applicable corporate tax from 1 January 2018, multiplied by three-quarters, being that part of 2018 which overlapped with the investigation period.

The Commission was not provided with deducted amounts claimed by exporters under this program for the investigation period and accordingly, given the nature of the program (in that no documentary evidence is required by exporters in order to claim the deduction), the Commission considers it reasonable to assume that the highest deductible rate available of 0.5 per cent will be used by exporters.

In accordance with s.269TACD(2), this amount has then been apportioned to each unit of the goods using the value of all exports to all countries for each entity during the investigation period.[28]

Observations

Liberty Steel agrees that it is reasonable to assume that the highest deductible rate of 0.5% will be used by exporters.

Liberty Steel disagrees with the method of calculating and apportioning the subsidy by using total export data to all countries as this will only give an average value of the subsidy to all countries and not the value of the subsidy for exports to Australia.

The value of the subsidy should be calculated on the export price of the goods exported to Australia, multiplied by 0.5 per cent, multiplied by the applicable corporate tax. This method is in accordance with s.269TACD(1) which states *"a countervailable subsidy has been received in respect of goods"*.

Liberty Steel notes that the benefit is effectively a tax-free subsidy and needs to be grossed up to apply the actual effect of the subsidy received. The revenue forgone to the Government of Turkey (**GoT**) is the tax forgone by the GoT, but the net benefit to the exporter is higher.

Liberty Steel submits that the subsidy should be apportioned to the export price based on the grossed-up value of the subsidy. That is the value of the subsidy calculated above divided by (1 minus the applicable corporate tax rate).

[28] SEF 495 at pp. 79-80.

The above approach is in accordance with the *SCM Agreement*[29] which states.

> The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise, as provided for in paragraph 3 of Article VI of GATT 1994.[30]

Apportioning the benefit based solely on the revenue forgone by the GoT understates the value of the subsidy to the exporter and would not offset the subsidy bestowed on the exporter.

The above approach is in accordance with s.269TACD(2) which states the *"Minister must, if that subsidy is not quantified by reference to a unit of those goods determined by weight, volume or otherwise, work out how much of that amount is properly attributable to each such unit"*.

2. Program 8: Exemption from Property Tax

SEF findings

Owner entities of property located in certain areas covered by this program are eligible to receive an exemption from paying property tax on buildings and land, which is otherwise payable at 0.2 per cent of the value of non-residential land or buildings outside of a metropolitan area.

The Commission has used data provided by Colakoglu and Diler on property tax payable by both exporters before they started receiving benefits under this program to determine property tax foregone during the investigation period. In accordance with s.269TACD(2), this amount has then been apportioned to each unit of the goods using the value of all goods produced by each company during the investigation period.

Observations

Liberty Steel notes that the exemption from property tax is similar in nature to Program 5, the property tax exemption has the effect, as does Program 5, of increasing profit after tax. The exemption is effectively a tax-free subsidy that needs to be grossed-up to apply the actual effect of the subsidy received.

Liberty Steel submits that the subsidy should be apportioned to the export price based on the grossed-up value of the subsidy. That is the value of the subsidy calculated above divided by (1 minus the applicable corporate tax rate).

3. Program 23: Social Security Premium Support (Employer's Share)

SEF findings

The Commission considers that the laws governing this program provide for a financial contribution by the GoT to eligible entities, being the foregoing of revenue (being a portion of social security insurance premiums) otherwise due to the GoT by those entities.

The Commission has allocated the amount of the benefit by having regard to all company turnover. In accordance with s.269TACD(2), this amount has then been apportioned to each unit of the goods using the value of all exports during the investigation period.

[29] References to the *SCM Agreement* shall be references to the *Agreement on Subsidies and Countervailing Measures*.
[30] *SCM Agreement* at p. 241.

Observations

Liberty Steel notes that the Social Security Support Program is similar in nature to Program 5, the program has the effect, as does Program 5, of increasing profit after tax. The exemption is effectively a tax-free subsidy that needs to be grossed-up to apply the actual effect of the subsidy received.

Liberty Steel submits that the subsidy should be apportioned to the export price based on the grossed-up value of the subsidy. That is the value of the subsidy calculated above divided by (1 minus the applicable corporate tax rate).

4. Program 25: Investment Incentive Program

a. VAT and Customs Duty Exemption for Machinery and Equipment used at the Port

SEF findings

VAT payable in Turkey is 18 per cent. By receiving an exemption for payment of VAT on the machinery, Habas has realised a benefit equal to 18 per cent of the cost of the machinery.

The Commission has then amortized the apportioned benefit over the expected life of the machinery.

In accordance with s.269TACD(2), this amount has then been apportioned to each unit of the goods using the value of all exports during the investigation period.

Observations

Liberty Steel notes that the VAT Exemption Program is similar in nature to Program 5, the program has the effect, as does Program 5, of increasing profit after tax. The exemption is effectively a tax free subsidy that needs to be grossed-up to apply the actual effect of the subsidy received.

Liberty Steel submits that the subsidy should be apportioned to the export price based on the grossed up value of the subsidy. That is the value of the subsidy calculated above divided by (1 minus the applicable corporate tax rate).

b. Tax Reduction in respect of corporate tax in respect of the Port

SEF findings

Under this measure, Habas is entitled to a reduction in its corporate tax rate for each year in which the Certificate is valid up to a maximum amount set in the Investment Incentive Certificate.

The benefit conferred in relation to the port facility has then been attributed based on the value of turnover reported in relation to the steel business division. In accordance with s.269TACD(2), this amount has then been apportioned to each unit of the goods using the value of all exports during the investigation period.

Observations

Liberty Steel notes that the Corporate Tax Reduction Program differs in nature from Program 5 in its effect of increasing the profit after tax. Whilst the exemption is effectively a tax-free subsidy that needs to be grossed up to apply the actual effect of the subsidy received, the calculation of the grossing up is dependent on the before tax profit achieved.

Liberty Steel submits that the subsidy should be apportioned to the export price based on the grossed-up value of the subsidy. That is the value of the subsidy calculated above divided by (1 minus the applicable corporate tax rate), taking into account profit before tax.

c. Tax Reduction in respect of corporate tax in respect of the Industrial Gas Facilities

SEF findings

As discussed above in respect of the Port, Habas is entitled to a reduction in its corporate tax rate in respect of its industrial gas facilities for each year in which the relevant investment certificate is valid.

The Commission has applied the same methodology discussed above in relation to Habas' port investment to determine the subsidy to Habas under this measure in relation to the investment in its industrial gas facilities by having regard to the value of the allowable deduction made for the gas facilities as reported in its 2017 tax return.

The benefit conferred in relation to the industrial gas division has then been worked out by having regard to all company turnover.

Observations

Liberty Steel disagrees with the Commission's approach of the benefit conferred being worked out in regard to all company turnover. Liberty Steel notes that the *"Habas group of companies is primarily involved in industrial gas and steel manufacturing, shipping, banking, finance, and automotive"*[31]. Liberty Steel considers that the benefit conferred should be worked out in regard to the turnover of the companies that would use or benefit from the industrial gas division activities, such as steel manufacturing and industrial gas.

Liberty Steel submits that the Program offers the same benefits as for the tax reduction program for the port facilities and is effectively a tax-free subsidy that needs to be grossed up to apply the actual effect of the subsidy received.

Liberty Steel submits that the subsidy should be apportioned to the export price based on the grossed-up value of the subsidy. That is the value of the subsidy calculated above divided by (1 minus the applicable corporate tax rate), taking into account profit before tax.

5. Program 22: Assistance to Offset Costs Related to AD/CVD Investigations

SEF findings

The Turkish Steel Exporters' Association (**TSEA**) provides financial support under this program to its members in connection with anti-dumping proceedings.

Following the closure of an investigation, entities submit to TSEA an application for reimbursement for up to 50 per cent of their legal/consultancy costs, up to a maximum of USD 100,000.

From the information provided by the GoT and exporters, the Commission has determined that Colakoglu, Diler and Kroman have each received a financial contribution under this program, and that the contribution is a contribution by a private body directed to carry out a government function.

[31] EPR Folio No. 495/008 at p. 15.

For Colakoglu and Diler, the contributions received were in respect of export markets other than Australia:

- for Colakoglu in respect of an anti-dumping proceeding conducted against its hot rolled steel exports to the United States; and
- for Diler in respect of an anti-dumping proceeding conducted against its steel rebar exports to Brazil.

While Kroman acknowledged receipt of a benefit under this program, it has not provided any details regarding the products subject to the investigation or the investigating country.

However, the Commission, after reviewing its previous anti-dumping investigations, is satisfied that any contribution received by Kroman under this program is not in respect of the export of the goods to Australia. In light of the above, the Commission has determined that no subsidy was provided under this program in respect of the goods during the investigation period.

Observations

Liberty Steel notes the GOT responses in regard to the program:

> According to TSEA, companies should make an application to TSEA within 3 months following the closing date of an investigation.[32]
>
> The company requesting financial support must submit to the Secretariat General within three months at the latest following the closure of the investigation with a brief note on the investigation[33]

Liberty Steel notes that it is clear that:

- The companies (exporters) cannot apply for the subsidy until after the closure of the investigation;
- The investigation is still current; the exporters would not have been able to apply for the subsidy whilst the investigation is still current;
- The subsidy in respect of the goods exported to Australia has not been received as the exporters could not as yet apply for such subsidy;
- All four exporters have engaged representation for this investigation;
- All four exporters have previously applied for and received the subsidy in respect of similar investigations.

Liberty Steel notes that Habas has previously received the subsidy in respect to similar investigations as stated in the application:

> Habas applied for and received such assistance from the TSEA;
> The US determined that Habas received a net countervailable subsidy.[34]

Liberty Steel submits that based on the evidence above that it is reasonable to assume that the exporters will claim the full amount of the subsidy that they are entitled to in relation to this investigation once it has concluded.

[32] EPR Folio No. 495/013 (GoT Response) at p. 96.
[33] EPR Folio No. 495/013.2 (Exhibits 20-37) at p. 114.
[34] EPR Folio No. 495/001 at pp. 110-112.

Liberty Steel further submits that the amount of the subsidy should be determined at USD 200,000 in accordance with s.269TACD(1) and that this amount be apportioned solely to the exported goods to Australia in accordance with s.269TACD(2).

The subsidy provided relates solely to the investigation that the subsidy is provided for:

> Financial support is granted per investigation by the Association. The Association may provide separate financial support for each investigation launched in the same country for the same product.[35]

The above makes it clear that the current anti-dumping investigation and the current countervailing investigation into exports of rebar from Turkey enable the exporter to receive assistance of USD 100,000 for each investigation for a total subsidy of USD 200,000.

A separate subsidy is provided for subsequent reviews of measures following any imposition of measures:

> For administrative review investigations on countervailing measures in effect launched upon the request by the Company; the Company must apply for approval, ahead of the application to the Authority that will carry out the investigation, to the Secretariat General with a report of the potential outcome of the investigation produced by the law firm that will provide services to the company.
> … the Company which has applied, without the opinion in favor of the Ministry, to the authorities in related countries for the opening of review investigation for countervailing measures in effect, shall not enjoy financial supports within the scope of this Implementation Procedures and Principles for this investigation for which it applied and for all other investigations to be launched within two years as of the opening of the said investigation.[36]
>
> Joint attorney and/or legal consultancy services may be purchased by relevant Association/Associations, on the condition that such services are purchased for the defense of the export of the product subject to the investigation or measure.[37]

The above demonstrates that the subsidy is solely related to the exports the subject of the investigation and also demonstrates further control over the direction and disbursement of the subsidy by the GoT.

Liberty Steel further submits that the Program offers the same benefits as for the tax reduction program for the port facilities and is effectively a tax-free subsidy that needs to be grossed-up to apply the actual effect of the subsidy received.

The evidence provided in the exporter submissions, GoT questionnaire and exporter verifications is clear that the exporters are entitled to and will receive a subsidy of USD 200,000 that is directly related to the exports of the goods the subject of the current investigation.

That the subsidy has not yet been received, or applied for, is irrelevant. What is relevant is that the exporters have received such subsidies for similar investigations and all the available evidence supports that the exporters will receive subsidies for the current investigation.

[35] EPR Folio No. 495/013.2 (Exhibits 20-37) at p. 115.
[36] EPR Folio No. 495/013.2 (Exhibits 20-37) at p. 115.
[37] EPR Folio No. 495/013.2 (Exhibits 20-37) at p. 116.

6. Program 27: Short Term Export Credit Insurance Program

SEF findings

The Commission has examined the financial performance of the program over the three years prior to the investigation period and has determined that over that period revenues from premiums are significantly more than pay outs made under the program, with Turk Eximbank collecting USD 67.5 million after pay outs of claims.

Accordingly, the Commission is satisfied that the revenue from premiums adequately covers the long-term operating costs of the program and that this program is not a subsidy in respect of the goods.

Observations

Liberty Steel notes the response by Colakoglu in its Exporter Questionnaire response where it stated:

> Çolakoglu did not incur marine insurance costs for sales to Australia.[38]

Liberty Steel acknowledges that marine insurance costs on such shipments may have been the responsibility of the importer, however it would be appreciated if this detail could be checked as it could potentially affect the calculation of the export price.

7. Program 17: Rediscount Program

SEF findings

The Commission has undertaken an analysis of the information provided by cooperating exporters in relation to loans they have sourced from the Export Credit Bank of Turkey (orTurk Eximbank), privately owned banks and government owned banks operating on a commercial basis. The Commission established that interest rates differed between exporters and between banks, which it considers indicative of financial institutions setting lending rates based on commercial risk assessments, which is a fundamental tenet of a functioning financial market.

The Commission has used interest rate data from privately owned banks and government owned banks operating on a commercial basis for short-term loans (as each loan provided under the program must be repaid within 360 days), weighted by the value of each loan, to establish a benchmark of market rates against which loans from Turk Eximbank can be compared over the investigation period.

The Commission considered this basis for the calculation of a benchmark rate more appropriate than the rate offered by the Central Bank of Turkey (**TCB**) as it more accurately represents rates actually available to exporters in the market.

The Commission has determined the amount of subsidy as the differential between this benchmark rate and the rate actually charged at the time the loan was sourced from Turk Eximbank.

Observations

Liberty Steel provides the following observations on the loans provided by Turk Eximbank (Eximbank or TE).

[38] EPR Folio No. 495/011 at p. 21.

a. Term of loans

The period of 360 days is treated as a full year.

> The calculation of interest rates is based on 360 full days per year.[39]

Liberty Steel submits that it is clear that any comparison of loans should be for loans on a full year and not lesser periods as shorter-term loans of six or nine months would likely incur lower rates.

b. Repayment of loans

Liberty Steel observes that loans under this program may be repaid in Turkish Lira (**TRY** or **TL**) or foreign currency.

> Firms can repay either in as usage foreign currency or in TL equivalent amount of principal and interest by using exchange rate determined by Türk Eximbank.[40]

Liberty Steel submits that the above provision allows for further benefits under this program to be provided to the exporter. It is unclear whether the repayment of the principal and interest in foreign currency or TRY references the amount originally set at the loan date or the amount at conclusion of the loan.

By way of example in a situation where the TRY is declining against the USD where the loan amount was USD 250,000, with an exchange rate of 4.00 TRY to the USD, the amount due for repayment by the exporter is TRY 1,000,000.

When the repayment falls due after the year the exchange rate of the TRY to the USD may be 5.00 TRY to the USD. The exporter has the choice of repaying the loan amount in USD or TRY. Clearly, in such a situation it is in the exporter's interest to convert USD 200,000 currency obtained from the exports and repay the TRY 1,000,000 leaving the exporter with a surplus of USD 50,000 from the loan or TRY 250,000.

Likewise, in a situation where the TRY is increasing against the USD for the same loan amount of USD 250,000, with an exchange rate of 5.00 TRY to the USD, the amount due for repayment by the exporter is TRY 1,250,000,

When the repayment falls due after the year the exchange rate of the TRY to the USD may be 4.00 TRY to the USD. The exporter has the choice of repaying the loan amount in USD or TRY, clearly in such a situation it is in the exporter's interest to repay the loan in USD 250,000 currency obtained from exports as converting the USD held by the exporter to TRY would only realise TRY 1,000,000 leaving the exporter with a deficit of TRY 250,000 still due on the loan to repay.

Liberty Steel requests that the Commission check any such repayments to assess whether such a benefit has been provided.

[39] EPR Folio No. 495/013.2 (Exhibits 20-37) at p. 45.
[40] EPR Folio No. 495/013.2 (Exhibits 20-37) at pp. 2 & 11.

c. Guarantees and risks

Liberty Steel observes that exporters can access the benefits of the Program via the commercial banks without applying via TE.

> Therefore, from that date on promissory notes issued on behalf of commercial banks are also discounted under this program which means firms can also use this program via commercial banks without applying TE or via TE without involvement of commercial banks.[41]

Liberty Steel submits that the above provisions effectively mean that comparison of loans from commercial banks to loans from TE are effectively a comparison of the same loans from TE, whereby TE is the same sponsor, guarantor and risk holder.

d. Taxes, duties, stamps and stamp tax liabilities exemptions on loans

Liberty Steel observes that loans provided under this program are exempt from taxes, duties, stamps and stamp tax liabilities that would ordinarily apply to such loans as evidenced in the responses provided by the GoT:

> In the event that the commitment is not partially or fully realized, the related tax declaration will be made by the relevant branch of the Central Bank to the relevant tax department in order to collect the taxes, duties, stamps and stamp tax liabilities that were initially exempted.[42]
>
> Also, the Banking and Insurance Transactions Tax to be calculated on the basis of the received interest, commission and other expenses shall be paid by Turk Eximbank under provisions of Expense Tax Law and then collected from the company.
>
> For obligations relating to the Resource Utilization Support Fund, action shall be taken within the framework of relevant Decrees, Communiqués and Circulars.[43]

Liberty Steel submits that the above evidences that loans under this program are exempt from taxes, duties and stamp duties that would normally apply to comparable loans and that such exemptions need to be taken into account in any comparison of loans.

Available information on the Banking and Insurance Transactions Tax (**BITT**) states:

> The transactions being performed by licensed banks and insurance companies are generally exempt from VAT but are subject to BITT at a rate of 5% in general (although some transactions are subject to 1% or 0% BITT), which is due on the gains of such corporations from their transactions.

Liberty Steel submits that in the absence of any evidence from the GoT or exporters as to the applicable BITT rate for the loans under this program that the highest BITT rate of 5% should be used in determining the amount of the subsidy applicable for the loans.

Available information on stamp tax states:

> Stamp tax applies to a wide range of documents, including, but not limited to, agreements, financial statements, and payrolls. Stamp tax is levied as a percentage of the value stated on the agreements at rates varying between 0.189% and 0.948%.

[41] EPR Folio No. 495/013 (GoT Response) at p. 76.
[42] EPR Folio No. 495/013.2 (Exhibits 20-37) at pp. 9, 11 & 51.
[43] EPR Folio No. 495/013.2 (Exhibits 20-37) at p.9 & 11.

Liberty Steel submits that in the absence of any evidence from the GoT or exporters as to the applicable stamp tax rate for the loans under this program that the highest stamp tax rate of 0.948% should be used in determining the amount of the subsidy applicable for the loans.

Available information on the Resource Utilization Support Fund (**RUSF**) states.

> According to the current legislation, regressive RUSF rates apply to foreign exchange and gold borrowings provided to Turkish residents (banks and financing institutions are exempt) from abroad depending on the maturity.
> The RUSF rates on foreign currency denominated loans are as follows:
> 3% if the maturity is under one year.
> 1% if the maturity is between one and two years (including one year).

Liberty Steel takes the view that the bank and financing institution exemption applies to borrowings provided to those institutions from abroad and not borrowings by those institutions to Turkish residents (including Turkish companies).

Liberty Steel submits that in the absence of any evidence from the GoT or exporters as to the applicable RUSF rate for the loans under this program that the highest RUSF rate of 3.0% should be used in determining the amount of the subsidy applicable for the loans.

Liberty Steel has calculated a subsidy value for Program 17 using the cost of funds for a Commercial Bank in Turkey, the margin that the bank achieves on those cost of funds and the applicable taxes and duties (BITT, RUSF and stamp duty). The subsidy value calculated by Liberty Steel is 3.28%.[44]

Liberty Steel submits that this calculated value represents the benefit of Program 17 to the exporters and is what should be apportioned to the export price as a countervailing measure.

8. Program 26: Program

SEF findings

The Commission has undertaken an analysis of the information provided by cooperating exporters in relation to loans they have sourced from both Turk Eximbank, privately owned banks and government owned banks operating on a commercial basis. The Commission established that interest rates differed between exporters and between banks, which it considers indicative of financial institutions setting lending rates based on commercial risk assessments, which is a fundamental tenet of a functioning financial market.

The Commission has used interest rate data for long-term loans issued to each exporter by privately owned banks and government owned banks operating on a commercial basis to establish a benchmark of market rates (thereby giving each exporter their own benchmark) against which loans from Turk Eximbank can be compared over the investigation period.

The Commission considered this basis for the calculation of a benchmark rate more appropriate than the rate offered by the TCB as it more accurately represents rates actually available to exporters in the market.

The Commission has determined the amount of subsidy as the differential between this benchmark rate and the rate actually charged at the time the loan was sourced from Turk Eximbank.

[44] NON-CONFIDENTIAL ATTACHMENT 1.

Observations

Liberty Steel provides the following observations on the loans provided by Turk Eximbank.

a. Taxes, duties, stamps and stamp tax liabilities exemptions on loans

Liberty Steel observes that loans provided under this program, as for Program 17, are exempt from taxes, duties, stamps and stamp tax liabilities that would ordinarily apply to such loans as evidenced in the responses provided by the GoT.

> This credit facility shall be exempted from taxes, duties and fees subject to provisions of the Decree on Exemptions from Taxes, Duties and Fees for Exports as well as Communiqués pertaining to this Decree. Issues pertaining to Resource Utilization Support Fund shall be subjected to provisions of respective Decrees, Communiqués and Circulars.[45]
>
> If it is found out that commitment for exports/foreign currency is not met within the term of the loan or under other terms or conditions, in part or in whole,
>
> The Banking and Insurance Transactions Tax (BSMV) to be calculated over collected interest, commissions and charges shall be paid by our Bank pursuant to Excise Tax Law and charged to the borrower.
>
> Obligations under Resource Utilization Support Fund shall be fulfilled in accordance with respective decrees, communiqués and circulars.
>
> The respective tax office shall collect taxes, duties, fees and stamp duties, which were exempted originally, upon notification of abrogation of exemption for such obligations…[46]

Liberty Steel submits that the above evidences that loans under this program are exempt from taxes, duties and stamp duties that would normally apply to comparable loans and that such exemptions need to be taken into account in any comparison of loans.

b. Grace period

Liberty Steel observes that a 1-year grace period applies in regard to payment of the principal:

> Term of the loan shall be 3 years as a maximum, with a 1 year grace period for payment of the principal amount. The term of the loan commences at the date on which loan proceeds are credited to the accounts of the company.[47]

Liberty Steel submits that the above grace period should be taken into account in any comparison of loans.

Liberty Steel has calculated a subsidy value for Program 26 using the cost of funds for a Commercial Bank in Turkey, the margin that the bank achieves on those cost of funds and the applicable taxes and duties (BITT, RUSF and stamp duty). A margin of 0.5% has also been applied to reflect the longer term loan, a value has not been calculated for the grace period. The subsidy value calculated by Liberty Steel is 3.53%.[48]

Liberty Steel submits that this calculated value represents the benefit of Program 26 to the exporters and is what should be apportioned to the export price as a countervailing measure.

[45] EPR Folio No. 495/013.2 (Exhibits 20-37) at p. 164.
[46] EPR Folio No. 495/013.2 (Exhibits 20-37) at p. 168.
[47] EPR Folio No. 495/013.2 (Exhibits 20-37) at p. 170.
[48] NON-CONFIDENTIAL ATTACHMENT 1.

CONCLUSIONS

Liberty Steel submits that for the above reasons, the Commission must review its preliminary conclusions and findings contained in SEF 495, specifically:

- adjust its assessment of the suitability of domestic sales for determination of the normal value under s.269TAC(1);
- remove or review its domestic credit expense adjustment;
- determine normal values under s.269TAC(1) and apply a specification adjustment for grade differences based on available evidence of price differences;
- assuming the normal value is appropriately determined under s.269TAC(2)(c), the correct its calculation by adding the exporters' domestic credit costs to the administrative, selling and general expenses for sales in Turkish domestic market, and add the exporters' ACRS expenses to the cost of goods exported;
- determine the export price deductively under s.269TAB(3);
- correct the errors and omissions of the exporters' MCCs and reconsider the comparability between the models of like goods and the goods exported;
- properly compare Habas' normal value at the same level of trade to its export price of the goods exported to Australia by applying an inland freight expense adjustment;
- for Program 5, the benefit should be calculated as it relates to exports to Australia as this properly reflects the value of the subsidy for the goods exported to Australia. The benefit should be apportioned on the grossed-up value relative to the export price of the goods exported to Australia as this represents the net benefit to the exporter and the proposed countervailing measures that would effectively countervail the subsidy;
- for Program 8, the benefit should be apportioned on the grossed-up value relative to the export price of the goods exported to Australia as this represents the net benefit to the exporter and the proposed countervailing measures that would effectively countervail the subsidy;
- for Program 23, the benefit should be apportioned on the grossed-up value relative to the export price of the goods exported to Australia as this represents the net benefit to the exporter and the proposed countervailing measures that would effectively countervail the subsidy;
- for Program 25, the benefit in regard to the exemption from VAT should be apportioned on the grossed-up value relative to the export price this represents the net benefit to the exporter and the proposed countervailing measures that would effectively countervail the subsidy. The benefit in regard to tax reductions for the port facilities should be apportioned on the grossed-up value relative to the export price having regard to the before tax profit achieved. This represents the net benefit to the exporter and the proposed countervailing measures that would effectively countervail the subsidy. The benefit conferred in regard to tax reductions for the gas facilities should be worked out in regard to the turnover of the companies that would use or benefit from the industrial gas division activities, such as steel manufacturing and industrial gas. The benefit should be apportioned on the grossed-up value relative to the export price having regard to the before tax profit achieved. This represents the net benefit to the exporter and the proposed countervailing measures that would effectively countervail the subsidy;

- for Program 22, all of the available evidence supports that the exporters are entitled to the subsidy and have claimed benefits from this program in previous years. The benefit conferred should be calculated on the value of benefit the exporter is entitled to relative to the value of the exports to Australia during the investigation. The benefit should be apportioned on the grossed-up value relative to the export price of the goods exported to Australia as this represents the net benefit to the exporter and the proposed countervailing measures that would effectively countervail the subsidy; and
- for Programs 17 and 26, the exemptions from the taxes and duties for loans under the programs need to be taken into account in determining the value of the subsidies. The values provided by Liberty Steel in this submission should be the values applied as the best available evidence. The value of the grace period, flexibility to repay in currency of choice and whether the GoT acts as guarantor on the commercial loans that were compared to loans under these programs are features that the Commission needs to take into account in its comparison of such loans.

It is Liberty Steel's expectation that upon successful review of the above findings and conclusions, the Commission will find that dumping has occurred in relation to exports of rebar from Turkey, and that the subsidies received in relation to these exports did exceed negligible levels. Accordingly, the applicant submits that it would no longer be the correct or preferable decision for the Commissioner to terminate any part or whole of the investigation under s.269TDA.

Please do not hesitate to contact your Liberty Steel representative on record with any questions.

FOR AND ON BEHALF OF THE

AUSTRALIAN INDUSTRY APPLICANT

NON CONFIDENTIAL ATTACHMENT 1

PUBLIC RECORD

Program 17 Rediscount program

Letter of credit from Commercial Bank.
Sent to EXIM for financing of USD 100,000
Recieve USD 96,000 on approval.
Required to pay EXIM USD 100,000 on maturity.
Financing up to 360 days.
Fee also paid to Commercial bank, likely nominal.

Benefit per USD 100,000

Amount		**96,000**
Repay		**100,000**
Charge		**4,000**
Period days 365		
GoT advised 360 days treated as year		**365**
Annual interest rate charge		**4.17%**
IS Bank USD Borrowing Rate		
Page 87 of statements		2.75%
Apply margin		
Interest income/Interest expense (page 6 of statements)	195.14%	5.37%
BITT (5% of gain, that is margin)		0.13%
Stamp duty		0.948%
RUSF		1.00%
Commercial loan inclusive of taxes duties		**7.45%**
Benefit		**3.28%**

Interim Financial Statements
TÜRKİYE İŞ BANKASI ANONİM ŞİRKETİ
Page 87

The Bank has signed a syndicated loan agreement in the amount of EURO 605 million and USD 276 million with a maturity of 367 days on 19 October 2018. The all-in cost for the highest participation level of each tranche is Libor+2,75% and Euribor+2,65.

https://www.global-rates.com/interest-rates/libor/american-dollar/2018.aspx

USD LIBOR 12 months Average 2018 2.759

Average LIBOR rate during the period of investigation to Greece was 2.759%
Greece is a suitable benchmark for the applicable LIBOR rate that would apply to Turkey.

https://sdw-wsrest.ecb.europa.eu/service/data/MIR/M.AT+BE+CY+DE+EE+ES+FI+FR+GR+IE+IT+LT+LU+LV+MT+NL+PT+SI+SK+U2.B.A2A.I.R.1.2240.EUR.N?startPeriod=2003
https://sdw-wsrest.ecb.europa.eu/service/data/MIR/M.AT+BE+CY+DE+EE+ES+FI+FR+GR+IE+IT+LT+LU+LV+MT+NL+PT+SI+SK+U2.B.A2A.F.R.1.2240.EUR.N?startPeriod=2003
https://www.euro-area-statistics.org/bank-interest-rates-loans?cr=eur&lg=en&page=1&charts=M..B.A2A.F.R.1.2240.EUR.N+M..B.A2A.D.R.2.2240.EUR.N+M..B.A2A.F.R.0.2240.EUR.N&template=1

Program 26 Exporter Working Capital Loan

The program provides credit (up to USD 50 million dollars) to manufacturers, manufacturer-exporters and firms engaged in foreign currency earning activities who produce goods in Turkey for export, to enable them to purchase raw materials, intermediate goods, machinery and equipment and meet their other financial needs.
Loans under the program are contingent on an export commitment by the applicant which must be satisfied within the credit period.
It is administered Turk Eximbank.

Use same estimated Benefit from Program 17
But added premium based on difference loans 1-5 years and
Loans 1 year for Germany from EU data

Premium	0.25%	
Benefit	with premium	**3.53%**

BITT, RUSF and Stamp Duty rates from.

http://taxsummaries.pwc.com/ID/Turkey-Corporate-Other-taxes

Investment Incentive Program 25

Tax discount — **As applied to Steel Division in regard to Port Facilities**

		Tax discount		**50.0%**
Corporate Tax	**21.5%**	Corporate Tax (reduced)		**10.75%**
Net profit	**6%**			**Tax incentive 50% discount**
Revenue		**100,000,000**		**100,000,000**
Net Revenue/profit		**6,000,000**		**6,000,000**
Corporate tax , no incentive		1,290,000		645,000
Habas profit after tax		4,710,000		**5,355,000**
		Benefit	**645,000**	**0.65%**
		Benefit grossed up	**821,656**	**0.82%**
Revenue		**100,821,656**		Benefit grossed up is increase in revenue required to achieve same after tax profit as that provided by the tax discount
Net Revenue/profit		6,821,656		
Corporate tax no incentive		1,466,656		
Habas profit after tax		**5,355,000**		

Tax discount EPR Folio 495/013.1 page 174.
Corporate tax or income tax reduction rate (%) *50*

Rate of profit from EU document, Page 3.
http://trade.ec.europa.eu/doclib/docs/2018/june/tradoc_156921.pdf
A minimum target profit of 6% is introduced – based on long-term profitability figures established for the European industry.

Corporate tax is average rate over the POI.
Revenue is an assumption.