PUBLIC RECORD

Australian Government
Department of Industry, Science, Energy and Resources

Anti-Dumping Commission

CUSTOMS ACT 1901 - PART XVB

STATEMENT OF ESSENTIAL FACTS NO. 495A

ALLEGED DUMPING OF STEEL REINFORCING BAR EXPORTED FROM THE REPUBLIC OF TURKEY AND ALLEGED SUBSIDISATION OF STEEL REINFORCING BAR EXPORTED FROM THE REPUBLIC OF TURKEY

11 May 2020

CONTENTS

ABBREVIATIONS

$	Australian dollars
ABF	Australian Border Force
the Act	*Customs Act 1901*
ACRS	Australasian Certification Authority for Reinforcing and Structural Steels
ADN	Anti-Dumping Notice
ADRP	Anti-Dumping Review Panel
BOTAS	Boru Hatlari ile Petrol Taşima A.Ş.
CBSA	Canada Border Services Agency
CFR	Cost and Freight
Colakoglu	Çolakoğlu Metalurji A.Ş.
the Commission	the Anti-Dumping Commission
the Commissioner	the Commissioner of the Anti-Dumping Commission
China	the People's Republic of China
CON 495	*Consideration Report No. 495*
COTAS	Çolakoğlu Dis Ticaret A.Ş.
CTMS	cost to make and sell
DBIC	steel reinforcing bar in coil
DBIL	steel reinforcing bar in lengths
DDT	Diler Dis Ticaret A.Ş.
Diler	Diler Demir Celik Endustri ve Ticaret A.Ş
DITH	DITH Australia Pty Ltd
Duferco	Duferco International Trading Holding Australia Pty Ltd
Dumping and Subsidy Manual	Anti-Dumping Commission – Dumping and Subsidy Manual
EAF	electric arc furnace
EPR	electronic public record for Investigation 495 available at www.adcommission.gov.au
FOB	Free on Board
FTCC	Foreign Trade Corporate Companies
the goods	the goods the subject of the application (also referred to as the goods under consideration)
GoT	Government of Turkey
Habas	Habaş Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.Ş.
IDD	interim dumping duty
Indonesia	the Republic of Indonesia
investigation period	1 October 2017 to 30 September 2018
InfraBuild, or the applicant	InfraBuild (Newcastle) Pty Ltd

injury analysis period	the injury analysis period is from 1 October 2014
INV 240	*Anti-Dumping Commission Investigation No.240*
INV 264	*Anti-Dumping Commission Investigation No.264*
INV 300	*Anti-Dumping Commission Investigation No.300*
INV 322	*Anti-Dumping Commission Investigation No.322*
INV 418	*Anti-Dumping Commission Investigation No.418*
IPC	inward processing certificate
Kaptan	Kaptan Metal Diş Ticaret ve Nakliyat A.Ş.
Korea	Republic of Korea
Kroman	Kroman Çelik Sanayii A.Ş.
MCC	model control code
MESS	Turkish Employers' Association of Metal Industries
the Minister	the Minister for Industry, Science and Technology
Mt	metric tonnes
OCOT	ordinary course of trade
OIZ	Organised Industry Zone
PAD	Preliminary Affirmative Determination
PAD 495	*Preliminary Affirmative Determination No.495*
R&D	Research and Development
Regulation	*Customs (International Obligations) Regulation 2015*
REQ	response to the exporter questionnaire
RGQ	response to the government questionnaire
SCM Agreement	Agreement on Subsidies and Countervailing Measures
SEF	statement of essential facts
SEF 495	*Statement of Essential Facts No. 495*
SEF 495	*Statement of Essential Facts No. 495A (this report)*
SEQR	supplementary exporter questionnaire response
SFTC	Sectoral Foreign Trade Companies
SG&A	selling general and administration
SOR	statement of reasons
TCB	the Central Bank of Turkey
TER 495	*Termination Report No. 495*
Thailand	the Kingdom of Thailand
TKI	Turkish Coal Enterprises
TKM	thyssenkrupp Materials Australia Pty Ltd
TSEA	Turkish Steel Exporters' Association
TUBITAK	Scientific and Technological Research Council of Turkey
Turkey	the Republic of Turkey

Turk Eximbank	the Export Credit Bank of Turkey
TRY	Turkish Lira
USD	United States Dollar
USDOC	United States Department of Commerce
VAT	Value Added Tax
WTO	World Trade Organisation
YIIP	Yücelboru İhracat İthalat ve Pazarlama A.Ş.

1 SUMMARY AND RECOMMENDATIONS

1.1 Summary

This Investigation No. 495 was initiated on 16 November 2018 in response to an application for the publication of a dumping duty notice and a countervailing duty notice in respect of certain steel reinforcing bar (rebar or 'the goods') exported to Australia from the Republic of Turkey (Turkey).[1]

The application was made by Liberty OneSteel (Newcastle) Pty Ltd, now known as InfraBuild (Newcastle) Pty Ltd (InfraBuild, the applicant).[2]

On 20 June 2019, the Commissioner of the Anti-Dumping Commission (the Commissioner) terminated the investigation in its entirety.[3]

InfraBuild applied to the Anti-Dumping Review Panel (ADRP) for a review of the Commissioner's termination decisions. On 27 September 2019, the ADRP revoked the Commissioner's termination decisions.[4]

Section 269ZZT(2) of the *Customs Act 1901* (the Act)[5] states that, as soon as practicable after a reviewable decision has been revoked, the Commissioner must publish a statement of essential facts (SEF). Following the publication of the SEF, the investigation resumes.

This SEF 495A, sets out the facts on which the Commissioner proposes to terminate the investigation in its entirety, subject to any submissions received in response.

1.2 Authority to make decision

Where the Commissioner has resumed a terminated investigation after a revocation decision by the ADRP under section 269ZZT(1)(b), the Commissioner must conduct the investigation according to the normal procedures provided under the Act.

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[1] Anti-Dumping Notice (ADN) No. 2018/175 refers, available on the electronic public record (EPR) for this investigation (Case 495) on the Anti-Dumping Commission (Commission) website via www.adcommission.gov.au. See Case 495 EPR item number 003.

[2] For convenience, the applicant is referred to as InfraBuild for the remainder of this report. InfraBuild's application included production data and letters of support from two other related party rebar producers, OneSteel NSW Pty Ltd and The Australian Steel Company (Operations) Pty Ltd. The applicant and the related party entities are collectively the Australian industry for like goods.

[3] ADN No. 2019/080 refers (see Case 495 EPR item number 037). Detailed reasons are available in *Termination Report No. 495* (TER 495, see Case 495 EPR item number 036).

[4] The ADRP's reasons for revoking the Commissioner's termination decision are available in ADRP Report No. 110, available via www.adreviewpanel.gov.au.

[5] All legislative references in this report are to the *Customs Act 1901*, unless otherwise specified.

Division 2 of Part XVB describes, among other things, the procedures to be followed and the matters to be considered by the Commissioner in conducting investigations in relation to the goods covered by an application under section 269TB(1).

Section 269TDA describes the circumstances in which the Commissioner must terminate an investigation.

1.3 Findings and conclusions

The Commissioner's findings and conclusions in SEF 495A are based on available information at this stage of the investigation. A summary is provided below and there is greater detail in the remainder of the report.

1.3.1 The goods and like goods (Chapter 3)

The Commissioner considers that locally produced rebar is "like" to the goods the subject of the application (the goods) and is satisfied that there is an Australian industry producing like goods.

1.3.2 Australian industry (Chapter 4)

The Commissioner has found that like goods are wholly or partly manufactured in Australia and the Australian industry producing like goods consists of InfraBuild and two related parties.

1.3.3 Australian market (Chapter 5)

The Australian rebar market is supplied from local production and imports from several countries, including Turkey.

1.3.4 Dumping (Chapter 6)

The Commission's assessment of dumping margins is set out in Table 1.

Exporter	Dumping Margin
Çolakoğlu Metalurji A.Ş. (Colakoglu)	-0.3%
Diler Demir Celik Endustri ve Ticaret A.Ş (Diler)	-4.7%
Habaş Sinai ve Tibbi Gazlar Istihsal Endüstrisi A.Ş. (Habas)	-1.8%
Kroman Çelik Sanayii A.Ş. (Kroman)	-0.4%
All Other Exporters	-0.3%

Table 1 Dumping margins

1.3.5 Countervailing (Chapter 7 and Non-Confidential Appendix A)

The Commission's assessment of subsidy margins is set out in Table 2.

Exporter	Subsidy Margin
Colakoglu	0.01%
Diler	0.97%
Habas	0.87%
Kroman	0.52%
All other exporters	1.33%

Table 2 Subsidy margins

1.3.6 Material injury caused by dumped and subsidised goods

Based on the findings in Chapters 6 and 7; that dumping has not occurred in relation to exports of the goods from Turkey, and that subsidies received in relation to those exports did not exceed the negligible levels, the Commissioner is proposing to terminate the investigation in its entirety (as recommended in Chapter 8). Accordingly, the Commissioner does not consider it necessary to determine whether exports of the goods from Turkey have caused material injury to the Australian industry.

1.3.7 Non-injurious price

The Commissioner is not recommending that the Minister publish a notice under sections 269TG(1) or (2) or sections 269TJ(1) or (2). As such, there is no requirement for the Commissioner to make a recommendation regarding whether the Minister should consider the desirability of fixing a lesser amount of duty for the purposes of removing injury, pursuant to the *Customs Tariff (Anti-Dumping) Act 1975*.

1.3.8 Proposal to terminate the investigation in its entirety (Chapter 8)

Subject to any submissions received in response to SEF 495A, the Commissioner proposes to terminate the dumping investigation under sections 269TDA(1) and (3) and the countervailing investigation under section 269TDA(2). The effect is that the investigation would be terminated in its entirety.

2 BACKGROUND

2.1 Key stages of the investigation

2.1.1 Application

On 19 October 2018, InfraBuild, lodged an application under section 269TB(1) seeking the publication of a dumping duty notice and a countervailing duty notice in respect of the goods exported to Australia from Turkey. In the application, it was alleged that the Australian industry has experienced material injury caused by the goods exported to Australia from Turkey at dumped and subsidised prices.[6]

The applicant provided further information in support of the application under section 269TC(2A) on 22 October 2018.

InfraBuild alleged that the Australian industry has experienced material injury caused by exports of rebar from Turkey at dumped and subsidised prices. InfraBuild alleged that the Australian industry has experienced injury in the form of:

- loss of market share;
- price suppression;
- loss of profits;
- reduced profitability;
- reduced return on investment;
- reduced investment in research and development (R&D) and value of assets deployed;
- reduced capacity utilisation;
- increased stock levels of finished goods;
- reduced cash flow; and
- lost revenue.

2.1.2 Initiation

Having considered the application, the Commissioner decided not to reject the application and initiated an investigation on 16 November 2018.

Consideration Report No. 495 (CON 495) and a public notice (ADN No. 2018/175) provide further details relating to the initiation of the investigation.[7]

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[6] Case 495 EPR item number 001.

[7] Case 495 EPR item numbers 002 and 003.

In respect of the investigation:

- the investigation period[8] for the purpose of assessing dumping, subsidisation and material injury is 1 October 2017 to 30 September 2018; and
- the injury analysis period is from 1 October 2014.[9]

2.1.3 Conduct of the investigation

Australian industry

The Commissioner is satisfied that the applicant, InfraBuild, and its related party producers, comprise the Australian industry producing like goods.

The Commission conducted a verification visit to InfraBuild's premises in November 2018. A visit report is available on the EPR.[10]

Importers

The Commission examined the Australian Border Force (ABF) import database and identified several importers of the goods from Turkey during the investigation period. The Commission forwarded importer questionnaires to three major importers and placed a copy of the importer questionnaire on the Commission's website for completion by other importers. The Commission received fully completed questionnaire responses from two importers, DITH Australia Pty Ltd (DITH) and thyssenkrupp Materials Australia Pty Ltd (TKM). The Commission verified the information provided by DITH and TKM on-site. Visit reports relating to each importer are available on the EPR.[11]

Exporters

At the outset of the investigation, the Commission forwarded questionnaires to major exporters of the goods from Turkey via their Australian importer of the goods. The Commission also placed a copy of the exporter questionnaire on the Commission's website for completion by other exporters. After granting extensions to four exporters of 21 days to the initial deadline of 24 December 2018[12] the Commission received completed responses to the exporter questionnaire (REQ) from the following four exporters:

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8 As that term is defined in section 269T(1).

9 The purpose of the injury analysis period is to allow the Commission to identify and examine trends in the market which in turn assists the Commission in its examination of whether material injury has occurred over the investigation period.

10 Case 495 EPR item number 018.

11 Case 495 EPR item numbers 015 and 016.

12 Case 495 EPR item number 006.

- Colakoglu;
- Diler;
- Habas; and
- Kroman.

Based on verified data provided by each of the above exporters and data obtained from the ABF import database, the Commission considers that these exporters are likely to have exported the total volume of the goods to Australia from Turkey in the investigation period from 1 October 2017 to 30 September 2018. The Commissioner has not identified any other exporters that would be the subject of the investigation.

Kaptan Metal Diş Ticaret ve Nakliyat A.Ş. (Kaptan) submitted[13] that it was an exporter of rebar in Turkey but that it had not exported to Australia during the investigation period. As it had not exported to Australia during the investigation period, Kaptan sought confirmation from the Commission that it was not required to provide a REQ. The Commission examined the ABF import database and did not find any evidence that Kaptan exported the goods to Australia during the investigation period. On this basis, Kaptan was not requested to provide a REQ.

Government of Turkey

In accordance with section 269TB(2C), the Commission invited the Government of Turkey (GoT) for consultations whilst the application was being considered. The purpose of the consultation was to provide an opportunity for the GoT to respond to the claims made within the application in relation to countervailable subsidies. This includes whether the subsidies exist and, if so, whether they are causing, or are likely to cause, material injury to an Australian industry, with the aim of arriving at a mutually agreed solution.

To assist in determining whether it wished to undertake consultations and what it would like to consult on, the GoT was provided with a non-confidential version of the countervailing application upon receipt of a properly documented application.

The GoT advised the Commission that it wished to participate in consultations whilst the application was being considered. A teleconference was held on 9 November 2018 between representatives of the Commission and the GoT. The GoT provided a written submission by email at the conclusion of the teleconference (**Non-confidential Attachment 1** refers). The following items were discussed:

- trade between Turkey and Australia in general;
- the status of certain subsidy programs alleged by the applicant. In particular, the GoT outlined that a number of programs:
    - have been repealed and no longer exist;
    - are not used by exporters of rebar to Australia;
    - were found not to be countervailable by other authorities; or
    - confer little to no benefit to exporters of rebar to Australia.
- the Commission gave a summary of its investigative processes.

[13] Case 495 EPR item number 004.

The Commission invited the GoT for further consultations during the investigation however no additional consultations were requested by the GoT.

Response to government questionnaire

At the outset of the investigation, the Commission provided the GoT with a questionnaire relating to the subsidies it was alleged had been received by exporters of the goods from Turkey. After receiving an extension to the original deadline of 24 December 2018, the Commission received the GoT response to the government questionnaire (RGQ) on 24 January 2019. The RGQ is available on the EPR.[14]

2.1.4 Preliminary affirmative determination

In accordance with section 269TD, the Commissioner may make a preliminary affirmative determination (PAD) if satisfied that there appears to be sufficient grounds for the publication of a dumping duty notice or a countervailable duty notice, or if satisfied that it appears that there will be sufficient grounds for the publication of such a notice subsequent to the importation of the goods into Australia.

The Commissioner during the course of the investigation, after having regard to the application, submissions and other relevant information, was satisfied that there appeared to be sufficient grounds for the publication of a dumping duty notice in respect of the goods exported to Australia from Turkey. As a result, the Commissioner made Preliminary Affirmative Determination No. 495 (PAD 495) on 15 January 2019, in respect of the dumping investigation. ADN No. 2019/075 provides further details and is available on the EPR.[15] No PAD was made in relation to the countervailing investigation.

Following PAD 495, and to prevent material injury to the Australian industry occurring while the investigation continued, securities were taken in respect of interim dumping duty (IDD) that may become payable in respect of the goods exported to Australia from Turkey, entered for home consumption on or after 16 January 2019, in accordance with section 42.

As a result of the preliminary findings and conclusions outlined in Statement of Essential Facts No 495 (SEF 495)[16] the Commissioner published a notice on 18 April 2019 advising that securities would no longer be required or taken in respect of all exports of the goods from Turkey.[17] Any securities previously taken by the Commonwealth will not be converted to interim dumping duty.

Subsequent to the ADRP revoking the Commissioner's termination decisions, InfraBuild submitted that it was appropriate for the Commissioner to again consider revising and

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[14] Case 495 EPR item number 013.

[15] Case 495 EPR item number 007.

[16] Case 495 EPR item number 031.

[17] ADN No. 2019/56, Case 495 EPR item number 032.

taking securities.[18] InfraBuild stated that the pricing behaviour of Turkish exporters and a surge in export volumes from Turkey subsequent to the withdrawal of the original securities had resulted in a reoccurrence of injury suffered by the Australian industry.

On the basis of the findings in Chapters 6 and 7, the Commissioner is proposing to terminate the entire investigation (as outlined in Chapter 8). Accordingly, the Commissioner has not revised and taken securities as part of SEF 495A.

2.1.5 Statement of essential facts (SEF 495)

The Commissioner must, within 110 days after the initiation of an investigation, or such longer period as allowed under section 269ZHI(3) place on the public record a SEF on which the Commissioner proposes to base a recommendation to the Minister in relation to the application.

The initiation notice advised that the SEF would be placed on the public record by 6 March 2019. However, as advised in ADN No. 2019/28, the Commissioner approved an extension of time for the publication of the SEF until 18 April 2019. SEF 495 was published on this date. In SEF 495 the Commissioner proposed to terminate the investigation in its entirety, subject to further submissions received.

2.1.6 Termination Report No. 495

On 20 June 2019, the Commissioner terminated the investigation into the alleged dumping and subsidisation of in its entirety.[19]

In relation to the dumping investigation, the Commissioner found that:

- for the goods exported to Australia by Colakoglu, Diler, Habas, Kroman, or any other exporter from Turkey, there was no evidence that dumping had occurred. Therefore the investigation was terminated in accordance with section 269TDA(1)(b)(i) in so far as it relates to these exporters; and
- on the basis that the total volume of goods that were exported to Australia over a reasonable examination period, being the investigation period, from Turkey that have been dumped was negligible, as defined by section 269TDA(4), the dumping investigation was terminated in accordance with section 269TDA(3).

In relation to the subsidy investigation, the Commissioner found that:

- for the goods exported by Colakoglu, Diler, Habas, Kroman a countervailable subsidy had been received in respect of some or all of those goods exported to Australia. However, the subsidies received never at any time during the investigation period exceeded the negligible level of countervailable subsidy as

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[18] Case 495 EPR item number 039.

[19] ADN No. 2019/080 refers, see Case 495 EPR item number 037. Detailed reasons are available in *Termination Report No. 495* (TER 485), see Case 495 EPR item number 036.

defined by section 269TDA(16)(b). Therefore, the investigation was terminated in accordance with section 269TDA(2)(b)(ii) in so far as it relates to all exporters.

2.1.7 ADRP Review No. 110

InfraBuild applied under section 269ZZO for a review of the decisions to terminate the investigation in respect of sections 269TDA(1), (2) and (3).

InfraBuild's review application challenged four grounds, summarised below.

> Ground 1: The Commissioner's determination of certain normal values under section 269TAC(2)(c), which formed the part of the decision to terminate the dumping investigation, was not authorised by the terms of paragraphs (a) or (b) of section 269TAC.
>
> Ground 2: The Commissioner failed to make certain adjustments to the normal value for Habas to account for the cost of inland freight so as to ensure a fair comparison between Habas' export price and normal value.
>
> Ground 3: The Commissioner erred in terminating the investigation under section 269TDA due to an incorrect calculation and determination of the level of subsidisation arising from the cumulation of the benefits conferred under Programs 5, 17 and 22 and from failing to take account of the tax free element of the benefits conferred under Programs 5, 8, 22, 23 and 25.
>
> Ground 4: The reviewable decision was not the correct or preferable decision because the Commissioner's calculation of the subsidy under Program 17 was done not having regard to the differences in short-term and long-term interest rates.

On 27 September 2019, the ADRP revoked the Commissioner's termination decisions.

In relation to ground 1, the ADRP found that the Commissioner erred in the determination of normal values and that such an error removed the foundation for the Commissioner's decision that the dumping margins did not exceed negligible margins. The Commissioner has addressed this issue in sections 6.3, 6.4 and 6.10-13.

The ADRP did not find that the Commissioner had erred in relation to grounds 2, 3 and 4. As such, SEF 495A has not revisited those grounds.

2.1.8 Additional information following ADRP Review No. 110

Following notice of the ADRP's termination decision, the following has occurred in relation to the investigation:

- on 9 December 2019, the Commission published ADN No. 2019/148[20] advising of the future resumption of the investigation following the publication of a new SEF;
- the EPR for Case 495 was reopened and submissions that were received were published on the EPR;[21]
- a supplementary questionnaire was issued to each of the cooperating exporters. A copy of each response (SEQR) was uploaded to the EPR;[22]
- further remote verification of Habas' domestic sales was conducted by the Commission; and[23]
- the Commission recalculated normal values for each of the cooperating exporters (refer to Chapter 6) and prepared this SEF 495A.

2.1.9 Statement of Essential Facts No. 495A

In preparing SEF 495A, the Commissioner has considered:

- all submissions that were received prior to publication of TER 495;
- InfraBuild's review application to the ADRP and the ADRP revocation decision;
- submissions received following the ADRP revocation decision; and
- all other relevant information including SEQRs and further verification.

2.2 Responding to this SEF

This SEF sets out the essential facts on which the Commissioner proposes to terminate the investigation in its entirety.

This SEF represents an important stage in the investigation. It informs interested parties of the facts established and allows them to make submissions in response.

It is important to note that the SEF may not represent the final views of the Commissioner.

Interested parties have 20 days to respond to this SEF. The Commissioner will consider these responses in any decision to terminate the application or report to the Minister. A report to the Minister, if applicable, will recommend whether or not a dumping duty notice and/or a countervailing duty notice should be published, and the extent of any interim duties that are, or should be, payable.

Responses to this SEF should be received by the Commissioner no later than **1 June 2020**. The Commissioner is not obliged to have regard to any submission made in response to the SEF received after this date, if to do so would, in the opinion of the Commissioner, prevent the timely preparation of the report to the Minister.

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[20] Case 495 EPR item number 38.

[21] Four submissions were received from InfraBuild. Case 495 EPR item numbers 39, 40, 48-49 and 50.

[22] Case 495 EPR item numbers 41 to 46.

[23] Case 495 EPR item number 47.

The Commissioner must report to the Minister by **25 June 2020**.

Submissions should preferably be emailed to investigations3@adcommission.gov.au.

Alternatively, they may be sent to fax number +61 3 8539 2499, or posted to:

Director, Investigations 3
Anti-Dumping Commission
GPO BOX 2013
CANBERRA ACT 2601
AUSTRALIA

Confidential submissions must be clearly marked accordingly and a non-confidential version of any submission is required for inclusion on the EPR.

A guide for making submissions is available at the Commission's web site.

The EPR contains non-confidential submissions by interested parties, the non-confidential versions of the Commission's visit reports and other publicly available documents.

Documents on the EPR should be read in conjunction with this SEF.

2.3 Previous cases

Anti-dumping measures currently apply to the goods exported to Australia from the Republic of Korea (Korea), Singapore, Taiwan, the People's Republic of China (China), the Republic of Indonesia (Indonesia), the Kingdom of Thailand (Thailand), Spain and Greece as a result of previous investigations. Further information is available on the Commission's website.[24]

[24] Investigation Nos. 264, 300 and 418 refer.

3 THE GOODS AND LIKE GOODS

3.1 Finding

The Commissioner considers that the locally manufactured rebar is a like good to the goods the subject of the application and is satisfied there is an Australian industry producing those like goods, which comprises of InfraBuild and its related party producers.

3.2 Legislative framework

Section 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, inter alia, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

In making this assessment, the Commissioner must firstly determine that the goods produced by the Australian industry are "like" to the imported goods. Section 269T(1) defines like goods as:

> *"Goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration"*.

An Australian industry can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are "like" to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

i. physical likeness;
ii. commercial likeness;
iii. functional likeness; and
iv. production likeness.

3.3 The goods

The goods the subject of the application (the goods) are:

> *The goods are hot-rolled deformed steel reinforcing bar whether or not in coil form, commonly identified as rebar or debar, in various diameters up to and including 50 millimetres, containing indentations, ribs, grooves or other deformations produced during the rolling process. The goods include all steel reinforcing bar meeting the above description regardless of the particular grade, alloy content or coating.*
>
> *Goods excluded from this application are plain round bar, stainless steel and reinforcing mesh.*

Further information regarding the goods the subject of the investigation can be found in CON 495 and ADN No. 2018/175.[25]

3.4 Tariff classification

The tariff subheadings in Schedule 3 to the *Customs Tariff Act 1995* that the goods are classified to are shown in Table 3.

Tariff classification (*Schedule 3 of the Customs Tariff Act 1995*)[26]			
Tariff code	*Statistical code*	*Unit*	*Description*
7213.10.00	42	tonne	Rebar Coil
7214.20.00	47	tonne	Rebar Straights
7227.90.10	69	tonne	Rebar Coil – Other Alloy
7227.90.90	42[27]	tonne	Rebar Coil – Alloy
7227.90.90	01, 02, 04[28]	tonne	Rebar Coil – Alloy
7228.30.10	70	tonne	Rebar Straights – Other Alloy
7228.30.90	40	tonne	Rebar Straights – Alloy
7228.60.10	72	tonne	Rebar Straights – Other Alloy

Table 3 Tariff classification for the goods

3.5 Like goods assessment

An application can only be made if there exists an Australian industry producing 'like goods' to the goods the subject of the application. Like goods are defined under section 269T(1). Sections 269T(2), 269T(3), 269T(4), 269T(4A), 269T(4B) and 269T(4C) are relevant to determining whether the like goods are produced in Australia and whether there is an Australian industry.

The following analysis outlines the Commission's assessment of whether the locally produced goods are identical to, or closely resemble, the goods the subject of the application and are therefore like goods.

3.5.1 Physical likeness

The Commission found that both the imported goods and the goods produced by the Australian industry are physically alike. Domestically produced rebar and the imported goods are manufactured to the same requirements of the Australian/New Zealand Standard AS/NZS 4671:2001 (the Australian Standard) administered by the Australasian Certification Authority for Reinforcing and Structural Steels. The imported and domestically produced rebar are manufactured to the range of grades specified under the

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[25] Case 495 EPR item numbers 002 and 003.

[26] Turkey is classified as a Developing Country under Part 4 to Schedule 1 of *Custom Tariff Act 1995.*

[27] Operative until 31 December 2014.

[28] Operative from 1 January 2015.

Australian Standard and are manufactured to similar diameters. It is noted that the indentations, ribs and grooves on the rebar varies between mills. However, these variations do not significantly modify the performance characteristics of the rebar. The Commission undertook an inspection of InfraBuild's manufacturing facilities at Newcastle as well as certain exporters from Turkey and is satisfied with the physical likeness between the domestically produced goods and the goods the subject of the application. These findings are consistent with the previous cases at section 2.3.

3.5.2 Commercial likeness

The Commission found that domestically produced rebar competes directly with imported rebar in the Australian market. Domestically produced and imported rebar is sold to common users and uses similar distribution channels. The Commission considers that the imported and domestically produced rebar are commercially interchangeable.

The verified exporter, importer and Australian industry data indicates that parties in the supply chain switch between purchasing rebar from import sources and Australian industry. The Commission has observed that there is close price competition in the market suggesting that product differentiation is not recognised by the market. These findings are consistent with the previous cases at section 2.3.

3.5.3 Functional likeness

The Commission found domestically produced and imported rebar have comparable or identical end uses. The verified exporter, importer and Australian industry data indicates that Australian customers are sourcing rebar from both the Australian industry and from Turkey. Imported and domestically produced rebar are used either 'as is', or are subject to post production processes such as bending, welding and cutting. The Commission notes that both the imported and domestically produced rebar are predominantly used to reinforce concrete and precast structures and are considered functionally substitutable when of the same diameter. The Commission is satisfied with the functional likeness between the domestically produced and imported rebar. These findings are consistent with the previous cases at section 2.3.

3.5.4 Production likeness

The Commission found domestically produced and imported rebar are manufactured in a similar manner via similar manufacturing processes. Having visited the premises of InfraBuild and certain exporters from Turkey, the Commission observed that while minor variations in the respective production processes were observed, the Commission considers that the key production steps and processes are near identical. These findings are consistent with the previous cases at section 2.3.

3.5.5 Submissions in relation to like goods assessment

No interested parties have submitted that the imported rebar and the rebar manufactured by the Australian industry are not alike.

3.5.6 The Commission's assessment – Like goods

Based on the above assessment, the Commission is satisfied that the Australian industry produces 'like' goods to the goods the subject of the application, and that the domestically produced goods are 'like goods' as defined in section 269T(1).

The Commission is satisfied that there is an Australian industry in respect of 'like' goods in accordance with section 269TC(1).

4 THE AUSTRALIAN INDUSTRY

4.1 Preliminary finding

The Commissioner finds that the like goods are wholly manufactured in Australia and that InfraBuild and its related party producers represent the entire Australian industry. The Commission finds that the Australian market for rebar is supplied by the Australian industry and imports from a number of countries, including Turkey. The Commission estimates that the size of the Australian market during the investigation period was approximately 1,300,000 metric tonnes.

4.2 Legislative framework

The Commissioner must be satisfied that the "like" goods are in fact produced in Australia. Sections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

4.3 Australian industry

The Australian industry produces steel long products including rebar and rod in coil. Rebar is use as a tension device to reinforce concrete as well as prefabricated and precast structures.

The Australian industry's manufacturing facilities relating to rebar during the investigation period included:

- Two electric arc furnaces (EAFs) located in Rooty Hill in New South Wales and Laverton North in Victoria; and
- Rod and/or bar mills situated in Laverton North in Victoria, Newcastle and Rooty Hill in New South Wales.

The Laverton North and Rooty Hill melt shop operations produces liquid steel through its EAFs using scrap steel as input. Scrap steel is purchased from a number of sources including a related supplier. The liquid steel is cast into billets.

The billet produced at the Laverton North melt shop operations is rolled through the rod and bar mills in Laverton North to produce rebar. The billet produced at the Rooty Hill melt shop operations is rolled through the Rooty Hill bar mill or the Newcastle rod mill to produce rebar. On rare occasions, the bar mill in Rooty Hill and the rod mill in Newcastle rolled billet from the group's Whyalla Steelworks (blast furnace) to produce rebar. The rebar produced at Newcastle rod mill may be further cold-worked to obtain the required mechanical properties.

4.4 Production process

InfraBuild provided a description and diagram of its production processes with its application. During the verification visit, InfraBuild provided a tour of the rod mill and cold-

working facilities at Newcastle where the Commission observed the steel making processes for rebar in coil form.

4.4.1 Process for making rebar in coil form

In general terms, the process for making rebar in coil form is outlined below.

- Steel billets were loaded into a reheat furnace and reheated to approximately 1,200°C.
- The heated billet then passes through a series of rolling stands.
- As the billet passes through each stand it gradually reduces in size and changes shape from a square section to a circular section.
- The rolls on the final (finishing) stand have a rib profile machined into them so that when the circular section passed through the rolls, deformations (or ribs) are formed on the bar which will provide gripping power so that concrete adheres to the bar and provides reinforcing value.
- For rebar coils produced through [a particular mill], rebar coils (12mm and 16mm diameter) are produced by rolling billets that have had a small controlled amount of a microalloy (typically ferrovanadium) added. The steel chemistry ensures the rebar strength requirements are met. After the finishing stand, the deformed rod is looped into rings, laid onto a cooling conveyor and the cooled rings are then formed into a coil.
- For 10mm rebar coils produced through [a particular mill], rebar coils are produced the same way described above using billets with microalloy additions to effect the required rebar strength through chemistry. For 12mm and 16mm rebar coils, billets without microalloy additions are rolled, looped into rings cooled and formed into coils. These coils are then put through a process where the required strength is achieved by cold-working (mechanical strain-hardening) the coil through a stretching panel. At the end of the process the rebar is spooled into a coil.

4.4.2 Process for making rebar in straight form

In general terms, the process for making rebar in straight form is outlined below.

- Steel billets are loaded into a reheat furnace and reheated to approximately 1,200°C.
- The heated billet then passes through a series of rolling stands.
- As the billet passes through each stand it gradually reduces in size and changes shape from a square section to a circular section.
- The final (finishing) stand rolls have a rib profile machined into them so that when the circular bar passes through the rolls, deformation (or ribs) are formed on the bar which will provide gripping power so that concrete adheres to the bar and provides reinforcing value.
- After the finishing stand, the bar passes through a controlled water cooling process where the surface of the bar is quenched rapidly. On exiting this part of the mill for slow cooling on the cooling bed, the temperature gradient established over the cross-section of the bar causes heat to flow from the core to the surface resulting in a (tempered) steel microstructure which gives increased strength. This cooling

process is known as the “TEMPCORE” process and rebar produced in this way is known as “QST” rebar as the bar has been quenched and self-tempered.[29]

4.5 Product range

InfraBuild manufactures a range of rebar at its rod and bar mills. The rebar is manufactured in a variety of methods to obtain the required mechanical properties. These methods include rolling, microalloying, quenching and self-tempering or continuous stretching (cold-working).

InfraBuild advised in its application that rebar is sold in straight lengths (rebar straights or DBIL) or coils (rebar coils or DBIC). Both rebar straights and rebar coils are produced in a variety of diameters. Rebar straights are produced in two grades.

4.5.1 Grades

InfraBuild advised that it produces rebar in two grade levels classified by minimum yield strength being 500N and 250N.

4.5.2 Diameters

InfraBuild advised that rebar is commonly produced up to a diameter of 16mm for rebar coils and 40mm for rebar straights. However, it has the capacity to manufacture rebar coils with diameters of 10mm-16mm and 12mm-50mm for rebar straights.

4.5.3 Length

InfraBuild advised that rebar coil sizes range from 1.5 tonnes to up to 4.5 tonnes and that rebar straights are sold in standard lengths of 6, 9, 10, 12 and 15 metres. InfraBuild advised that rebar straights can be sold at various non-standard lengths by customer request.

A summary of the rebar manufactured by InfraBuild is shown in Table 4.

Type	Diameter Range (mm)	Grade
Rebar coil	10, 12, 16	500N
Rebar straight	12, 16, 20, 24, 28, 32, 36, 40, 50	500N
Rebar straight	12	250N

Table 4 InfraBuild’s product range

4.6 Preliminary conclusion

In its application, InfraBuild claimed that it and its related party producers are the only Australian producers of rebar in Australia. The Commission is not aware of any other producer of rebar in Australia and no submissions or other information has been received to indicate that there are any other producers of rebar in Australia.

[29] Two of InfraBuild’s mills produce like goods via this method.

Following the Commission's verification of InfraBuild's manufacturing processes in Australia, the Commission is satisfied that:

- rebar is wholly manufactured in Australia; and
- InfraBuild and its related party producers conduct one or more substantial process in the production of rebar at its manufacturing plants in Laverton North, Newcastle and Rooty Hill.

Accordingly, the Commission is satisfied, in accordance with sections 269T(2) and 269T(3) that there is an Australian industry producing rebar in Australia and that this industry consists of InfraBuild and its related party producers.

5 AUSTRALIAN MARKET

5.1 Preliminary finding

The Commissioner has found that the Australian market for rebar is supplied by the Australian industry and imports from a number of countries, including Turkey. Imports from Turkey supplied approximately four (4) per cent of the entire Australian market.

5.2 Introduction

The Australian rebar market is supplied by the Australian industry and imports from a range of countries including Turkey, countries subject to measures and other countries not subject to measures during the investigation period. Rebar is a commodity like product and end users can generally quickly change their source of supply between exporters and countries.

Locally produced and imported rebar is typically cut, bent, and/or welded into various shapes before use in concrete reinforcement as a tension device. However, whilst the majority of rebar is fabricated in some way, there are instances where no cutting, bending or welding is required by a fabricator or service centre prior to end use.

5.3 Market structure

The Australian rebar market comprises the Australian industry, exporters, importers, and distributors or processors who process and sell rebar.

Imported and locally produced rebar is primarily purchased by rebar processors and steel service centres who typically process it before supplying the rebar into the commercial, residential and engineering sectors. Rebar processors quote jobs to the construction sector, cut and bend locally manufactured or imported rebar to order and deliver to job sites. Steel service centres also purchase locally produced or imported rebar to stock for resale, primarily to smaller rebar processors for use as concrete reinforcement.

Final end use applications for rebar include (but are not limited to) concrete slabs and prefabricated concrete beams, columns, cages and precast products. The vast majority of rebar is further processed in some way prior to end use.

Third party reinforcing customers are supplied by the Australian industry, downstream entities related to the Australian industry, direct imports from exporters or overseas traders, or by imports through local steel trading houses.

The supply chain for rebar is illustrated in Figure 1.

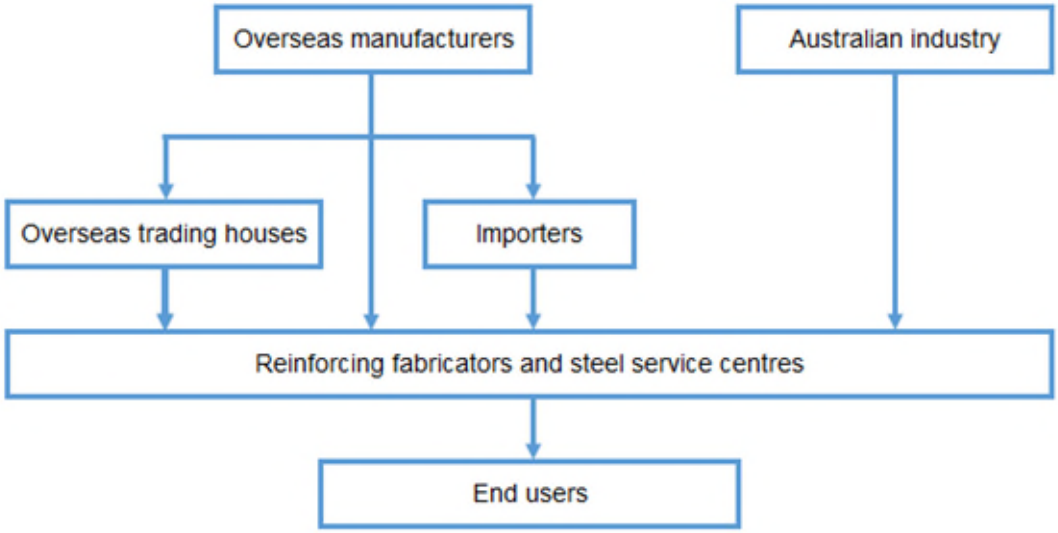

Figure 1 Australian supply chain for rebar

5.3.1 Australian producers

The application was lodged by InfraBuild on behalf of the Australian industry producing rebar. The application was supported by OneSteel NSW Pty Limited and The Australian Steel Company (Operations) Pty Ltd.

The Commission undertook a verification visit to the applicant, InfraBuild, and is satisfied that the information it provided is relevant, accurate and complete. A verification visit report is available on the EPR.[30]

5.3.2 Importers

Following the initiation of this investigation, the Commission identified the importers of rebar from Turkey using the ABF import database. Based on individual import volumes, the following three importers were considered to be 'major' importers, accounting for 85 per cent of imports of rebar from Turkey during the investigation period:

- DITH;
- Macsteel International Australia Pty Limited;
- TKM.

The Commission sent the above importers importer questionnaires to complete.

The Commission conducted onsite verification of data provided by DITH and TKM. Both companies participated with the investigation and provided their internal records and source documents for import and sales transactions. The importer verification reports for DITH and TKM are published on the EPR.[31]

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[30] Case 495 EPR item number 018.

[31] Case 495 EPR item numbers 015 and 016.

5.4 Australian standards

Almost all rebar sold and used in Australia meets the requirements of Australian/New Zealand Standard AS/NZS 4671:2001. The market considers it desirable for mills to be certified by Australasian Certification Authority for Reinforcing and Structural Steels (ACRS) which is an independent, not for profit production certification scheme. The ACRS 'mark' is internationally recognised as the means of showing conformity to the Australian Standard. Imported rebar is compliant with the Australian Standard where made by ACRS certified exporters. All cooperating exporters from the country subject of this investigation are ACRS certified.

The ACRS website maintains a listing of all companies which are currently certified.[32]

5.5 Marketing and distribution

Australian made rebar is sold nationally and is distributed by rail and road between the capital cities of Adelaide, Melbourne, Sydney and Brisbane, and dispatched by sea freight to Perth and Tasmania.

Imported rebar is typically distributed by road to all customers.

5.6 Demand

Demand for rebar is Australia-wide with the majority demanded from the eastern states of Queensland, New South Wales and Victoria. Demand is driven by downstream activity in several market segments:

- residential construction, including swimming pool construction;
- non-residential construction; and
- engineering construction/infrastructure, including mining infrastructure.

The commercial construction market is the main driver of demand for rebar. For the Australian producers, there is some seasonal fluctuation in demand with a downturn at the end of the year around the Christmas holiday period and coinciding with the wet season in northern Australia.

5.7 Market size

The Commission has relied on data from the ABF import database, the sales volumes reported by the participating Australian industry producers and verified exporter sales data to estimate the size of the Australian market for rebar. Figure 2 summarises the size of the Australian market for rebar for the injury analysis period (1 October 2014 to

[32] http://www.steelcertification.com/acrshome.html

31 October 2018).[33] Figure 2 is based on the verified sales data from the Australian industry, exporters and importers, and data from the ABF import database.

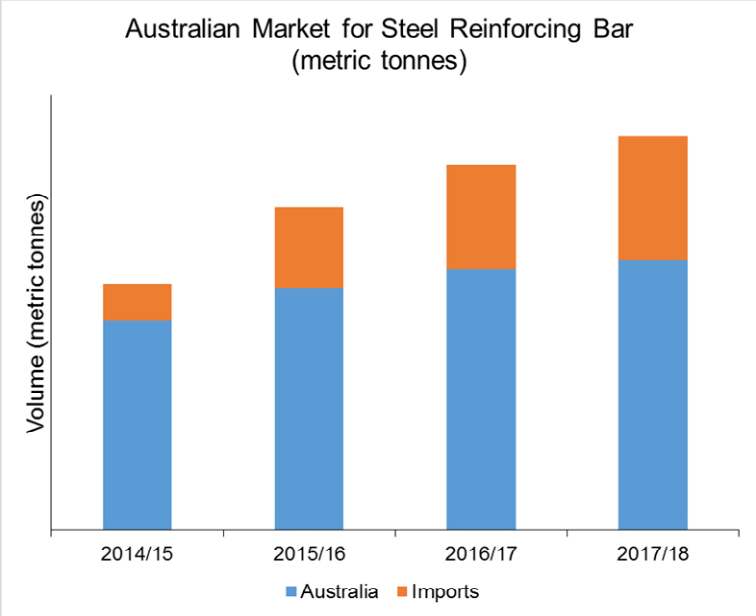

Figure 2 Size of the Australian market for rebar

In assessing the size of the Australian market, the Commission notes that the market for rebar consists of two product sub-categories, DBIL and DBIC. For the purpose of this report, the Commission has aggregated both product categories for estimating the size of the Australian market.

5.8 Price sensitivity

The Commission considers that given the interchangeable nature of rebar it is regarded as a commodity like product that competes primarily on price.

[33] All years in Figure 2, and subsequent figures, align with the investigation period, e.g. years spanning 1 October to 30 September, unless otherwise stated.

6 DUMPING INVESTIGATION

6.1 Preliminary findings

The Commission has found that the goods exported to Australia from Turkey by each of the cooperating exporters were not at dumped prices. There was no evidence that the goods were dumped by any other exporter of the goods from Turkey.

The dumping margins are summarised in Table 5.

Country	Exporter	Dumping margin
Turkey	Colakoglu	-0.3%
	Diler	-4.7%
	Habas	-1.8%
	Kroman	-0.4%
	All other exporters	-0.3%

Table 5 Dumping margins

The Commission's calculations of export prices, normal values and dumping margins are confidential attachments to this report.

6.2 Introduction and legislative framework

In any report to the Minister under section 269TEA(1), the Commissioner must recommend whether the Minister ought to be satisfied as to the grounds for publishing a dumping duty notice under section 269TG.

Under section 269TG, one of the matters the Minister must be satisfied of in order to publish a dumping duty notice is that the goods exported to Australia have been dumped.

Dumping occurs when a product from one country is exported to another country at a price less than its normal value. The export price and normal value of goods are determined under sections 269TAB and 269TAC respectively. Further details of the export price and normal value calculations for each exporter are set out in this chapter.

Dumping margins are determined under section 269TACB. For all dumping margins calculated in this investigation, the Commission compared the weighted average of export prices over the whole of the investigation period with the weighted average of corresponding normal values over the whole of that period, in accordance with section 269TACB(2)(a). This reflects the Commission's usual approach outlined in the *Anti-Dumping Commission – Dumping and Subsidy Manual* (the Manual) where there are many sales, as there were in this investigation.[34] Whilst the Act prescribes other methods by which dumping may be determined, the Commission considers these methods are more suited to circumstances where there are few transactions or where export prices

[34] The Manual (November 2018), page 122, available at www.industry.gov.au

vary significantly between purchasers, regions or over time, which was not the case in this investigation.

6.3 Model control codes

6.3.1 Background

On 9 August 2018, the Commission announced its policy and practice in regards to model control code (MCC) structures via ADN No. 2018/128.

Chapter 14 of the Manual further explains that the MCC structure provides a system of identifying fundamental characteristics of the goods subject to investigation (the goods) and assigns an alphanumeric code to define categories and sub-categories of the goods and like goods. The objective of the MCC structure is to provide a framework for comparing goods exported to Australia with similar like goods sold on an exporter's domestic market.[35] This process is commonly referred to as 'model matching'.

Model matching assists the Commission to assess whether dumping has occurred and is a useful way to ensure that the normal value is properly comparable with the export price.

In ADN No. 2018/175 and exporter questionnaires, the Commission advised interested parties of the proposed MCC structure for this investigation. In determining the MCC structure, the Commission will have regard to differences in physical characteristics that give rise to distinguishable and material differences in price. The proposed MCC structure for this investigation was based on information contained in the application and other information that the Commission considered relevant at that time, for example information obtained from previous dumping cases listed in section 2.3.[36]

With the exception of an MCC category and sub-category relating to maximum carbon equivalent, all other MCC categories and sub-categories proposed by InfraBuild in its application were adopted by the Commission in the proposed MCC structure in ADN No. 2018/175 as shown in the following table.[37]

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[35] Part 14.1 of the Manual, p.60.

[36] In these dumping investigations (INV Nos. 264, 300 and 418), the Commission had regard to available evidence and applied the most appropriate model matching criteria depending on the specific circumstances relevant to each exporter. At a minimum, this included minimum yield strength (specified in product standard or grade designation), finished form and diameter. In certain instances model matching also involved ductility and length. Prime vs non-prime has not been explicitly used in model matching criteria, however all goods sold to Australia have been found to be prime goods, and any non-prime goods sold domestic in a country of export are usually not in the ordinary course of trade (OCOT) (as they are likely to be sold below cost), and therefore would not be used for comparison to the export price of prime goods.

[37] Case 495 EPR item number 001, p.17.

Category	Sub-category	Identifier	Sales Data	Cost Data	Key Category
Prime	Prime	P	Mandatory	Optional	Yes
	Non-prime	N			
Minimum yield strength specified by product standard (Mega Pascals or "MPa") [38]	Less than or equal to 300	A	Mandatory	Mandatory	No
	Greater than 300 but less than or equal to 480	B			
	Greater than 480 but less than 550	C			
	Greater than or equal to 550	D			
Finished form	Rebar in length/straight	S	Mandatory	Mandatory	No
	Rebar in coil	C			
Nominal diameter (millimetres or "mm")	Less than 12	A	Mandatory	Optional	No
	Greater than or equal to 12 and less than or equal to 16	B			
	Greater than 16 and less than or equal to 32	C			
	Greater than 32	D			
Length (metres or "m")	Less than or equal to 6	1	Mandatory	Optional	No
	Greater than 6 and less than or equal to 12	2			
	Greater than 12	3			
	Coil product	C			

Table 6 Model control codes

While exporters were expected to follow the MCC structure in their REQs, submissions were sought by the Commission on any necessary modifications to the categories and/or sub-categories.

6.3.2 Submissions on the proposed MCC structure prior to TER 495

Exporters

Colakoglu, Habas and Kroman commented on the proposed MCC structure in their REQs. These comments are considered by the Commission to be submissions regarding the MCC structure.

[38] The grade of rebar characterises, amongst other things, the strength of the rebar expressed, typically in Mega Pascals (MPa) or pounds per square inch (PSI), and can relate to the product's minimum yield strength or ultimate tensile strength. In the Australian Standard the strength of the rebar is contained in the grade designation. For example, where the Australian Standard for rebar is a grade 500N, it represents rebar with a minimum yield strength of 500 MPa. The equivalent Standard for rebar sold into the Turkish market is TS 708. The grade designation in TS 708 also contains the product's minimum yield strength expressed in MPa, e.g. B420 represents rebar with a minimum yield strength of 420 MPa.

In its REQ, Habas stated that "*[w]ith respect to the MCC for yield strength, these are imparted by minor variations in the quenching process which are not separately costed… On that basis Habas sees no reason to differentiate between the MCC's B and C in the yield strength category…"*[39]

In its REQ, Colakoglu proposed that the sub-category B and C in relation to minimum yield strength should be combined.[40] It nonetheless separately reported its domestic sales and costs in relation to minimum yield strength consistent with the proposed MCC structure.

At section C-3 of its REQ Kroman questioned whether the MCC category relating to length was necessary.[41] Kroman based its position on the observations of other jurisdictions.

InfraBuild

InfraBuild further explained the importance of maximum carbon equivalent in its exporter verification visit briefing.[42] It highlighted that the maximum carbon equivalent is a key requirement for certain purchasers, ensuring that the goods have the necessary chemistry composition to be pre-qualified for welding. It noted that the standards in Australia and Turkey differ in regards to the specified maximum carbon equivalent value and that certain grades in Turkey may not require one at all. InfraBuild considers that the maximum carbon equivalent was wrongly omitted from the proposed MCC structure.

Following SEF 495, InfraBuild commented that the Commission did not address other matters relating to the application of the MCC category for minimum yield strength and comments made by Habas in its REQ.[43]

InfraBuild was concerned that Habas failed to report domestic sales of like goods and cost of production data using the correct MCC sub-category relevant to minimum yield strength. InfraBuild also questioned the Commission's findings relating to the MCC structures in relation to Colakoglu, Diler and Kroman.[44]

6.3.3 Commission's response on the proposed MCC structure in TER 495

Maximum carbon equivalent

Whilst the Commission agrees with InfraBuild that the maximum carbon equivalent differs between rebar standards, InfraBuild's application and subsequent exporter verification visit briefing did not demonstrate how maximum carbon equivalent affects the comparison

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[39] Case 495 EPR item number 008, p.12.

[40] Case 495 EPR item number 011, p.13.

[41] Case 495 EPR item number 009, p.14.

[42] Case 495 EPR item number 014, p.14.

[43] Case 495 EPR item number 014, p.12.

[44] Case 495 EPR item number 033, p.9.

of export price and normal value. Maximum carbon equivalent has not been found to be a price determinant in other dumping investigations into the goods as listed at section 2.3 (refer also to footnote 38).

The Commission examined whether exporters incurred additional costs to produce rebar to a specified maximum carbon equivalent, and whether this might indicate that maximum carbon equivalent is a consideration when setting prices. The Commission examined mill certificates provided by Turkish exporters during the investigation and observed that the carbon equivalent value was similar for rebar produced for the Turkish domestic market (TS708 'Turkish Standard') and the Australian Standard. The Commission also confirmed that the carbon equivalent values recorded on the mill certificates comply with the maximum carbon equivalent values specified in the Turkish and Australian standards.

The Commission considers that the mill certificates support that there would be little to no difference in the cost of production relating to differences in the maximum carbon equivalent values specified by the Turkish and Australian Standards. The cooperating exporters appeared to target a carbon equivalent value which complies with the acceptable limits for either standard.

The Commission has no other evidence to support that the maximum carbon equivalent affects the price comparison between exported goods and domestic like goods. Therefore it is not necessary for the Commission to include an MCC category relating to maximum carbon equivalent in this instance.

The MCC category of minimum yield strength (sub-categories B and C)

Importance of the MCC category for minimum yield strength

In its exporter verification briefing, InfraBuild claimed that grades which designate higher minimum yield strengths (e.g. the grade commonly sold to Australia has a 500MPa minimum yield strength) would be priced higher than grades which designate a lower minimum yield strength (e.g. a grade commonly sold in Turkey which may have a 420MPa minimum yield strength).[45] InfraBuild's claims are consistent with the Commission's findings into certain dumping investigations into rebar, as listed in section 2.3, where minimum yield strength has shown to affect prices in some other markets where different grades are sold.[46]

In addition, some other jurisdictions have recognised minimum yield strength as impacting prices in Turkey, whilst others have not. For example, in its investigations into Turkish rebar, the United States Department of Commerce (USDOC) considered minimum yield

[45] Case 495 EPR item number 014, p.16.

[46] For example in relation to the Korean domestic market, verified price lists show a price difference between grades designated with a 400 MPa minimum yield strength and a 500 MPa minimum yield strength.

strength to be important to its control number (CONNUM) structure, which is based on similar principles to the Commission's MCC structure.[47]

Due to the above considerations, minimum yield strength was included as a category in the proposed MCC structure for this investigation.

Cost data provided by exporters

The Commission verified, for each exporter, that the cost of production for rebar is comprised of three main cost components, scrap metal, electricity and natural gas. Through the verification process, the Commission established that the unit value of these cost items did not fluctuate due to the minimum yield strength of the rebar. This observation corresponds with the statements made by Habas in its REQ.

Therefore, the Commission accepts Habas' claims that there are minor differences in the costs of production relevant to minimum yield strength and that it was not required to report different costs for the different minimum yield strength sub-categories B and C (these have been combined for Habas in relation to costs but not sales).

Sales data provided by exporters

All cooperating exporters reported sales of the goods and like goods in accordance with the proposed MCC structure.

The Commission tested the accuracy of the MCC information reported by each exporter by comparing the product description of the like goods reported in the REQ to source documentation, such as commercial invoices and delivery forms. Based on this examination, the Commission was satisfied that the exporters had accurately applied the correct MCC category, including minimum yield strength, to their domestic sales of like goods.

The Commission also tested the completeness and relevance of each exporters' domestic sales of like goods, by comparing the total value of all like goods sales to relevant financial records, such as trial balances and/or audited financial statements. The Commission found no evidence to conclude that the exporters had omitted, or misclassified, relevant sales of like goods. The Commission's verification procedures, which are designed to detect exceptions and document these in verification reports, did identify in the case of Kroman, where the MCC for like goods had been incorrectly reported. After further examination it was established that the sales in question were non-prime products and the data was corrected accordingly.[48] No further issues in the

[47] USDOC, A-489-829, *Less-Than-Fair-Value Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey.* In making product comparisons, the USDOC matched foreign like products based on prime versus non-prime merchandise and the physical characteristics reported by the respondents in the following order of importance: type of steel, minimum specified yield strength, coating, martensitic, nominal diameter, and form.

[48] Case 495 EPR item number 026, Kroman Visit Report Section 3.1.1,

reporting of the MCC for minimum yield strength of like goods sales was observed in relation to any of the other cooperating exporters.

The MCC category of length

In TER 495, the Commission considered the documents provided by Kroman.

The Commission considered that these documents about other jurisdictions did not specifically address the merits of length as an MCC category, and may not be relevant in the context of Australian export sales.

The Commission's verification of Kroman's sales revealed some minor price differences for different lengths of exported goods and no price differences for domestic sales of like goods. The price differences observed for Kroman's exported goods occurred in each quarter of the investigation period, and while they were inconsistent, they nonetheless occurred.

Kroman did not maintain price lists in relation to the goods, and in the absence of other evidence discounting length as a price determinant, the Commission retained the MCC category in relation to length for all exporters in TER 495.

Conclusion in TER 495

The Commission was satisfied that each cooperating exporter correctly applied the MCC structure when reporting their sales or costs in TER 495. Despite initially being proposed as a mandatory MCC category for both sales and costs, the rationale for why Habas combined the MCC sub-category B and C for minimum yield strength in reporting its costs was considered reasonable and has been accepted by the Commission. This was the only modification to the proposed MCC structure for TER 495.

6.3.4 ADRP Review No. 110

Ground 1 of InfraBuild's application to the ADRP predominantly focussed on the Commission's MCC structure and the determination of normal values under section 269TAC.

The ADRP referred the World Trade Organisation (WTO) Panel as providing general support for model matching.[49] The ADRP also stated at paragraph 26 that:

> *"36. I acknowledge variances or differences amongst like goods may give rise to practical difficulties in comparing domestic and export sales particularly in the context of tight statutory timeframes…"*

However, at paragraph 36, the ADRP considered that:

[49] The ADRP specifically mentioned *EC – Salmon (Norway)*, WT/DS337/R at para. 7.49, which was quoted in the following "*an investigating authority may divide a product into groups or categories of comparable goods [models] for the purposes of comparison of normal value and export price*."

> *"practical difficulties in determining an appropriate adjustment cannot operate to exclude sales of like goods available for consideration under s.269TAC(1), for the purposes of s.269TAC(2)(a) or (b).The legislation goes some way to address such difficulties by requiring investigating authorities to make adjustments for differences and by providing a fallback position where such adjustments cannot practicably be made. In such circumstances the Minister may determine normal values by having regard "to all relevant information."*

In response to the ADRP review, the Commission revisited its MCC structure and approach to normal value (section 6.4 refers) in formulating SEF 495A.

6.3.5 MCC structure for SEF 495A

Length

The Commission has undertaken further analysis of whether length materially impacts the selling prices in Turkey and exports to Australia. For each of the cooperating exporters, the Commission reviewed instances of invoices where there were sales of multiple lengths. The Commission notes that there is only one length category for DBIC, therefore length does not impact DBIC. The following analysis only refers to DBIL.

The Commission found that for domestic sales, 71 per cent of invoices that had varying lengths on the same invoice had identical prices. Of the remaining invoices, other than one outlier transaction which had a variance of 4.5 per cent (possibly related to that particular sale also being of a different diameter), the price differences in relation to length ranged from -0.1 per cent to +1.01 per cent.

Similarly, for export sales to Australia, the Commission found that some invoices that had varying lengths on the same invoice had identical prices; while of the remaining invoices, price variances of between -1.1 per cent and +6.2 per cent were observed. As with domestic sales, the Commission found that those variances were possibly related to different diameters.

The Commission considers that length has an immaterial impact on domestic selling prices and export prices.[50]

Accordingly, the Commission no longer considers the MCC category for length necessary. Removing the MCC category for length reduces the number of MCCs and therefore simplifies model matching without affecting the fair comparison between export prices and normal values.

Key categories

The Commission's previous approach in TER 495 was to include "key categories". The Manual explains that:

[50] Confidential Attachment 33.

> *For any key category (identified by a YES in the "Key category" column of the MCC structure), the approach will be that sub-categories within each key category should be compared directly and should not be used as surrogate models for other subcategories within that key category. This would generally be because the physical characteristics are significantly different and making an adjustment for physical differences would not be meaningful in terms of estimating a price difference.*[51]

For SEF 495A, the Commission has removed the key category requirement.

Conclusion - MCC applied in SEF 495A

The removal of the MCC category for length and the key category requirement eliminates some of the practical difficulties from TER 495 and allows for normal values to be calculated wholly under section 269TAC(1).

The MCC structure applied in SEF 495A is as follows:

Category	Sub-category	Identifier	Sales Data	Cost data
Prime	Prime	P	Mandatory	Optional
	Non-prime	N		
Minimum yield strength specified by product standard (Mega Pascals or "MPa")	Less than or equal to 300	A	Mandatory	Mandatory
	Greater than 300 but less than or equal to 480	B		
	Greater than 480 but less than 550	C		
	Greater than or equal to 550	D		
Finished form	Rebar in length/straight	S	Mandatory	Mandatory
	Rebar in coil	C		
Nominal diameter (millimetres or "mm")	Less than 12	A	Mandatory	Optional
	Greater than or equal to 12 and less than or equal to 16	B		
	Greater than 16 and less than or equal to 32	C		
	Greater than 32	D		

Table 7 – MCC for SEF 495A

6.3.6 Submissions following ADRP Review No. 110

InfraBuild made two submissions relevant to MCCs following the ADRP revocation decision, the first on 18 October 2019 and the second on 6 December 2019. The following section addresses those submissions.

[51] Manual, page 61.

Recalculation of normal values based on domestic sales of like goods

InfraBuild requested a recalculation of normal values based on domestic sales of like goods pursuant to section 269TAC(1). The Commission has addressed this in sections 6.4 and 6.10 -6.13.

Further verification of MCCs

In undertaking a recalculation of normal values, InfraBuild requested that the Commission further investigate and clarify the MCCs for each of the cooperating exporters.

InfraBuild Steel considers that the cooperating exporters have incorrectly designated the MCCs to their domestic sales, which in turn has frustrated the Commission's ability to:

- properly compare the like goods to the goods exported to Australia; and
- make any necessary adjustments for physical or specification differences affecting the comparison.

InfraBuild requested that the Commission require all exporters to review and correct as necessary their MCCs and undertake further verification of the revised domestic sale worksheets.

Following InfraBuild's submission, the Commission undertook additional efforts to ensure that the MCCs were reported accurately including:

- issuing a supplementary questionnaire to each of the cooperating exporters;
- further remote verification of Habas' domestic sales; and
- reviewing the domestic sales of Colakoglu, Diler and Kroman.

Habas

InfraBuild expressed concern that Habas may have misreported its domestic sales in relation to the MCC category for minimum yield strength.

In particular, InfraBuild queries whether Habas combined domestic sales of B420C (sub-category B) and B500C (sub-category C) into one sub-category in relation to the minimum yield strength category.

The Commission confirms that Habas has not combined its domestic sales in this way. The Commission refers to Habas' SEQR and the remote verification of Habas' domestic sales, which provided the following:

- an explanation from Habas that it did not sell B500C on the domestic market during the investigation period. Habas stated that such grades are simply not used, or not required, in the Turkish market, except in very limited cases. Habas stated that any minimal sales in the past were mostly made up of overruns, or where an export order might have been cancelled. Accordingly, Habas have only ever sold grade B500C in exceptional cases, with B420C being by far the most common grade sold domestically;

- additional information about Habas' product codes, which the Commission has used to map the product codes reported in the REQ to the MCCs;
- source documentation in relation to an additional sample of sales. These documents did not include any sales of B500C; and
- extracts from Habas' accounting system which provide further assurance that Habas' domestic sales listing is relevant, accurate and complete.

The above satisfies the Commission that Habas has correctly reported its MCCs.

InfraBuild requested that the Commission provide a revised list of MCCs applicable to domestic sales for Habas. These are below:

- P-B-S-B
- P-B-C-B
- P-B-S-A
- P-B-S-C
- P-B-C-A
- P-A-C-A

Diler

InfraBuild also questions whether Diler has combined domestic sales of B420C and B500C into one sub-category in relation to minimum yield strength. InfraBuild considered it implausible that a significant rebar producer, such as Diler, would have zero domestic sales of grade B500C (sub-category C) for DBIL across the entire investigation period.

The Commission clarifies that Diler's domestic sales listing did include a minor volume of sub-category C sales of DBIL in the investigation period. However, in relation to these sales, Diler's accounting system and source documents do not capture attributes such as diameter or length. Therefore, these sales were unable to be classified for the MCC categories of diameter and length in the REQ, and were reported as non-prime mixed lengths in various diameters, as referred to in Diler's visit report.[52]

At the verification visit, Diler explained that these sales were various offcuts from made-to-order lengths. The Commission analysed these sales, and although a proportion were in the OCOT, the weighted average prices are below the weighted average prices of all other MCCs. The Commission considers that these sales are unusual[53] and may have been sold at a discount. Therefore, the evidence of these sale prices is not sufficient (or appropriate) to comprise a fair comparison. Similar sales were also made by Kroman and not incorporated into the assessment of Kroman's normal value and export price.

[52] Page 7, Diler Visit Report, Case 495 EPR item number 27.

[53] As per page 33 of the Manual, depending on the circumstances, profitable sales may not be in the OCOT. These circumstances may include sample sales, promotional sales made at special prices, end of season sales, low quality sales, or sales in other unusual circumstances.

Kroman

InfraBuild considered Kroman's REQ to be a more likely representative sample of domestic sales, given that Kroman sold both sub-category B and C in relation to the category of minimum yield strength.

InfraBuild observed that for Kroman's normal value in TER 495, 4 of 5 exported MCCs were of category C minimum yield strength and that only one export MCC could not be matched directly to the same domestic MCC, because of a different length.

As outlined at section 6.3.5, the removal of length as an MCC category has meant that all of Kroman's exported MCCs were compared to the same domestic MCCs in SEF 495A.

Colakoglu

In relation to Colakoglu InfraBuild noted that in TER 495 two of the four exported MCCs had matching domestic MCCs, with the other two differing for length. As outlined at section 6.3.5, the removal of length as an MCC category has meant that all of Colakoglu's exported MCCs were compared to the same domestic MCCs in SEF 495A.

Verification of grade names

InfraBuild requested that the Commission verify the MCC category for minimum yield strength against the actual grade names to which the like goods are sold, rather than the raw material billet code. The Commission confirms that the exporters completed a field for product code and grade name in the REQs. The Commission has verified the MCCs against the product codes and grade names and not the raw material billet code.

Reference to approaches by other jurisdictions

InfraBuild commented that it is unable to reconcile the lack of sub-category C minimum yield strength domestic sales of the cooperating exporters to findings in relation to some of the same exporters in investigations involving other jurisdictions, including Malaysia and the USA.

InfraBuild also questions whether domestic sales of grades made to non-Turkish Standards may have been inadvertently excluded from the domestic sales listings of the cooperating exporters in this investigation.

Malaysia

In relation to Malaysia, InfraBuild highlighted that on 5 September 2019, the Trade Practices Section, Ministry of International Trade and Industry, published their Preliminary Determination Report in relation to Case No. AD02/2019: *Anti-dumping investigation concerning imports of steel concrete reinforcing bar products originating or exported from the Republic of Singapore and the Republic of Turkey*.

InfraBuild noted that the period of investigation for the Malaysian investigation matches the investigation period for this investigation.

InfraBuild highlighted specific sections of the Malaysian Preliminary Determination Report, in particular that:

- the goods exported to Malaysia are DBIL in a 500 MPa grade equivalent, e.g. minimum yield strength sub-category C;
- the Malaysian authority had commented that, based on the submissions received from exporters, the product exported to Malaysia is identical to the product sold by exporters on their domestic markets; and
- in relation to Colakoglu and Diler's normal value, the Malaysian authority model matched based on the same product codes sold to Malaysia during the investigation period.

InfraBuild submitted that the above suggests that the Malaysian authority was able to find sufficient domestic sales of sub-category C minimum yield strength for both Colakoglu and Diler in determining their normal values.

As part of the supplementary questionnaire, the Commission requested that Colakoglu and Diler clarify the Malaysian authority's approach to model matching:

- Diler indicated that the Malaysian authority took into account diameter only and did not have regard to minimum yield strength. Diler explained that the Malaysian authority assigned each sale of DBIL a code based on the diameter. The Malaysian authority combined all of the DBIL codes exported to Malaysia and calculated a single weighted average export price. Similarly the domestic sales of the same DBIL codes were combined into a single weighted normal value.
- Colakoglu indicated that the Malaysian authority took into account the HS codes only and not minimum yield strength. Colakoglu explained that the Malaysian authority calculated one single weighted average export price based on Colakoglu's exports under HS codes 7214200012, 7214200013 and 7214200014, and compared this to the weighted average normal value of Colakoglu's domestic sales meeting the same HS codes.

USA investigation

InfraBuild highlighted a January 2017 response by Habas, for the USDOC's Investigation No. A-489-829, concerning Steel Concrete Reinforcing Bar from Turkey. That response showed that Habas sold grade 500 rebar domestically (sub-category C minimum yield strength) for the period of investigation, albeit to the British Standard BS444916.

As part of the supplementary questionnaire, the Commission requested further details about the USDOC investigation from Habas. Habas responded that:

- the investigation period was 1 July 2015 to 30 June 2016;
- the sales of the British Standard product were in immaterial amounts; and
- it did not sell that product in the investigation period for Investigation 495.

The Commission considered the SEQR by Habas, in addition to revisiting the data verified as part of Habas' REQ, and is satisfied that the MCCs reported by Habas are accurate.

InfraBuild also referred to another exporter in the USDOC investigation, Kaptan, as reporting home market sales to the Turkish Standard (TS708) and a number of other international standards.

As outlined at section 2.1.3, Kaptan's sales are not being examined in this investigation. The Commission makes no comments regarding InfraBuild's submission regarding Kaptan.

Canadian expiry review

In its SEQR, Kroman provided an extract from a Canadian expiry review. In this review, Kroman had sales of sub-category B and C minimum yield strength. Kroman described the sub-category C sales as irregular and overruns from export sales orders. In determining normal values for Kroman, the Canadian authority appear to have model matched based on diameter only and have combined all sales of rebar with a sub-category B and C minimum yield strength.

Summary – verification of MCCs

The Commission has examined InfraBuild's concerns regarding the misreporting of MCCs. The Commission is satisfied the MCCs have been accurately reported by each of the cooperating exporters.

6.4 Approach to normal values

6.4.1 Sales of like goods

Section 269TAC(1) provides the general rule for calculating normal values. Section 269TAC(1) states:

> *Subject to this section, for the purposes of this Part, the normal value of any goods exported to Australia is the price paid or payable for like goods sold in the ordinary course of trade for home consumption in the country of export in sales that are arms length transactions by the exporter or, if like goods are not so sold by the exporter, by other sellers of like goods.*

Each of the cooperating exporters sold like goods on the domestic market in Turkey during the investigation period. The following tests were conducted to the domestic sales of each of the cooperating exporters.

6.4.2 Arms length

The Commission assessed the arms length nature of the domestic sales having regard to section 269TAA, which stipulates that such sales would not be arms length if the following was present:

- there was any consideration payable for, or in respect of, the goods other than its 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 not directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

6.4.3 Ordinary course of trade

Section 269TAAD states that domestic transactions are not in the OCOT if arms length transactions are:

- unprofitable in substantial quantities over an extended period; and
- unlikely to be recoverable within a reasonable period.[54]

The Commission tested the profitability for each domestic sales transaction by comparing the price against the relevant cost.

The Commission then tested whether the unprofitable sales were in substantial quantities (not less than 20 per cent) by comparing the volume of unprofitable sales to the total sales volume, for each MCC over the investigation period.

The Commission tested the recoverability of each domestic sales transaction by comparing the price against the relevant weighted average cost over the investigation period.

6.4.4 Volume of relevant sales

Section 269TAC(2) provides alternative methods for calculating the normal value of goods exported to Australia where there is an absence, or low volume, of relevant sales of like goods in the market of the country of export. Domestic sales of like goods are taken to be in a low volume under section 269TAC(14) where the total volume of like goods is less than five per cent of the total volume of the goods under consideration that are exported to Australia (unless the Minister is satisfied that the volume is still large enough to permit a proper comparison for the purposes of assessing a dumping margin).

The Commission assessed the total volume of domestic sales of like goods as a percentage of the goods exported to Australia for the investigation period.

When calculating a normal value under section 269TAC(1), in order to ensure a proper comparison between the goods exported to Australia and the like goods sold on the domestic market, the Commission gives further consideration to the volume of domestic sales of like goods for each exported MCC. Where the volume of sales of a domestic MCC is less than five per cent of the volume of the exported MCC, the Commission will consider whether a proper comparison can be made at the MCC level. In situations where it is not possible or the price appears to be affected by the low volume of sales, the Commission may consider whether a surrogate domestic MCC should be used to calculate normal value under section 269TAC(1) for the exported MCC.

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[54] For investigations, the Commission will generally consider ‘extended period’ and ‘reasonable period’ to be the investigation period.

6.4.5 Adjustments to normal value

The Commission considered whether adjustments under section 269TAC(8) are necessary to ensure that the normal value is properly compared with the export price of those goods.

6.4.6 Summary

For the purposes of SEF 495A, the Commission has calculated normal values for each exporter under section 269TAC(1).

Further information is available in respect of each exporter's circumstances below at sections 6.10 to 6.13.

6.5 Currency movements

In its application, the applicant submitted that the Turkish Lira (TRY) has demonstrated short-term fluctuation during the investigation period when compared against the US dollar (USD) and that, in order to properly compare normal value and export prices, these fluctuations should be disregarded, in accordance with section 269TAF(3).

6.5.1 Legislative background

Section 269TAF(1) provides that where comparison of export prices and corresponding normal values requires a conversion of currency, that conversion is to be made using the rate of exchange on the date of the transaction or agreement that best establishes the material terms of the sale of the exported goods.

Section 269TAF(3) states that:

> *If:*
>
> *(a) the comparison referred to in section (1) requires the conversion of currencies; and*
> *(b) the rate of exchange between those currencies has undergone a short-term fluctuation;*
>
> *the Minister may, for the purpose of that comparison, disregard that fluctuation.*

Section 269TAF(4) states that:

> *If:*
>
> *(a) the comparison referred to in section (1) requires the conversion of currencies; and*
> *(b) the Minister is satisfied that the rate of exchange between those currencies has undergone a sustained movement;*
>
> *the Minister may, by notice published in the Gazette, declare that this section applies with effect from a day specified in the notice and, if the Minister does so, the Minister may use the rate of exchange in force on that day for the purposes of that comparison during the period of 60 days starting on that day.*

In the Act there is no explicit definition of what is a fluctuation or a sustained movement. Part 21.3 of the Manual[55] outlines the Commission's policy approach in relation to these issues as follows:

> *A currency may show steady change, or some fluctuation, over time in the rate of exchange. The notion of a 'sustained movement' suggests something outside of a normal range of fluctuation. There must have been a 'movement', and this 'movement' must have been 'sustained' throughout subsequent periods.*

6.5.2 Daily movement of the Turkish Lira

Figure 3 shows the daily movement in the TRY/USD exchange rate over the investigation period, using currency exchange data sourced from the Turkish Central Bank (TCB).

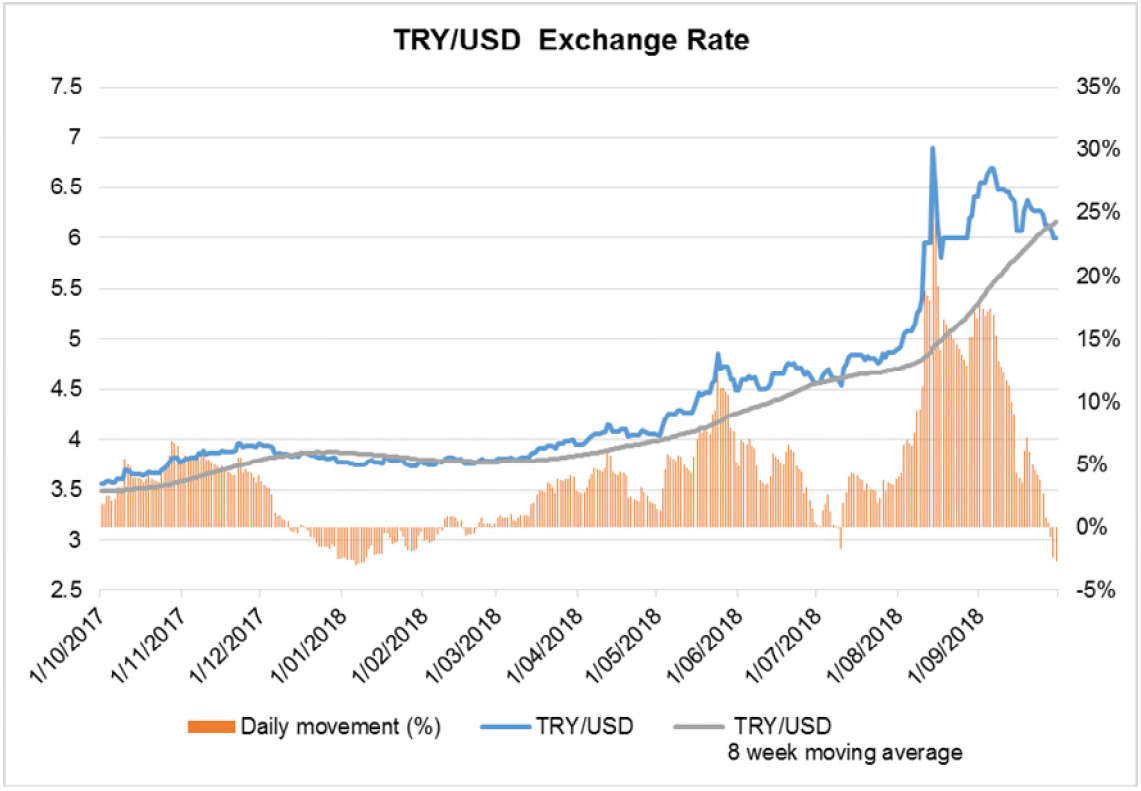

Figure 3 TRY/USD exchange rates over the investigation period

6.5.3 Short-term fluctuations under section 269TAF(3)

Methodology for determining short-term fluctuations

In Investigation No. 240 (INV 240), which was into exports of rod in coils from Turkey, among other countries, the Commission applied the following methodology for determining short-term fluctuations in currency:

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[55] The Manual, p.125.

- a benchmark based on an eight week moving average for the exporter's currency against the USD was established for the investigation period;
- daily actual rates were compared to the benchmark and a daily variance benchmark was established; and
- where the actual daily rate varied from the benchmark rate by more than two and a quarter per cent the actual daily rate was classified as fluctuating.

The above methodology is based on that used by the USDOC.[56] In INV 240, the Commission considered it reasonable, in the absence of an established practice, to employ a methodology in use in a comparable jurisdiction for the purposes of conducting its analysis.

This methodology was that advocated by the applicant in its application. Whilst the Commission received submissions on applying section 269TAF(3) to this investigation, the Commission found no reason to depart from the methodology applied in INV 240.

On the basis that the methodology used in INV 240 is consistent with the practice of a reputable and comparable jurisdiction, and that it is a methodology which interested parties to this investigation are familiar, the Commission remains satisfied that it is applying an appropriate basis in determining whether a short-term fluctuation has taken place under section 269TAF(3) in this investigation.

Application of methodology

Pursuant to section 269TAF(3), where a daily exchange rate has been classified as a fluctuation (in line with the methodology above), the actual daily rate may be set aside in favour of the benchmark rate. The practical impact of the application of section 269TAF(3) to an anti-dumping investigation is to set aside the exchange rates used by exporters where it has been determined there has been a fluctuation and use instead the benchmark rate.

Figure 4 shows the movement in the TRY/USD exchange rate (as reported by the TCB) compared with a TRY/USD exchange rate calculated using the section 269TAF(3) methodology.[57]

[56] USDOC Policy Bulletin 96-1.

[57] See Non-confidential Attachment 2 setting out Commission's calculations for determining short-term fluctuations.

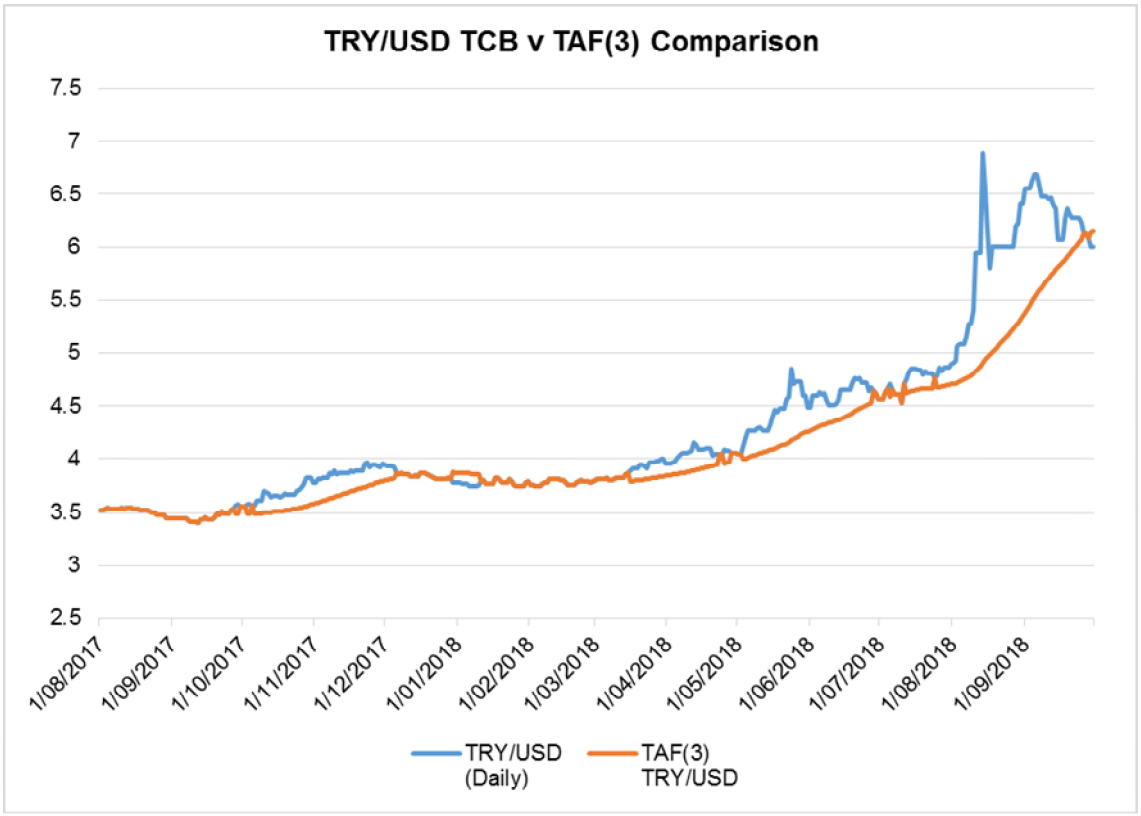

Figure 4 Turkish Central Bank TRY/USD vs TAF(3) exchange rates over the investigation period

The Commission has considered whether there are short-term fluctuations (pursuant to the methodology discussed above), and if so, whether disregarding those fluctuations would provide a better comparison of export prices with corresponding normal values of the goods for determining the material terms of the sale of the exported goods, as opposed to a comparison that includes those fluctuations.

As shown in Figure 4, using the methodology describe above, the Commission considers there have been short-term fluctuations in the exchange rate of the TRY when compared to the USD.

In considering whether it is preferable or not to disregard those fluctuations, the Commission has, in this instance, had regard to:

- the volume of trade on days where a short-term fluctuation occurred;
- the degree of fluctuation on a day-to-day basis;
- the number of instances of short-term fluctuations;
- the degree of change in the exchange rate over the investigation period; and
- the number of exporters affected by short-term fluctuations.

The Commission has observed that short-term fluctuations occurred on over 50 per cent of days within the investigation period, with significant degrees of fluctuation on a day-to-day basis, in some cases of more than 20 per cent from one day to the next. The TRY depreciated by more than 38 per cent between the beginning and end of the investigation

period. The Commission also observed significant volumes of trade by all exporters occurring on days where short-term fluctuations occurred.[58]

It is the Commission's view that these considerations provide a sufficient basis in this instance to determine that applying section 269TAF(3) to disregard short-term fluctuations would best establish the material terms of the sale of the exported goods.

6.5.4 Sustained fluctuations under section 269TAF(4)

Given the observed depreciation in the TRY/USD exchange rate over the investigation period, the Commission has also had regard to whether there was a sustained movement in the TRY/USD exchange rate under section 269TAF(4).

In INV 240, the Commission applied the following methodology for determining whether there was a sustained fluctuation in the exporter's currency:

- an eight week moving average for the exporter's currency against the USD was established for the investigation period;
- a weekly average of actual daily rates was established;
- a weekly average of the eight week moving average was established;
- where the weekly average of actual rates exceeded the weekly average of benchmark rates by more than five per cent that week was identified as a period of unusual movement; and
- the number of consecutive weeks of unusual movement was established.

Where the methodology establishes a period of eight or more consecutive weeks of unusual movement, the Commission may form a view under section 269TAF(4) that the exchange rate has undergone a sustained movement. As discussed above in respect of section 269TAF(3), the Commission is satisfied that the methodology applied in INV 240 remains appropriate.

Applying this methodology in the current investigation, the Commission determined there were two periods of unusual movement during the investigation period:

- for three consecutive weeks from mid-April 2018 to the end of April 2018; and
- for six consecutive weeks from the beginning of August 2018 to mid-September 2018.

That is, the Commission did not identify a period of eight consecutive weeks of unusual movement during the investigation period. Accordingly, the Commission has determined that the Minister cannot be satisfied under section 269TAF(4) that the TRY/USD exchange rate has undergone a sustained movement during the investigation period.

6.5.5 Submissions received in relation to currency conversion

In the verification reports for the exporters whose REQs were subject to examination, the Commission did not publish a dumping margin on account that further consideration of

[58] The Commission analysis of each exporter's circumstances is provided at Confidential Attachment 1.

the provisions of section 269TAF(3) were being undertaken and that any decision on this issue might affect the dumping margins.

In response to the publication of the verification reports for Diler and Kroman, the Commission received submissions from Diler and Kroman[59] regarding the treatment of short-term currency fluctuations and the application of section 269TAF(3). The submissions also commented on the application of section 269TAF(4) with respect to sustained currency movements. The issues raised in each submission are summarised as follows:

- Diler and Kroman both submit that section 269TAF(4) should not be applied in circumstances where the currency of the country of origin of the exporter depreciates against the currency in which the export sales are denominated. Diler and Kroman refer to the approach outlined in INV 240[60] as the basis for their position;
- Kroman submits the relationship between the USD and TRY during the investigation period exhibits a sustained currency movement rather than a short-term fluctuation;
- Diler submits that the application of section 269TAF(3) to address short-term currency fluctuations is not warranted in circumstances where the comparison of export price and normal value does not require a conversion of currencies;
- Diler also highlights that for a constructed normal value, based on the cost of production of the exported goods, the application of section 269TAF(3) to address short-term currency fluctuations would be relevant to the cost of imported raw materials used in the production of the goods; and
- Diler proposes that in the event that the Commission had regard to the provisions of section 269TAF(3) then an appropriate benchmark would be the published USDOC exchange rates on the basis that these rates eliminate cross currency conversion issues.

Following the SEF, Diler requested that the Commission further elaborate on whether section 269TAF(4) would be applied in the circumstance of a depreciating currency movement.[61]

6.6 Commissioner's response to submissions on currency conversion

6.6.1 Application of section 269TAF(4)

Regarding the application of section 269TAF(4), at section 6.5.4 the Commission's analysis of the exchanges applicable to exports of the goods from Turkey found that the Minister cannot be satisfied under section 269TAF(4) that those exchange rate has undergone a sustained movement during the investigation period.

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[59] Case 495 EPR item numbers 024 and 025, respectively.

[60] Report No. 240, pp.31-32, Case 240 EPR item number 073.

[61] Case 495 EPR item number 034.

6.6.2 Relevance of section 269TAF(3) in certain circumstances

With respect to Diler's submission regarding when the provisions of section 269TAF(3) are not warranted, the Commission's has not taken short-term currency fluctuations into account in instances where an exporter's FOB export price was derived from an invoice value that was already denominated in TRY. This circumstance was observed when export sales to the Australian importer were transacted through an intermediary and the export price was taken to be the price paid by the intermediary to the exporter and the sale between the two parties was dominated in TRY. However, the sale of goods to an intermediary were not consistently invoiced in TRY. Where a sale was invoiced in USD, the Commission converted those values into TRY using an exchange rate taking into account section 269TAF(3).

In certain cases, to determine an export price at the FOB level certain costs items were either deducted or added to the exporter's TRY denominated invoice value. Where such cases occurred and the relevant cost items were denominated in USD, the Commission has firstly converted those costs into TRY by applying the exchange rate taking into account section 269TAF(3).

6.6.3 Application of section 269TAF(3) for constructed normal value

Diler's submission refers to the application of section 269TAF(3) in the context of when an exporter's normal value has been constructed based on the cost of production. Diler's submission correctly points out that exporters produce rebar by utilising raw materials that have been imported. However, as these costs when provided by Diler to the Commission were denominated in TRY, no conversion is required and therefore section 269TAF(3) is not enlivened in this circumstance.

6.6.4 Exchange rate benchmark

The Commission's application of section 269TAF(3) as outlined in section 6.5.3 has relied on the TCB published daily exchange rates as the basis to work out whether a short-term currency fluctuation has occurred. The Commission's use of the TCB data reflects the observations made regarding each cooperating exporter's sales and accounting records whereby all exporters relied on the TCB rates. The use of the TCB's published TRY and USD exchange rates also eliminates the issue raised by Diler with respect to the impact of cross currency discrepancies.

In assessing the issue of short-term currency fluctuations the Commission initially considered using exchange rate data published by the USDOC. However, after further examination of the USDOC data the Commission concluded that the data had been subject to alterations (as allowed under the relevant US legislation) and the precise treatment of the data could not be ascertained. As a result the Commission did not rely on the USDOC data.

6.6.5 TRY/USD is a sustained currency fluctuation

In response to Kroman's submission which asserts that the movement in the TRY and USD exchange rate represents a sustained currency fluctuation, the Commission refers to the findings at section 6.5.4 which found that the circumstances relevant to the TRY/USD

exchange rate did not produce what the Commission considers to be a sustained fluctuation.

Kroman's submission also asserts that the depreciation of the TRY over the entire investigation period could not be considered a short-term fluctuation. Kroman proposes that the relevant period is the investigation period which in its opinion could not reasonably be treated as being a short term period of time. The Commission interprets Kroman's analysis of the movement in the exchange rate as being an observation of the overall trend in the TRY/USD exchange rates over the investigation period. However, as outlined in section 6.5.3 and contrary to Kroman's view, the Commission's approach regards the period of currency fluctuation as something which occurs on a daily basis. A daily basis is considered appropriate as sales of the exported goods are made based on daily exchange rates. It is the case that the relationship between the TRY and USD at section 6.5.2 exhibits a depreciation of the TRY against the USD however the macro trend does not necessarily mean there were no short-term fluctuations of the kind determined by the Commission.

6.6.6 Use of section 269TAF(4) when currency depreciates

The Commission understands Diler's submission of 15 May 2019 is seeking a determination on whether the Commission would apply section 269TAF(4) in the circumstance of a depreciating currency. The Commission's analysis at section 6.5.4 found that the TRY had not undergone a sustained currency movement against the USD. The Commission's finding was not made having regard to whether the TRY appreciated or depreciated against the USD.

Since the TRY/USD exchange rate did not undergo a sustained movement during the investigation period according to the methodology set out in section 6.5.4, it is not necessary to further evaluate whether section 269TAF(4) would apply in the circumstance of a depreciating TRY.

6.7 Cooperative exporters

Section 269T(1) provides that, in relation to a dumping investigation, an exporter is a 'cooperative exporter' where the exporter's exports were examined as part of the investigation and the exporter was not an 'uncooperative exporter'. At the commencement of the investigation, the Commission contacted known exporters of the goods and each identified supplier of the goods within the relevant tariff subheading for rebar as identified in the ABF import database, and invited them to complete an exporter questionnaire. The Commission received completed exporter questionnaire responses from the following exporters:

- Colakoglu;
- Diler;
- Habas; and
- Kroman.

The Commission undertook onsite verification visits to Diler and Kroman and also undertook an offsite verification of the data submitted by Colakoglu and Habas. All of the exporters listed above are considered to be cooperative exporters.

6.8 Uncooperative exporters

Section 269T(1) provides that, in relation to a dumping investigation, an exporter is an 'uncooperative exporter', where the Commissioner is satisfied that an exporter did not give the Commissioner information that the Commissioner considered to be relevant to the investigation within a period the Commissioner considered to be reasonable, or where the Commissioner is satisfied that an exporter significantly impeded the investigation.

The Commission received four responses to its exporter questionnaire. These exporter questionnaire responses were complete and enabled the Commission to conduct onsite and benchmark verifications.

The Commission considers that the volumes exported by the exporters who have cooperated with the investigation likely represents the total volume of exports that are relevant to the investigation period. As a result the Commissioner has not identified any uncooperative exporters that would be the subject of the investigation as defined in section 269T(1). However, at section 6.14 the Commission has determined a rate for the category of 'all other exporters'.

6.9 Submissions in relation to dumping

The Commission received two submissions relating to preliminary dumping margins calculated in SEF 495.

InfraBuild made a submission on 15 May 2019[62] covering a range of issues relevant to the dumping margins, some which are exporter specific and others which relate to all exporters generally. Those issues as summarised below:

- incorrect application of section 269TAB(1)(c) to determine export prices for Colakoglu, Diler and Kroman;
- incorrect application of section 269TAC(14) in determining a sufficient volume of domestic sales of like goods sold in the ordinary course of trade;
- wrongly applying adjustments for domestic credit expenses under section 269TAC(9);
- improper recognition of specification differences due to minimum yield strength;
- failure to recognise Australasian Certification Authority for Reinforcing and Structural Steels (ACRS) accreditation fees in adjusting the normal value; and
- failure to compare Habas' normal value and export price at the same level of trade, due to the omission of an adjustment for export inland transportation fees.

Following the SEF, Diler made a submission on 15 May 2019[63] contending that the Commission should have applied a downwards adjustment to account for duty drawback on imports of raw materials.

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[62] Case 495 EPR item number 033.

[63] Case 495 EPR item number 034.

Diler made a follow up submission on 22 May 2019[64], responding to InfraBuild's 15 May 2019 statements regarding the application of section 269TAC(14), the application of section 269TAB(1)(c) and adjustments for domestic credit expenses.

6.9.1 Application of section 269TAB(1)(c) to determine export prices for Colakoglu, Diler and Kroman

InfraBuild noted that the export prices for Colakoglu, Diler and Kroman were calculated by the Commission under section 269TAB(1)(c), having regard to the circumstances of exportation. Each of these exporters utilised a related party intermediary in the exportation of the goods to Australia. The Commission established the export prices for each of these exporters using the price between the exporter and the intermediary, consistent with page 30 of the Manual.

InfraBuild questions whether there is sufficient information to allow the Commission to be satisfied that the sales of the goods by Colakoglu, Diler and Kroman to their respective related party intermediaries were arms length transactions. InfraBuild states that it is not clear how the Commission satisfied itself that the conditions of section 269TAA(1) (relevant to assessing the arms length nature of transactions) were not met in this case. InfraBuild further states that, unless the Commission is able to be entirely satisfied that the conditions of section 269TAA(1) were not met, then the Commission ought to conclude that sufficient information has not been furnished, or is not available, to enable the export price of goods to be ascertained under section 269TAB(1)(c). In the event that the Commission does find as above, InfraBuild proposes that the export prices for Colakoglu, Diler and Kroman be established using section 269TAB(3) having regard to all relevant information, following a deductive export price methodology.

In examining the circumstances of the exportations by Colakoglu, Diler and Kroman, the Commission assessed the transactions between each exporter and their intermediary, as well as between the intermediary and the customers in Australia. This included establishing who paid certain exportation costs, the price paid for the goods by the intermediary to the exporter, and the price paid by the Australian customer to the intermediary. The Commission examined the exporter's source documentation and general ledger accounts relevant to the transactions. The two largest importers of the goods participated in the investigation and the information provided by these importers was verified and contributed to the assessment of whether the transactions relevant to those aspects of the exportations were arms length.

Using the information described above, the Commission concluded that there was no evidence to support an allegation that the sale of the goods by each of the exporters to the respective intermediaries (and between the intermediaries and the customers in Australia) should not be treated as arms length transactions, in view of the matters set out in section 269TAA(1). Statements to this effect were made in the verification reports for Colakoglu, Diler and Kroman and are further restated, albeit in a summarised form, in SEF 495.

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[64] Case 495 EPR item number 035.

The Commission considers that the available information was sufficient to allow an examination of the circumstances relevant to the exportations as required under section 269TAB(1)(c), including the particular transactions between the exporters and their related party intermediaries upon which the export prices were based. As a result, the Commission is not required to resort to section 269TAB(3) to establish the export prices for Colakoglu, Diler and Kroman.

6.9.2 Incorrect assessment of "suitability" of domestic sales under section 269TAC(14)

Submissions from interested parties prior to TER 495

InfraBuild claims that the Commission incorrectly assessed whether, for each exporter, there were sufficient volumes of domestic sales relevant to the determination of normal values under section 269TAC(1), on a model-by-model. It claims that there is no support for this practice in section 269TAC(14) or the ADA.[65] InfraBuild was concerned that the Commission's approach wrongly led it to construct normal values for certain MCCs under section 269TAC(2)(c), rather than using domestic selling prices under section 269TAC(1).

Diler submitted that it was appropriate and reasonable for the Commission to interpret and apply a policy to assess the sufficiency of domestic sales on a model-by-model basis. Diler referred to WTO Appellate Body reports[66] and the Commission's notification of the MCC structure at initiation of the investigation, as support for the Commission's approach in this investigation.

Commission's response to submissions in TER 495

The Commission considered in TER 495 that:

- it did not misapply section 269TAC(14); and
- it appropriately assessed the sufficiency of domestic sales on a model-by-model basis.

ADRP Review No. 110

In ADRP Review No. 110, the ADRP found that the Commission's assessment of the sufficiency of domestic sales on a model-by-model basis seeks to read into section 269TAC a requirement that domestic sales, which would otherwise be considered in the ascertainment of normal value, must meet an additional requirement in order to be relevant to the determination of normal value. The ADRP considered that this additional requirement is not evident by the express language of section 269TAC and cannot be inferred when that section is read in context.

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[65] Case 495 EPR item number 033, p.4.

[66] DS 397, *European Communities – Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China* (WT/DS397/AB/R). paras. 490 and 496; and DS197, *United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea* (WT/DS179/R). paras. 6.107 and 6.111.

Approach in SEF 495A

The Commission has revised its approach to calculating normal values at section 6.4. The Commission's approach for SEF 495A ensures that relevant sales have been considered in the ascertainment of normal value under section 269TAC(1).

6.9.3 Adjustments for domestic credit expenses under section 269TAC(9)

InfraBuild stated that the downwards adjustment for domestic credit expense applied to constructed normal values under section 269TAC(2)(c) by the Commission was not supported by section 269TAC(9). InfraBuild also questioned the rationale for such credit expense adjustments and the basis for the value of such adjustments.[67]

The Commission responded to InfraBuild's submission in TER 495 and was satisfied that an adjustment was warranted. However, it is noted that the Commission has revised its approach to calculating normal values at section 6.4. The Commission's approach for SEF 495A ensures that the normal values have been calculated under section 269TAC(1). As a result, there are no adjustments under section 269TAC(9). Accordingly, the Commission has not replicated the text from TER 495 on this issue.

A further submission by InfraBuild regarding credit costs has been addressed at 6.9.8.

6.9.4 Adjustment for grade specification differences

Approach in TER 495

In the case of Colakoglu, Diler, Habas and Kroman, there were quarters where there were no sales of MCCs on the domestic market that matched the exported MCCs). This occurred because of the different grades each exporter sold to the respective markets. The grades are relevant to the MCC category of minimum yield strength.

For context, all of the goods exported to Australia were of minimum yield strength sub-category C (greater than 480 MPa but less than 550 MPa). In contrast, only one per cent of like goods sold in the OCOT in Turkey as verified for the cooperating exporters in this investigation were of minimum yield strength sub-category C. Almost all of the remaining domestic OCOT sales were minimum yield strength sub-category B (greater than 300 MPa but less than or equal to 480 MPa).

In TER 495, where there were no domestic sales of minimum yield strength sub-category C in a particular quarter, the Commission considered whether it could base a normal value on domestic sales of minimum yield strength sub-category B and make a specific adjustment to account for the difference in minimum yield strength. However, due to the low volume of domestic sales of minimum yield strength sub-category C, the reported sales data in the REQs did not provide a sufficient basis to accurately quantify the price differential between sub-category B and sub-category C. There was also an absence of other information which may have been relevant to quantifying the price difference between sub-category B and sub-category C on the Turkish domestic market, for

[67] Case 495 EPR item number 033, item 2.

example price lists or market reports. Therefore, the Commission did not apply an adjustment to account for minimum yield strength specification differences under section 269TAC(8).

InfraBuild's submitted prior to TER 495 that the Commission could have had regard to third country sales data of the exporters (section F of the REQs) to quantify a minimum yield strength specification adjustment.[68]

However, in TER 495 Commission did not consider this to be the preferred approach. InfraBuild's submission did not outline how prices in third countries are relevant to the comparison of Australian export prices and the corresponding normal values in Turkey.

In TER 495, the Commission noted that, even if equivalent grades to those sold in Australia and Turkey were sold by Turkish exporters to a third country, any specific price difference observed in relation to minimum yield strength in a third country may not be relevant to the Turkish market. The Commission considers that prices in third country markets could be affected by a range of market factors and it would require careful analysis to draw meaningful conclusions.

The data provided by exporters in section F of the REQs is insufficient for this purpose. The Commission collects summarised data relating to third country sales in section F of the exporter questionnaires. If required, the Commission will seek more detailed third country sales data for the purposes of calculating normal values under section 269TAC(2)(d). This is usually only necessary if section 269TAC(1) or section 269TAC(2)(c) cannot be used. As outlined in the Manual, when it is not possible to calculate a normal value under section 269TAC(1), the Commission's preferred approach is to determine normal values under section 269TAC(2)(c) provided cost data is available.

For this reason, the summary data collected in section F of the REQs is not sufficiently detailed nor reliable to quantify price differences relating to minimum yield strength. In contrast, the Commission has cost data available from Turkish exporters, which it verified and considers is suitable for determining normal values under section 269TAC(2)(c).

The Commission therefore considered in TER 495 that, based on the information available, it was correct and preferable to follow its stated policy and to calculate the normal value under section 269TAC(2)(c) in instances where there were no sales that would be relevant in determining a price under section 269TAC(1).

ADRP Review No. 110 found that, under the circumstances where there sales of like goods, practical difficulties relating to calculating adjustments provided no legislative basis on which to construct the normal value under section 269TAC(2)(c).

Following ADRP Review No. 110, the Commission has revisited its approach to normal values at section 6.4 and has further elaborated on the need for adjustments for grade differences at section 6.9.8.

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[68] Case 495 EPR item number 033, p. 7.

6.9.5 Recognition of ACRS accreditation fees

InfraBuild's submission in response to SEF 495 stated that it was unclear whether the Commission included the costs of obtaining ACRS accreditation as an export related cost of production for each exporter under section 269TAC(2)(c)(i) or as an upward adjustment to the normal value for each exporter under section 269TAC(9).

Background

ACRS is an independent, expert, industry-based product certification scheme, certifying manufacturers and suppliers (both domestic and export) of rebar, pre-stressing and structural steels to the Australian standard.

It is not mandatory for producers of rebar to be ACRS certified to participate in the Australian market. The ACRS[69] website provides details of accredited rebar producers. Based on the Commission's examination of the ACRS website, having ACRS accreditation is commonplace in the Australian market. All of the cooperating exporters from Turkey in this investigation possess an ACRS accreditation for their production of straight rebar. Habas and Kroman also possess an ACRS accreditation for their production of coil rebar. Kaptan who did not export during the investigation period, also possess an ACRS accreditation for straight rebar.

Obtaining ACRS accreditation involves paying a yearly fee that covers the cost incurred by the ACRS organisation for granting the producer its certification. Certification of rebar is granted in relation to certain grades and diameters which conform to the relevant Australian standard.

Assessment

As part of the SEF, the Commission did not include ACRS fees as an export related cost of production for each exporter under section 269TAC(2)(c)(i) or as an upward adjustment to the normal value for each exporter under section 269TAC(9).

To examine this issue further following InfraBuild's submission, the Commission made enquiries with all cooperating exporters and sought further information regarding their ACRS accreditation.

In doing so, the Commission established that Turkey has a similar system of accreditation administered by the Turkish Standards Institute (TSE). Therefore, the Commission sought further information regarding both accreditation systems. This included details about the accreditation process, initial accreditation fees, ongoing fees, establishing who paid these fees, accounting treatment in the exporters' records, and how the prices of rebar are influenced by the cost of such fees.

[69] https://www.steelcertification.com, accessed 14 June 2019.

Having regard to the additional information (confidential to each exporter) provided by the cooperating exporters from Turkey and their verified sales and cost data, the Commission found that:

- each exporter had a similar export price. Noting that there was disparity in the volume each exporter sold to Australia, and considering that all exporters paid similar ACRS fees, there appears to be no correlation between the export prices achieved and the ACRS fees incurred;[70]
- all cooperating exporters had ACRS accreditation. The ACRS accreditation did not present a point of differentiation which may have been reflected in the price;
- whilst there are initial and ongoing ACRS fees, from June 2017 onwards, there is no longer an activity based levy linked to export volume;
- TSE fees were relatively low in value in comparison with ACRS fees. The TSE fees are unlikely to have impacted on the domestic selling prices of like goods; and
- all exporters treated the ACRS and TSE fees as an administrative fixed overhead cost rather than a cost of production.

On the available evidence, the Commission is satisfied that the comparison between export prices and normal values were not affected by the payment of accreditation fees paid by the cooperating exporters. On this basis, the Commission has not adjusted the normal values to account for accreditation fees.

The Commission also remains satisfied that the ACRS fees should not be treated as an export related cost of production for each exporter under section 269TAC(2)(c)(i).

6.9.6 Inland transportation adjustment for Habas

In its REQ, Habas reported that the port of exportation for the goods was located four miles from its rolling mill. Consequently, it did not report export inland transportation costs in its export sales listing at confidential appendix B-4 of its REQ. Based on the close proximity of the port to the rolling mill, the Commission accepted that any inland export transportation costs incurred by Habas in relation to its export of the goods would be immaterial.

InfraBuild stated that it was unclear whether the Commission made an adjustment to Habas' normal value for export inland transportation costs, acknowledging that the Commission was satisfied that due to the close proximity of the port to the rolling mill, any such adjustment would likely be negligible. InfraBuild proposed that in the absence of available data from Habas, the Commission could calculate the export inland transportation costs for Habas using data from other exporters.

InfraBuild claim that, absent an adjustment for export inland transport costs, the Commission failed to compare Habas' normal value and export price at the same level of trade.

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[70] The objective of this analysis was to test if the same ACRS fee when amortised across different sales volumes produces the result that a low volume exporter has charged more than a high volume exporter.

The Commission confirms that Habas' export price calculated under section 269TAB(1)(a) did not include export inland transportation costs. The Commission does not consider that the above has affected the comparison between export price and normal value because:

- any export inland transportation cost to be captured in the export price was likely to be immaterial; and
- no corresponding upwards adjustment was made to the normal value.

On the basis of the above, the Commission considers that it has correctly compared Habas' normal value and export price at the same level of trade, enabling a fair comparison.

While it is may have been open for the Commission to use data from other exporters to calculate a notional amount of export inland transportation costs for Habas, it would not be preferable to do so because this notional amount would not be the actual costs of Habas, and the Commission would be required to incorporate the same amount into Habas' export price and normal value calculation. This amendment would result in no net effect on the dumping margin. The Commission has therefore not made an adjustment to the normal value under to account for export inland transportation costs.

ADRP Review No. 110

It is noted that InfraBuild's second ground of appeal to the ADRP was on the basis that the Commissioner failed to adjust Habas normal value to account for the cost of inland freight so as to ensure a fair comparison between export price and normal value.

The ADRP ultimately found that the Commissioner was not obligated to make an adjustment to normal value and rejected this ground of appeal. Accordingly, the Commissioner has not changed his view on this issue in SEF 495A.

6.9.7 Adjustments to account for duty drawback

In Diler's submission regarding the making of an adjustment to normal values to account for duty drawback, Diler correctly points out that the Inward Processing Regime (IPR) in Turkey is a substitution drawback scheme. In such circumstances the Commission's policy is that it may allow the drawback payable on the substituted domestic material if the like materials were imported within the previous two years and the total amount of drawback does not exceed the total duty paid.[71] The Manual states that making due allowance adjustments arising from a substitution drawback system is discretionary and implies that an examination of the rationale for making the adjustment remains necessary.

The verification report relating to Diler outlined the Commission's reasons for not making an adjustment to Diler's normal value in relation to duty drawback in this investigation. The verification report details that Diler did not claim nor present any information which suggested that, it paid import duty for any imported raw materials that were consumed in

[71] Part 15.3 of the Manual, p.70.

producing goods sold domestically.[72] The Commission was satisfied that Diler did not pay import duties on its imports of raw material the subject of the IPR (steel billets) and was further satisfied that import duties were not paid on imports of scrap metal, which whilst not subject to the IPR, were duty free nonetheless. The same was found for all other exporters cooperating with this investigation where duty on imports of scrap metal and steel billets by those exporters was not payable.

Since sales of rebar by Diler in its domestic and export markets were produced using duty free imports of raw materials, no cost differential arises between the goods produced for each of the markets into which Diler sells rebar. This reasoning is supported by the Commission's practice for considering an adjustment in this situation is discussed in the Manual as Example 1.[73] In Example 1, it is stated that where neither the goods for export nor the goods for the domestic market are subject to import duties, the Commission considers that there are no differences in the export and domestic prices due to the effects of the import duties and no adjustment is made for duty drawback.

The same observations made in relation to Diler were found to exist in relation to other exporters cooperating in this investigation. Consequently, no adjustments were made in relation to duty drawback for any exporter.

6.9.8 Submissions following ADRP Review No. 110

Following ADRP Report No. 110, InfraBuild made submissions in relation to:

- adjustments to normal value; and
- costs of production and particular market situation.

6.9.8.1 Adjustments to normal value

<u>Adjustments for differences in minimum yield strength</u>

It is InfraBuild's view that once MCC designations are settled, the Commission must reassess the sales and pricing information of the exporters for all models of like goods sold into the domestic Turkish market to determine whether there are any differences in price (either price premiums or discounts) for any physical or specification differences.

In particular, InfraBuild commented on minimum yield strength and indicated that, while the product described in sub-category B is considered alike to exports of sub-category C, an upward adjustment to sub-category B sales is required, if a price premium is observed for sub-category C sales on the Turkish domestic market.

InfraBuild considered that an appropriate way of performing this function would be to identify instances where the exporter has sold sub-category B and C to the same domestic customer, or where orders for both sub-category B and C goods were placed on the same day, albeit to different customers.

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[72] Case 495 EPR item number 027, Section 8.1, p.20.

[73] Part 15.3 of the Manual, p.69.

In response to InfraBuild's submission, the Commission conducted an analysis at the invoice level for all domestic sales transactions which had both sub-category B and sub-category C sales on the same invoice. This only occurred in relation to Kroman and Colakoglu. The analysis showed that in 86 per cent of the transactions, the unit prices were identical. Of the invoices where unit price differences were observed, the unit prices were within plus or minus one per cent. The Commission does not consider that this supports InfraBuild's submission for a specification adjustment.[74]

InfraBuild also referred to a confidential attachment to Kroman's REQ which led InfraBuild to believe that there are price premiums in relation to grade of rebar in Turkey. The Commission confirms that the price list referred to in InfraBuild's submission does not demonstrate such price premiums. The price list is now available on the EPR.[75]

The Commission has considered the available information, including the cost and sales data of the cooperating exporters, findings of other jurisdictions and available price lists. The Commission concludes that, in relation to minimum yield strength, there is no evidence of a quantifiable price premium for sub-category C sales above sub-category B sales on the Turkish domestic market.

In relation to Habas and Diler, where the Commission has used sub-category B domestic sales as a surrogate for sub-category C export sales in determining normal values, no specification adjustment was applied.

Adjustments to the normal value for domestic credit expenses

InfraBuild submits that the Commission must not make downward adjustments to the normal value for "domestic credit expenses" unless it is satisfied that the adjusted normal value is in the OCOT.

The Commission notes that:

- domestic credit expense adjustments were only made in relation to Colakoglu, Diler and Kroman;
- the value of the adjustments is minor; and
- there is no requirement in the Act to retest whether sales are in the OCOT after adjustments have been applied to the normal values.

Accordingly, the Commission has not altered its approach to adjusting for domestic credit expenses.

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[74] Confidential Attachment 32. Note; this analysis did not include Kroman and Diler's sales of non-prime mixed lengths in various diameters as discussed in section 6.3.6.

[75] Case 495 EPR item numbers 45 and 46.

Overruns of goods produced for overseas markets

On 24 April 2020, InfraBuild commented[76] on a file note the Commission published regarding Habas[77], having conducted further verification following TER 495. InfraBuild cited the following:

- Habas had on rare occasions in the past sold overrun goods that were 'produced to order' for overseas markets, on the domestic market in Turkey;
- conversely, Habas almost always sells its goods from stock on the domestic market;
- a Government decree came into place in late 2018, which means that all rebar sold on the Turkish domestic market must show a Turkish standard marker;
- Habas now scraps any overrun overseas goods and feeds it back into the production process; and
- Habas had known about the Government decree earlier than the implementation date and had stopped selling overrun overseas goods without the Turkish standard markings on the Turkish market prior to the Government decree.

InfraBuild claims that the Commission will be required to make an upwards adjustment for Habas, and any other exporter, found to be scrapping overrun goods produced for export markets. Furthermore, InfraBuild alleges that the scrapping of overrun goods leads to a higher unit export cost-to-make, which in turn affects price comparability via the different profit margin earned on sales into domestic and export markets. In support of its claim, InfraBuild provided a worked example.

The Commission accepts Habas' statement that any sales of overrun overseas goods made on the Turkish market in the past were rare. This is evidenced by the small volumes of such sales in previous periods[78]. The actual volumes involved were considerably smaller than the worked example in InfraBuild's submission. The actual volumes involved are unlikely to have impacted, to any degree, the unit cost-to-make of export goods and domestic goods.

As outlined in the Manual on page 65, where any adjustment is to be based on costs, it is subject to the principle that adjustments will be made only where evidence indicates that price comparability has been affected. The Commission does not have any evidence that an incremental cost in relation to the scrapping of overrun goods, if any, would affect price comparability for the investigation period. InfraBuild's worked example is not supported by evidence that would reasonably demonstrate that any such incremental cost, if any, is passed on to customers.

[76] Case 495 EPR item number 50.

[77] Case 495 EPR item number 47.

[78] Reference is made to Habas' confidential SEQR and comments made in relation to investigations by the USDOC, CBSA and the Commission's Investigation 264.

6.9.8.2 Cost of production and particular market situation

Submission

On 22 April 2020, InfraBuild[79] submitted to the Commission a preliminary determination made by the Canada Border Services Agency (CBSA) in relation to an investigation into the alleged dumping and subsidisation of certain corrosion-resistant steel sheet from Turkey. The submission attached the CBSA's *Statement of Reasons* (SOR)[80]. InfraBuild claims that the CBSA investigation may indicate that a number of key input costs of production for like goods in Turkey do not reasonably reflect competitive market costs, including the following input costs:

- natural gas;
- electricity; and
- water.

InfraBuild claims that the CBSA's investigation may be relevant to the Commission's current investigation. In particular, in relation to:

- if calculating normal values under section 269TAC(1) – the determination of which sales of like goods are in the OCOT, by virtue of having to determine the costs of production for the purposes of section 269TAAD(4)(a) and section 269TAAD(5) having regard to section 43(1) of the *Customs (International Obligations) Regulation 2015* (the Regulation);
- if calculating normal values under section 269TAC(2)(c) – determining the cost of production relevant to section 269TAC(5A); or
- whether the Commission may consider that the interventions of the Government of Turkey render a situation in the domestic rebar market of Turkey, such that sales in that market are not suitable for use in determining a price under section 269TAC(1), by operation of section 269TAC(2)(a)(ii).

Cost of production and competitive market costs

The Commission has reviewed the CBSA SOR and makes the following general observations:

- the CBSA's SOR are preliminary in nature;
- the CBSA is examining an investigation period of 1 July 2018 to 30 June 2019. The CBSA's investigation period overlaps the investigation period for this investigation (1 October 2017 to 30 September 2018) by one quarter only; and

[79] Case 495 EPR item number 48.

[80] Case 495 EPR item number 49.

- the CBSA's investigation is in relation to a different type of goods, being corrosion-resistant steel sheet.[81] The Commission notes that those goods are not like goods to rebar. As outlined at pages 6 to 9 of the SOR, the CBSA is investigating goods with substantially different physical characteristics, production processes and end-uses to those in this investigation. Noting the differences in the relevant investigations, a degree of caution is required in drawing conclusions.

The Commission also notes that the preliminary findings in the SOR referenced by InfraBuild were not made in the context of the CBSA examining the Turkish exporter's records for the purposes of determining normal values. At the time of issuing the SOR, the CBSA do not appear to have examined the exporter's records, because the questionnaire responses received contained deficiencies. Furthermore, the exporters examined by the CBSA are different to the exporters examined in this investigation. The determination of whether an exporter's records are in accordance with the Regulation, may change from case to case.

InfraBuild's observations about key input costs were made having regard to commentary in the CBSA's SOR relating to the subsidy investigation. The CBSA's subsidy investigation is not examining any of the four cooperating exporters from this investigation. The relevant subsidy program relating to key inputs of natural gas, electricity and water as mentioned by InfraBuild are found in CBSA Program 11. In regards to CBSA Program 11:

- a preliminary finding that a countervailable subsidy was received in relation to natural gas at less than fair value was made on the basis that one exporter was found to be in an Organised Industrial Zone (OIZ). It was stated that entities within OIZs were paying 0.5 per cent less to a state-owned enterprise in relation to the provision of natural gas for uses other than electricity. InfraBuild claims that such a finding may extend to Habas, the only exporter to purchase natural gas from a state-owned enterprise in this investigation. InfraBuild cite the GoT RGQ as potentially indicating that Habas operates in an OIZ. The Commission confirms that Habas' steel making and production facility for rebar is not located in an OIZ[82]. In addition, as set out at section 7.10 and Non-Confidential Appendix A, the Commission considers that Habas did not receive a subsidy in relation to natural gas at less than adequate remuneration in relation to this investigation. The GoT's RGQ in respect of natural gas states that, pursuant to the provisions of Law No.

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[81] The CBSA goods description refers to flat products with a maximum thickness of 4.267mm and a maximum width of 1,828.88mm. Such goods are manufactured to different standards than rebar. The production process refers to inputs which are generally cold rolled steel (but sometimes hot rolled steel sheet) and includes a process for hot-dip galvanizing or electro-galvanizing. Common applications for the goods investigated by CBSA include, but are not limited to, production of farm buildings, grain bins, culverts, garden sheds, roofing material, siding, floor decks, roof decks, wall studs, drywall corner beads, doors, door frames, ducting (and other heating and cooling applications), flashing, hardware products and appliance components. Those applications are different to rebar which is typically used to reinforce concrete and precast structures.

[82] This is based on the Commission's own research and confirmation by Habas in an email dated 6 May 2020.

4646, the natural gas market in Turkey is based on free market principles, and that all market participants are free to set their own pricing. It is noted that the GoT response stated in the CBSA SOR makes similar comments; and
- no preliminary finding was made by the CBSA regarding alleged subsidies in relation to energy and water.

On the basis of the above, the Commission continues to be satisfied that, for each of the four cooperating exporters for this investigation:

- the records are kept in accordance with GAAP; and
- the records reasonably reflect competitive market costs associated with the production or manufacture of like goods.

The Commission is satisfied that those records can be relied upon in determining which sales are in the OCOT and by extension in calculating normal values under section 269TAC(1).

Particular market situation

The Commission's policy and procedures for examining claims of particular market situation are outlined in the Manual.[83] The Commission generally only examines such claims where relevant and reliable evidence of a particular market situation is available.

The Commission notes that the CBSA is currently examining whether a "particular market situation" exists in Turkey in relation to the market for corrosion resistant steel sheet, a different product to rebar. It is further noted that, based on the SOR, although the GoT was sent a market situation questionnaire, the CBSA are yet to reach any considered and final conclusion on this issue.

The Commission does not consider that there is relevant and reliable evidence of a particular market situation in Turkey in relation to sales of rebar.

6.10 Dumping assessment – Colakoglu

6.10.1 Verification

Although Colakoglu was not requested to host the Commission for a verification visit, it's REQ was verified remotely, having regard to other relevant information available.

The Commission established the reliability of Colakoglu's REQ by ascertaining the variable factors relevant to its exports of rebar to Australia and comparing these variable factors, and the relevant data underlying these variable factors to the data and variable factors for other cooperating exporters that were the subject of a verification visit, another cooperating exporter who was not subject to a verification visit, the GoT's RGQ and relevant information from previous investigations (i.e. INV 264 refers).

[83] Pages 35 and 36.

The verification of Colakoglu's data satisfied the Commission that the variable factors ascertained could be considered reliable for the purposes of determining the level of dumping and subsidisation relating to its exports of the goods to Australia during the investigation period.

Relying on the information available the Commission is further satisfied that Colakoglu is the producer of the goods and like goods.

A report detailing the verification findings relating to the variable factors determined for Colakoglu is available on the EPR.[84]

6.10.2 Export price

Having regard to Colakoglu's verification report, the Commission remains satisfied that:

- Colakoglu was the exporter of the goods to Australia;
- sales to Australia were conducted through the trading arm of Colakoglu, COTAS; and
- the export sales between Colakoglu, COTAS, and its Australian customers were the result of arms length transactions.

Based on the above, the Commission is unable to calculate the export price under sections 269TAB(1)(a) or (b). The export price for Colakoglu has been established under section 269TAB(1)(c), having regard to all the circumstances of the exportation, using the invoiced price from Colakoglu to COTAS, less deductions to the FOB level as required.

6.10.3 Normal value

Arms length

In respect of Colakoglu's domestic sales of like goods during the investigation period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the like goods other than its 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 directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.

The Commission therefore considers that all domestic sales of like goods made by Colakoglu during the investigation period were arms length transactions.

Ordinary course of trade

The Commission tested whether Colakoglu's domestic sales were in the OCOT, using the methodology outlined above at section 6.4.3. The large majority of Colakoglu's sales of

[84] Case 495 EPR item number 028.

like goods were found to be in the OCOT. Those not in the OCOT were excluded from the normal value calculations.

Volume of relevant sales

The Commission assessed the total volume of domestic sales of like goods as a percentage of the goods exported to Australia for the investigation period and found that the volume of domestic sales was sufficient.

Comparison of MCCs

The following table summarises Colakoglu's exported MCC and the domestic MCC used to calculate the normal value under section 269TAC(1).

Export MCC	Is volume of domestic sales of the same MCC 5% or greater?	Treatment of normal value
P-C-S-C	Y	Volume of domestic sales of P-C-S-C enables a proper comparison For Q2, Q3 and Q4, there were no domestic sales of P-C-S-C. For those quarters, the values in Q1 were used and a timing adjustment was made based on the movements of a comparable model P-B-S-C which had sales in each quarter.
P-C-S-B	Y	Volume of domestic sales of P-C-S-B enables a proper comparison For Q2, Q3 and Q4, there were no domestic sales of P-C-S-B. For those quarters, the values in Q1 were used and a timing adjustment was made based on the movements of a comparable model P-B-S-B which had sales in each quarter.

Table 8 Domestic volumes

6.10.4 Adjustments to normal value

The Commission considers the following adjustments under section 269TAC(8) are necessary to ensure that the normal value so ascertained is properly compared with the export price of those goods.

Adjustment Type	Deduction/addition
Domestic credit expense	**Deduct** domestic credit costs
Domestic packaging	**Deduct** domestic packaging
Export packaging	**Add** export packaging
Export inland transport	**Add** export inland transport
Exporters' Association fees	**Add** exporters' association fees
Export survey fees	**Add** export survey fees
Timing Adjustment	**An** adjustment was made for quarters with no sales

Table 9 Adjustments to Colakoglu's normal value

6.10.5 Dumping margin – Colakoglu

The Commission has calculated the dumping margin for Colakoglu as **negative 0.3 per cent**. [85]

6.11 Dumping assessment – Diler

6.11.1 Verification

The Commission conducted an in-country visit to Diler's facility in Istanbul, Turkey during February 2019 to verify the information disclosed in its REQ.

The Commission toured Diler's facility and is satisfied that it is the producer of the goods and like goods.

A report covering the visit findings is available on the EPR.[86]

6.11.2 Export price

Having regard to the findings contained in Diler's verification report, the Commission remains satisfied that:

- Diler was the exporter of the goods to Australia;
- sales to Australia were conducted through an intermediary of Diler, Diler Dis Ticaret A.Ş. (DDT); and
- the export sales between Diler, DDT, and its Australian customers were the result of arms length transactions.

Based on the above, the Commission is unable to calculate the export price under sections 269TAB(1)(a) or (b). The export price for Diler has been established under section 269TAB(1)(c), having regard to all the circumstances of the exportation. The Commission considers the appropriate method of calculating the FOB export price as the price paid by the related trading company (DDT) to Diler plus relevant FOB costs incurred by DDT. The date of sale used by the Commission is the date of the commercial invoice between Diler and DDT.

6.11.3 Normal value

Arms length

In respect of Diler's domestic sales of like goods during the investigation period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the like goods other than price; or

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[85] This represents a change from TER 495, where the dumping margin was previously -1.4 per cent.

[86] Case 495 EPR item number 027.

- 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 directly or indirectly reimbursed, compensated or otherwise receive a benefit for, or in respect of, the whole or any part of the price.[87]

The Commission therefore considers that all domestic sales of like goods made by Diler during the investigation period were arms length transactions.

Ordinary course of trade

The Commission tested whether Diler's domestic sales were in the OCOT, using the methodology outlined above at section 6.4.3. The majority of Diler's sales of like goods were found to be in the OCOT. Those that were not in OCOT were excluded from normal value calculations.

Volume of relevant sales

The Commission assessed the total volume of domestic sales of like goods as a percentage of the goods exported to Australia for the investigation period and found that the volume of domestic sales was sufficient.

Comparison of MCCs

The following table summarises Diler's exported MCC and the domestic MCC used to calculate the normal value under section 269TAC(1).

Export MCC	Is volume of domestic sales of the same MCC 5% or greater?	Treatment of normal value
P-C-S-B	N	No domestic sales of P-C-S-B. Volume of surrogate model P-B-S-B enables a proper comparison and was used, with no specification adjustment under section 269TAC(8).
P-C-S-C	N	No domestic sales of P-C-S-C. Volume of surrogate model P-B-S-C enables a proper comparison and was used, with no specification adjustment under section 269TAC(8).
P-C-S-D	N	No domestic sales of P-C-S-D. Volume of surrogate model P-B-S-D enables a proper comparison and was used, with no specification adjustment under section 269TAC(8).

Table 10 Domestic volumes

[87] Section 269TAA refers.

6.11.4 Adjustments to normal value

The Commission considers the following adjustments under section 269TAC(8) are necessary to ensure that the normal value so ascertained is properly compared with the export price of those goods.

Adjustment Type	Deduction/addition
Domestic credit expense	**Deduct** the cost of domestic credit
Export packaging	**Add** the cost of export packaging
Export inland transport	**Add** the cost of export inland transport
Export port inspection expense	**Add** the cost of export port inspection
Export Custom's overtime expense	**Add** the cost of Custom's overtime
Exporters' Association fees	**Add** the cost of Exporters' Association fees
Export handling expense	**Add** the cost of export handling
Export commission expense	**Add** the cost of export commission
Export bank charges	**Add** the cost of export bank charges

Table 11 Adjustments to Diler's normal value

6.11.5 Dumping margin – Diler

The Commission has calculated the dumping margin for Diler as **negative 4.7**[88].

6.12 Dumping assessment – Habas

6.12.1 Verification

Although Habas was not requested to host the Commission for a verification visit, its REQ was verified remotely having regard to available information.

The Commission established the reliability of Habas' REQ by ascertaining the variable factors relevant to its exports of rebar to Australia and comparing these variable factors, and the relevant data underlying these variable factors. This data was compared to the data and variable factors for other cooperating exporters that were the subject of a verification visit, as well as another cooperating exporter who was not subject to a verification visit, the GoT's RGQ, and relevant information from previous investigations (INV 264 refers).

The verification of Habas's data satisfied the Commission that the variable factors ascertained could be considered reliable for the purposes of determining the level of dumping and subsidisation relating to its exports of the goods to Australia during the investigation period.

[88] This represents a change from TER 495, where the dumping margin was previously -6.0 per cent.

Relying on the information before it, the Commission is further satisfied that Habas is the manufacturer of the goods and like goods.

A report detailing the verification findings relating to the variable factors determined for Habas is available on the EPR.[89]

6.12.2 Export price

Having regard to the findings contained in Habas' verification report, the Commission remains satisfied that:

- Habas was the exporter of the goods to Australia; and
- the export sales between Habas and its Australian customers were the result of arms length transactions.

Therefore, the export price for Habas has been established at the FOB level under section 269TAB(1)(a), as the price paid by the importer to the exporter less transport and other costs arising after exportation.

6.12.3 Normal value

Arms length

In respect of Habas' domestic sales of like goods during the investigation period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the like goods other than 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 directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.[90]

The Commission therefore considers that all domestic sales of like goods made by Habas during the investigation period were arms length transactions.

Ordinary course of trade

[89] Case 495 EPR item number 029.

[90] Section 269TAA refers.

The Commission tested whether Habas' domestic sales were in the OCOT, using the methodology outlined above at section 6.4.3. All of Habas' sales of like goods were found to be in the OCOT.

Volume of relevant sales

The Commission assessed the total volume of domestic sales of like goods as a percentage of the goods exported to Australia for the investigation period and found that the volume of domestic sales was sufficient.

Comparison of MCCs

The following table summarises Habas' exported MCC and the domestic MCC used to calculate the normal value under section 269TAC(1).

Export MCC	Is volume of domestic sales of the same MCC 5% or greater?	Treatment of normal value
P-C-C-A	N	No domestic sales of P-C-C-A. Volume of surrogate model P-B-C-A enables a proper comparison and was used, with no specification adjustment under section 269TAC(8).
P-C-C-B	N	No domestic sales of P-C-C-B. Volume of surrogate model P-B-C-B enables a proper comparison and was used, with no specification adjustment under section 269TAC(8).
P-C-S-B	N	No domestic sales of P-C-S-B. Volume of surrogate model P-B-S-B enables a proper comparison and was used, with no specification adjustment under section 269TAC(8).
P-C-S-C	N	No domestic sales of P-C-S-C. Volume of surrogate model P-B-S-C enables a proper comparison and was used, with no specification adjustment under section 269TAC(8).
P-C-S-D	N	No domestic sales of P-C-S-D. Volume of surrogate model P-B-S-C enables a proper comparison and was used, with no specification adjustment under section 269TAC(8).

Table 12 Domestic volumes

6.12.4 Adjustments to normal value

The Commission considers the following adjustments under section 269TAC(8) are necessary to ensure that the normal value so ascertained is properly compared with the export price of those goods.

Adjustment Type	Deduction/addition
Domestic packaging	**Deduct** domestic packaging
Export packaging	**Add** export packaging
Export handling and other	**Add** export handling and other

Adjustment Type	Deduction/addition
Export exporter association and consignment surveillance expenses	**Add** export related exporter association and consignment surveillance expenses
Export bank fees	**Add** export bank fees

Table 13 Summary of adjustments

6.12.5 Dumping margin – Habas

The Commission has calculated the dumping margin for Habas as n**egative 1.8 per cent**.[91]

6.13 Dumping assessment – Kroman

6.13.1 Verification

The Commission conducted an in-country visit to Kroman's facility in Darıca, Turkey during February 2019 to verify the information disclosed in its REQ.

The Commission toured Kroman's facility and is satisfied that it is the producer of the goods and like goods.

A report covering the visit findings is available on the EPR.[92]

6.13.2 Export price

Having regard to the findings contained in Kroman's verification report, the Commission remains satisfied that:

- Kroman was the exporter of the goods to Australia;
- sales to Australia were conducted through an intermediary of Kroman, Yücelboru İhracat İthalat ve Pazarlama A.Ş. (YIIP); and
- the export sales between Kroman, YIIP, and its Australian customers were the result of arms length transactions.

Based on the above, the Commission is unable to calculate the export price under sections 269TAB(1)(a) or (b). The export price for Kroman has been established under section 269TAB(1)(c), having regard to all the circumstances of the exportation. The Commission considers the appropriate method of calculating the FOB export price as the price paid by the related trading company (YIIP) to Kroman with the addition of relevant FOB costs incurred by YIIP.

[91] This represents a change from TER 495, where the dumping margin was previously -3.4 per cent.

[92] Case 495 EPR item number 026.

6.13.3 Normal value

Arms length

In respect of Kroman's domestic sales of like goods during the investigation period, the Commission found no evidence that:

- there was any consideration payable for, or in respect of, the like goods other than 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 directly or indirectly reimbursed, compensated or otherwise received a benefit for, or in respect of, the whole or any part of the price.

The Commission therefore considers that all domestic sales of like goods made by Kroman during the investigation period were arms length transactions.

Ordinary course of trade

The Commission tested whether Kroman's domestic sales were in the OCOT, using the methodology outlined above at section 6.4.3. The large majority of Kroman's sales of like goods were found to be in the OCOT. Those not in the OCOT were excluded from the normal value calculations.

Volume of relevant sales

The Commission assessed the total volume of domestic sales of like goods as a percentage of the goods exported to Australia for the investigation period and found that the volume of domestic sales was sufficient.

Comparison of MCCs

The following table summarises Kroman's exported MCC and the domestic MCC used to calculate the normal value under section 269TAC(1).

Export MCC	Is volume of domestic sales of the same MCC 5% or greater?	Treatment of normal value
P-C-S-C	Y	Volume of domestic sales of P-C-S-C enables a proper comparison
P-C-S-B	Y	Volume of domestic sales of P-C-S-B enables a proper comparison
P-C-C-B	N, however the low volume of domestic sales of P-C-C-B were to more than one customer, relate to multiple invoices and were all in the OCOT. The Commission considered them to be relevant and has relied on them in the normal value.	For Q2 and Q4, there were no sales of P-C-C-B. For those quarters, the values in Q3 and Q4 were used and a timing adjustment was made based on a comparable model P-B-C-B which had sales in each quarter.

Table 14 Domestic volumes

6.13.4 Adjustments to normal value

The Commission considers the following adjustments under section 269TAC(8) are necessary to ensure that the normal value so ascertained is properly compared with the export price of those goods.

Adjustment Type	Deduction/addition
Domestic credit costs	**Deduct** domestic credit costs
Domestic inland freight	**Deduct** inland freight
Domestic packaging	**Deduct** domestic packaging
Domestic collection insurance	**Deduct** collection insurance
Domestic direct debit system expense	**Deduct** debit system expenses
Export packaging	**Add** Export packaging
Export inland transport	**Add** Export inland transport
Export handling and other	**Add** Export handling and other
Export related commission	**Add** Export related commission
Domestic customs brokerage	**Add** Domestic customs brokerage
Customs overtime expense	**Add** Customs overtime expense
Exporter association fees	**Add** Exporter association fees
Surveillance expenses	**Add** Surveillance expenses
Timing adjustment	**For one MCC**, an adjustment was made for two quarters with no sales

Table 15 Summary of adjustments

6.13.5 Dumping margin – Kroman

The Commission has calculated the dumping margin for Kroman as **negative 0.4 per cent**. [93]

6.14 Dumping assessment - All other exporters

The Commission considers that the volumes exported by the exporters who have cooperated with the investigation represent the total volume of exports that are relevant to the investigation. As a result, the Commissioner does not consider that there are any uncooperative exporters that would be the subject of the investigation as defined in section 269T(1).

After having regard to all relevant information, export prices for all other exporters have been established in accordance with section 269TAB(3), and normal values in accordance with section 269TAC(6).

Specifically, the Commission has adopted the dumping margin for Colakoglu as an 'all other exporters' rate for this category of exporters from Turkey. The dumping margin for Colakoglu is the highest observed out of the four exporters who have cooperated with the

[93] This represents a change from TER 495, where the dumping margin was previously -2.5 per cent.

investigation. This approach is similar to that taken in INV 240, where the Commissioner was satisfied that there were no other exporters from Turkey, other than those examined, who exported the goods.

The dumping margin for the category of 'all other exporters' from Turkey is **negative 0.3 per cent**.

6.15 Summary of dumping margins

The Commission has assessed that the goods exported to Australia by:

- Colakoglu, Diler, Habas and Kroman and the category of 'all other exporters from Turkey' were not dumped during the investigation period.

A summary of the Commission's dumping margins are set out in Table 16.

Country	Exporter	Dumping Margin
Turkey	Colakoglu	-0.3%
	Diler	-4.7%
	Habas	–1.8%
	Kroman	–0.4%
	All Other Exporters	-0.3%

Table 16 Dumping margins

6.16 Volume of dumped imports

Pursuant to section 269TDA(3), the Commissioner must terminate the investigation, in so far as it relates to a country, if satisfied that the total volume of goods that are dumped is a negligible volume. Section 269TDA(4) defines a negligible volume as less than three per cent of the total volume of goods imported into Australia over the investigation period if section 269TDA(5)(c) does not apply. Pursuant to section 269TDA(6), the volume of goods at negligible dumping margins are not prevented from being taken into account for the purposes of section 269TDA(3).

Using the ABF import database and having regard to the information collected and verified from the importers and exporters, the Commission determined the volume of imports in the Australian market. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of allegedly dumped goods Turkey was not greater than three per cent of the total import volume and is therefore negligible.

Accordingly, the Commissioner is satisfied that it is necessary to terminate this investigation against Turkey under section 269TDA(3).

6.17 Level of dumping

Section 269TDA(1)(b)(i) provides that the Commissioner must terminate a dumping investigation, in so far as it relates to an exporter of the goods, if satisfied that there has been no dumping by the exporter of any of those goods.

The dumping margins outlined in this chapter satisfy the Commissioner that there has been no dumping of the goods by any exporters from Turkey.

Accordingly, the Commissioner is satisfied that it is necessary to terminate the dumping investigation in relation to all exporters from Turkey, pursuant to section 269TDA(1)(b)(i).

7 SUBSIDY INVESTIGATION

7.1 Findings

The Commission has found that countervailable subsidies have been received in respect of the goods exported to Australia from Turkey during the investigation period.

The Commission has found that the volume of subsidised goods exported to Australia during the investigation period was not negligible.

However, the subsidy margin determined by the Commission in respect of each exporter is negligible.

Accordingly, the Commissioner is satisfied that it is necessary to terminate the subsidy investigation under section 269TDA(2)(b)(ii) in respect of all exporters from Turkey.

7.2 Relevant legislation

Section 269T(1) defines 'subsidy' as follows:

> ***subsidy***, in respect of goods exported to Australia, means:
>
> (a) a financial contribution:
>
> (i) by a government of the country of export or country of origin of the goods; or
>
> (ii) by a public body of that country or a public body of which that government is a member; or
>
> (iii) by a private body entrusted or directed by that government or public body to carry out a governmental function;
>
> that involves:
>
> (iv) a direct transfer of funds from that government or body; or
>
> (v) the acceptance of liabilities, whether actual or potential, by that government or body; or
>
> (vi) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to that government or body; or
>
> (vii) the provision by that government or body of goods or services otherwise than in the course of providing normal infrastructure; or
>
> (viii) the purchase by that government or body of goods or services; or
>
> (b) any form of income or price support as referred to in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from such a government or body;
>
> if that financial contribution or income or price support confers a benefit (whether directly or indirectly) in relation to the goods exported to Australia.[94]

[94] Section 269TACC sets out the steps for working out whether a financial contribution or income or price support confers a benefit.

Section 269TAAC defines a 'countervailable subsidy' as follows:

(1) For the purposes of this Part, a subsidy is a countervailable subsidy if it is specific.

(2) Without limiting the generality of the circumstances in which a subsidy is specific, a subsidy is specific:

(a) if, subject to subsection (3), access to the subsidy is explicitly limited to particular enterprises; or

(b) if, subject to subsection (3), access is limited to particular enterprises carrying on business within a designated geographical region that is within the jurisdiction of the subsidising authority; or

(c) if the subsidy is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance; or

(d) if the subsidy is contingent, whether solely or as one of several conditions, on the use of domestically produced or manufactured goods in preference to imported goods.

(3) Subject to subsection (4), a subsidy is not specific if:

(a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

(b) eligibility for the subsidy is automatic; and

(c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and

(d) those criteria or conditions are strictly adhered to in the administration of the subsidy.

(4) The Minister may, having regard to:

(a) the fact that the subsidy program benefits a limited number of particular enterprises; or

(b) the fact that the subsidy program predominantly benefits particular enterprises; or

(c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or

(d) the manner in which a discretion to grant access to the subsidy has been exercised;

determine that the subsidy is specific.

(5) In making a determination under subsection (4), the Minister must take account of:

(a) the extent of diversification of economic activities within the jurisdiction of the subsidising authority; and

(b) the length of time during which the subsidy program has been in operation.

Section 269TACD provides that if the Minister is satisfied that a countervailable subsidy has been received in respect of the goods, the Minister must, if the amount of the subsidy is not quantified by reference to a unit of the goods, work out how much of the subsidy is properly attributable to each unit of the goods.

7.3 Investigated programs

In the application, the applicant alleged the existence of a total of 32 programs, based on the findings of previous investigations undertaken by the USDOC. The Commission also

held a consultation with the GoT in relation to the application prior to this investigation being initiated. As part of the consultation process, the GoT provided a submission regarding the operation of the subsidies alleged by the applicant.[95]

The Commission notes that there was minimal detail in the application for some of the 32 programs. The Commission has also had regard to the information provided by the GoT in its consultation submission and the GoT's *New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures* (**SCM Agreement**).[96]

The Commission observed that there appeared to be some duplication in the programs listed in the application. Accordingly, the Commission sought further information through questionnaires from the GoT and exporters on 25 programs.

Information on a further seven programs not previously identified was provided by the GoT and the exporters in their questionnaire responses. This brought the total of investigated programs to 32.

The Commission has investigated each of the 32 alleged subsidy programs.

7.4 Summary of programs

The Commission has set out each program and its finding in respect of each program in the table below.

Program Number	Program name	Program Type	Countervailable subsidy received? (Yes/No)
Programs included in questionnaires			
1	Natural Gas for Less than Adequate Remuneration	Provision of goods	No
2	Land for Less than Adequate Remuneration	Provision of goods	No
3	Electricity for Less than Adequate Remuneration	Provision of goods	No
4	Provision of Lignite for Less than Adequate Remuneration	Provision of goods	No
5	Deductions from Taxable Income for Export Revenue	Preferential tax policies	Yes
6	R&D Income Tax Deduction	Preferential tax policies	Duplicated under Program 19
7	Withholding of Income Tax on Wages and Salaries	Preferential tax policies	No

[95] CON 495, Non-confidential Attachment 6: Government of Turkey Submission on Countervailable Subsidies, Case 495 EPR item number 002.

[96] Available on the WTO website at https://www.wto.org/english/tratop_e/scm_e/scm_e.htm

Program Number	Program name	Program Type	Countervailable subsidy received? (Yes/No)
8	Exemption from property tax	Preferential tax policies	Yes
9	Exemption from Income Tax on Wages Paid to Workers	Preferential tax policies	No
10	Import duty rebates/drawbacks under Article 22 of Turkey's Domestic Processing Regime (RDP) Resolution 2005/839 (RDP duty drawback program)	Tariff & VAT Exemptions	Duplicated under Program 12
11	Investment Encouragement Program VAT and Import Duty Exemptions	Tariff & VAT Exemptions / Preferential tax policies	Duplicated under Program 25
12	Inward Processing Certificate Exemption Program	Tariff & VAT Exemptions	No
13	Pre-shipment Turkish Lira Export Credits	Preferential Loans / Financial Arrangements	No
14	Pre-shipment Foreign Currency Export Credits	Preferential Loans / Financial Arrangements	Duplicated under Program 13
15	Pre-export Credits	Preferential Loans / Financial Arrangements	No
16	Short-term Export Credit Discounts	Preferential Loans / Financial Arrangements	No
17	Rediscount Program	Preferential Loans / Financial Arrangements	Yes
18	Foreign Trade Company Export Loans	Preferential Loans / Financial Arrangements	No
19	Investments Provided under Turkish Law No. 5746	Preferential Loans / Financial Arrangements	No
20	Turkish Development Bank Loans	Preferential Loans / Financial Arrangements	No
21	Industrial R&D Projects Grant Program	Direct Funds	No
22	Assistance to Offset Costs Related to Anti-Dumping ('AD')/Countervailing Subsidy Duty ('CVD') Investigations	Other	No
23	Social Security Premium Support (Employer's Share)	Other	Yes
24	Social Security Premium Support (Employee's Share)	Other	Duplicated under Program 25
25	Investment Incentive Program	Other	Yes
Further Identified Programs			
26	Export-Oriented Working Capital Credit Program	Preferential Loans / Financial Arrangements	Yes
27	Short Term Export Credit Insurance Program	Preferential Loans / Financial Arrangements	No

Program Number	Program name	Program Type	Countervailable subsidy received? (Yes/No)
28	Support and Stability Fund for participating in trade fairs in abroad	Direct Funds	No
29	Support on subscribing to e-trade websites	Direct Funds	Yes
30	Electricity for More than Adequate Remuneration	Provision of goods	No
31	Social Security Insurance Premium Deductions	Other	No
32	Turkish Employers' Association of Metal Industries (MESS) Assistance	Direct Funds	No

Table 17 Investigated subsidy programs – Turkey

The Commission's findings in relation to each program investigated are outlined in **Non-confidential Appendix A**.

7.5 Information considered by the Commission

7.5.1 Information provided by exporters

The Commission has relied upon information provided by cooperating exporters in assessing the alleged subsidy programs. This included information provided by exporters in the REQs, which identified a further seven programs (Programs 26-32), as well as information provided by exporters during verification.

7.5.2 Information provided by the Government of Turkey

The Commission included questions relating to Programs 1-25 in a Government Questionnaire sent to the GoT on 16 November 2018. The GoT provided its RGQ on 24 January 2019, after being granted an extension of time by the Commission.[97]

Two further programs were identified by the GoT in its response (Programs 26 and 27).

7.5.3 Other information considered as part of this assessment

The Commission also considered as part of this assessment information provided in the application as well as other relevant information obtained by the Commission during independent research into matters relevant to determining subsidisation in Turkey. This information has been referenced where relevant.

[97] Case 495 EPR item number 006.

7.6 Submissions in relation to subsidy assessments

On 17 April 2019, prior to the publication of SEF 495, the Commission received a submission from InfraBuild regarding REQs received from Turkish exporters and the GoT RGQ.

This submission was received one day prior to the publication of SEF 495, and could not be considered in formulating SEF 495. Notwithstanding, the Commission considers that SEF 495 largely addressed the matters raised by InfraBuild in this submission.

The Commission received two further submissions in respect of countervailable subsidies following the publication of SEF 495.

A submission was received from InfraBuild on 15 May 2019, which commented on the findings of SEF 495 in respect of the following programs:

- Program 5 – Deductions from Taxable Income for Export Revenue;
- Program 8 – Exemption from property tax;
- Program 17 – Rediscount Program;
- Program 22 – Assistance to Offset Costs Related to AD/CVD Investigations;
- Program 23 – Social Security Premium Support (Employer's Share);
- Program 25 – Investment Incentive Program;
- Program 26 – Export-Oriented Working Capital Credit Program; and
- Program 27 – Short Term Export Credit Insurance Program.

Diler's submission of 15 May 2019 stated that an increase in the benchmark interest rate used in SEF 495 for Program 17 (compared to the Diler verification report) may have resulted from an error in respect of loan data provided by exporters.

The Commission's responded to the above submissions in TER 495 consistent with below. The Commission's assessment has not changed following TER 495.

7.6.1 Program 1 – Natural gas benchmark

InfraBuild submitted in its pre-SEF 495 submission that the benchmark price relevant to the determination of whether a benefit has been received under this program ought to be calculated based on a previous approach by the USDOC in its countervailing duty investigation of rebar from Turkey in May 2017. In that matter the USDOC compared exporter's natural gas costs to the Organisation for Economic Cooperation and Development (**OECD**) Europe natural gas prices, as published by the International Energy Agency.[98]

The benchmark used by the Commission in this investigation had regard to the prices of natural gas sold by private enterprises in Turkey, the prevailing market conditions relating

[98] Case No.C-489-830.

to the provision of natural gas in Turkey[99] and the Manual[100]. The detailed explanation of the Commission's approach and finding is provided in Appendix A at Section A3.1.5 of this report.[101]

7.6.2 Program 5 – Deductions from Taxable Income for Export Revenue

Apportioning of the subsidy

InfraBuild disagrees with the method used by the Commission for calculating and apportioning the subsidy found under this program. It submitted that the subsidy ought to be apportioned based on the value of the exports of the goods to Australia, rather than on the value of all exports to all countries, as was the method applied in SEF 495.

As stated in Appendix A, the Commission found that the subsidy is available for income derived from export activities, and accordingly, the Commission considers that a benefit under this program is in connection with all exports, not only those exports to Australia. This is consistent with the allocation method discussed in the Manual.[102]

The Commission does not agree with the submission by InfraBuild that apportioning the subsidy using total export data will give the average value of the subsidy to all countries and not the value of the subsidy for exports to Australia. The Commission considers that the allocation of the subsidy across all export income will reflect the proportion of export income derived from each country. In other words, if income from Australian exports represents a certain percentage of total exports, the apportioning of the subsidy across all export income will result in that same certain percentage of the subsidy being allocated against Australian export income.

Net benefit of the subsidy

InfraBuild further submits that the net benefit of the subsidy to exporters is greater than the revenue foregone by the GoT. It argues that the benefit based solely on revenue foregone understates the value of the subsidy to exporters, and accordingly, to correctly

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[99] Section 269TACC(4).

[100] Part 17.3 of the Manual, p.87.

[101] USDOC's May 2017 final affirmative determination into the countervailing duty investigation of rebar from Turkey (Case No.C-489-830) exported by Habas relied on OECD natural gas prices after concluding that the use of Turkish private transaction prices for natural gas in Turkey were not a suitable benchmark due to the GoT's involvement in the Turkish natural gas market. In a subsequent administrative review of the countervailing duties applying to all exporters of rebar from Turkey (except Habas) (Case No.C-489-819), the USDOC preliminarily determined in December 2018 that OECD prices were no longer suitable due to government influence in the countries of origin from where EU member states imported their natural gas. The USDOC alternatively relied on a benchmark using the price of LNG exported from the United States less amounts for converting natural gas to LNG (liquefaction costs). The benefit in the period of review examined by the USDOC resulted in a countervailable subsidy rate of 0.00 per cent ad valorem.

[102] Part 17.3 of the Manual, p.88.

determine the value of the subsidy, the benefit ought to be grossed-up to account for the tax-free nature of the subsidy.

The Manual states that any lump sum of revenue transferred or foregone (in this case, by way of a tax deduction) will normally be treated as being equivalent to a grant, with the benefit being the amount of the grant.[103] This is as the benefit is equal to amount of tax the recipient of the subsidy would normally have paid, if the deduction did not exist.

In this case, the Commission has not been provided with any evidence which would suggest that this approach would not most accurately represent the benefit received the exporters. To gross-up the benefit as submitted by InfraBuild would also not be preferable because it would reflect a scenario where the exporter would be paying additional tax on top of the tax it would normally have to pay if the deduction did not exist.

Accordingly, the Commission considers that any amount foregone to the GoT by an exporter pursuant to this program represents the benefit received by that exporter under that program, which is not grossed-up, consistent with the procedures outlined in the Manual.

Addition of interest

The Commission notes that the Manual further provides that such a benefit will generally be expensed to the year in which the benefit is received when the recipient would otherwise had to have paid the taxes associated with the deduction. The Commission considers this approach is preferable to take in this investigation because by this means the benefit can be expensed to the investigation period. If a benefit is expensed within the investigation period, the expensed amount will generally be increased by the annual commercial interest rate (to reflect the full estimate of benefit on the assumption that the beneficiary would have had to borrow the money at the beginning of the period and repay at the end).[104]

In its consideration of InfraBuild's submission, the Commission identified that it did not include interest in its subsidy calculations for this program in SEF 495. Accordingly, the Commission adjusted upwards its calculation of the subsidy amount received by each exporter under this program by increasing the amount by a commercial interest rate. The Commission considers that the benchmark interest rate calculated in its analysis of Program 17 is an appropriate commercial interest rate for this exercise, on the basis that:

- this rate has been determined with reference to short-term loans provided on a commercial basis, and the period for such short-term loans is similar to the investigation period in duration;[105] and
- the benchmark interest rate represents rates actually available to exporters in the market.

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[103] Part 17.3 of the Manual, p.93.

[104] Part 17.3 of the Manual, pp.90 and 93.

[105] See section A3.6.7 of Appendix A to SEF 495.

Adjustment to benefit amount

Following further examination of the issues raised by InfraBuild regarding Program 5 the Commission observed that the revenue relied on to calculate the benefit received under this program was understated in SEF495. The Commission \corrected for this issue by recalculating the subsidy margin for the program. The change to the subsidy margin resulted in a minor increase to the subsidy margin determined for Diler, Habas and Kroman. The subsidy margins in this report incorporate the corrected amount of countervailable subsidy received.

7.6.3 Program 8 – Exemption from property tax

InfraBuild submits that the subsidy provided under this program is similar in nature to the subsidy in Program 5 and that the subsidy amount needs to be grossed-up to apply the actual effect of the subsidy received.

As stated in its response to InfraBuild's submission under Program 5, the Commission considers that the deduction amount most accurately represents the benefit received by that exporter, consistent with the Manual.

Further, like in its examination of Program 5, the Commission has identified it did not include interest in its subsidy calculations for this program in SEF 495. Accordingly, the Commission adjusted upwards its calculation of the subsidy amount received by each exporter under this program by the benchmark interest rate calculated in its analysis of Program 17. The subsidy margins in this report incorporate the corrected amount of countervailable subsidy received.

7.6.4 Program 17 – Rediscount Program

Term of loans

InfraBuild submits that the benchmark interest rate calculated for this program ought to be based on loans issued for periods not less than one year as shorter term loans would likely incur lower rates.

The Commission considers that short-term loans provide a better comparison (for the purposes of establishing a benchmark) than long term loans in this investigation because they are similar in duration to loans provided under this program.

Further, InfraBuild has provided no evidence for its contention regarding the relative interest rates of short and long term loans, nor did the Commission observe such a pattern of lower rates as suggested would occur by InfraBuild in the confidential loan data provided by exporters.

Accordingly, the Commission has retained its determination of the benchmark rate based on short-term loans as per SEF 495.

Repayment of loans

InfraBuild submits that the nature of the program permits repayment of loan amounts by exporters in either TRY or foreign currency. It submits that a benefit could be obtained by

exporters by repayment of such loans in the currency which provides a more favourable outcome to the exporter, depending on the movement of the relative exchange rates over the term of the loan.

The Commission notes that Turk Eximbank determines the exchange rate for repayments. In order for there to be the benefit submitted by InfraBuild, Turk Eximbank would have to choose an uncommercial rate. The Commission has seen no evidence that this is the case.

The Commission further notes that no repayments on loans issued during the investigation period under this program were made by any exporter during the investigation period. It therefore did not observe any such benefit as described by InfraBuild occurring.

Guarantees and risks

InfraBuild submits that, as commercial banks can issue promissory notes under this program at discounted rates, the comparison of loans issued by Turk Eximbank with loans issued by commercial banks is effectively a comparison of such loans with themselves.

The Commission considers that only rediscount loans issued by commercial banks would affect the comparison. Other commercial loans are not issued at discounted rates and are unaffected by rediscount loans, as contended by InfraBuild. The Commission notes that no rediscount loans issued by commercial banks were used by the Commission in calculating its benchmark rate. Accordingly, the Commission has retained its determination of the benchmark rate based on short-term loans as per SEF 495.

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

InfraBuild observes that loans provided under this program are exempt from taxes, duties and stamp tax liabilities that would ordinarily apply to such loans.

It submits that the following taxes in particular would be applied to comparable commercial loans and that the exemption to such taxes ought to be taken into account in the comparison of such loans:

- Banking and Insurance Transactions Tax (BITT);
- Stamp Tax; and
- Resource Utilization Support Fund (RUSF).

In respect of each of these taxes, the Commission notes the following:

- BITT is payable by bank and insurance companies, not borrowers.[106] The Commission considers that such taxes would likely be incorporated into the commercial interest rates offered by lenders and will therefore have been reflected

[106] *Turkish Taxation System 2016*, The Republic of Turkey Ministry of Finance, p. 29. Available at https://www.gib.gov.tr/sites/default/files/fileadmin/taxation_system2016.pdf

in the benchmark rate. The Commission has also not received any evidence indicating otherwise;

- Pursuant to Article IV-23 of the Stamp Tax Law No. 488, documents for obtaining credit from banks (i.e. loan documentation) are exempt from payment of stamp tax;[107] and
- RUSF is only payable on commercial borrowing provided by banks outside of Turkey.[108] From the information provided to the Commission by exporters, the Commission has observed that all commercial borrowing by exporters was made by banks in Turkey and therefore, RUSF is not applicable.

In light of the above, the Commission considers that there are no applicable taxes to be taken into account in the calculation of the subsidy provided under this program.

Error in benchmark rate in respect of Kroman data

Diler submitted that the calculation of the benchmark rate for this program may have included an error in connection with loan data for Diler and Kroman used by the Commission. Diler requested that the Commission amend the benchmark if such an error is confirmed following submissions from Kroman.

No submissions were received from Kroman on this issue. Nonetheless, the Commission has reviewed the data used in its calculation of the benchmark rate, in particular the use of loans denominated in both TRY and foreign currencies. In this regard, the Commission notes that loans made under this program by Turk Eximbank may be made either in foreign currency or TRY.

While the Commission notes the concerns raised by Diler, in the absence of further submissions on the suitability of including loans made in either foreign currency or TRY in its calculation of the benchmark rate, it sees no basis for changing from the methodology applied.

7.6.5 Program 22 – Assistance to Offset Costs Related to AD/CVD Investigation

InfraBuild submits that it is irrelevant whether a subsidy has been received by an exporter or whether an exporter has applied for such a subsidy. It submits that what is relevant is that exporters have received a subsidy under this program in similar investigations and

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[107] See Article 30 of *Law Amending Some Laws (Laws 213, 6183, 3065, 4691, 193, 5422, 2978, 197) No. 5035* amending Stamp Tax Law No. 488 as well as commentary available in *Memorandum On Amendments In The Stamp Tax And Official Fees Laws Made By The Law No. 5035* by Vural Gunal available at http://www.mondaq.com/turkey/x/25825/Corporate+Tax/Memorandum+On+Amendments+In+The+Stamp+Tax+And+Official+Fees+Laws+Made+By+The+Law+No+5035 and *Stamp Tax (Duty) on Commercial Agreements: A General Overview Within The Scope of Turkish Legislation, Court Decisions, Revenue Administration Circular and Rulings* by Asst. Dr. Erdem Atesagaoglu, p.135 available at https://dergipark.org.tr/download/article-file/7055

[108] *Turkey Tax Summaries – Corporate – Other Taxes*, PWC. Available at http://taxsummaries.pwc.com/ID/Turkey-Corporate-Other-taxes

that all evidence supports that exporters will receive subsidies for the current investigation.

The Commission notes the definition of a "subsidy" provided in section 269T(1). It provides that a subsidy is a financial contribution which (among other things), confers a benefit in relation to the goods exported to Australia.

While the Commission considers it likely that there may be a financial contribution under this program to the exporters at some time in the future (but in what amount and in what timeframe is unknown at this stage), it is the Commission's view that in this investigation, there has been no financial contribution under this program which has conferred a benefit in relation to the goods exported to Australia – the particular goods being rebar exported to Australia from Turkey during the investigation period.

7.6.6 Program 23 – Social Security Premium Support (Employer's Share)

InfraBuild submits that the subsidy provided under this program is similar in nature to the subsidy in Program 5 and that the subsidy amount needs to be grossed-up to apply the actual effect of the subsidy received.

As stated in its response to InfraBuild's submission under Program 5, the Commission considers that the deduction amount most accurately represents the benefit received by that exporter, consistent with the Manual.

Further, like in its examination of Program 5, the Commission has identified it did not include interest in its subsidy calculations for this program in SEF 495. Accordingly, the Commission adjusted upwards its calculation of the subsidy amount received by each exporter under this program by the benchmark interest rate calculated in its analysis of Program 17.

7.6.7 Program 25 – Investment Incentive Program

Reduction of corporate tax

In its submission of 17 April 2019, InfraBuild commented on Program 11 (which is duplicated under Program 25).

The Commission considers that the discussion at section 7.8.6 and in section A3.11 to Appendix A of SEF 495 addresses the majority of the matters raised by InfraBuild in its submission. However, for clarification purposes the Commission has determined that the benefit received in relation to the reduction of corporate tax available under Program 25 is the value of foregoing or non-collection of tax revenue by the GoT. The Commission's approach here is consistent with the practice outlined in the Manual.[109]

Based on an analysis of the information provided by the GoT[110] and Habas' tax return, the Commission ascertained that the tax discount is not simply a function of reducing the

[109] Part 15.3 of the Manual, p.80.

[110] GoT RGQ Exhibit 17, EPR item number 013, Exhibits 1-19, p.174.

corporate tax rate and applying this to the whole profit margin reported by an entity. The Commission identified that the discount rate of tax applies to a portion of the total profit margin as specified in the relevant incentive certificate. The amount of profit not subject to the incentive certificate was taxed at the full rate.

The benefit conferred to the exporter was therefore calculated as the difference in the tax payable at the discounted rate of tax on the relevant proportion of taxable income as allowed under the program and the tax payable on the same portion of taxable income at the non-discounted rate of tax.

In the absence of the 2018 financial year tax returns to work out the benefit received by Habas in the investigation period, the Commission had regard to the values reported by Habas in the 2017 financial year. In 2017 Habas attracted the maximum available tax discount under Program 25, as specified in its incentive certificates. Pursuant to the terms of the incentive certificate, the maximum available tax discount does not change from year-to-year. The Commission considers that the benefit received by Habas in the 2017 financial year is a suitable alternative (on the assumption there will be no significant decrease to its taxable income) to determine the benefit available under Program 25 in the investigation period and has therefore adopted this amount in its calculations.

Tax reduction in respect of corporate tax in respect of the Industrial Gas Facilities

InfraBuild submits that the benefit conferred under this program in respect of Habas' industrial gas facilities ought to be calculated in regard to the turnover of only those Habas divisions which would benefit from the subsidy conferred in respect of the industrial gas facilities, rather than all divisions, as was done in SEF 495.

After having regard to InfraBuild's submission and information provided in the Habas REQ, the Commission considers it likely that Habas' steel division would be the most significant beneficiary of such a subsidy, noting the nature of the other divisions within the Habas group of companies (banking, finance and automotive). As discussed in section A3.11.5 of Appendix A, the Commission understands that the industrial gases produced by Habas' industrial gas section are consumed in the production of steel. No evidence was received by the Commission that would indicate these gases are not used by its steel division. Accordingly, the Commission has recalculated the subsidy under this program in regard to only the turnover of Habas' steel division. The subsidy margins in this report incorporate the corrected amount of countervailable subsidy received.

Gross-up of benefit amount

InfraBuild submits that subsidy amounts received under this program need to be grossed-up to apply the actual effect of the subsidy received under this program.

As stated in its response to InfraBuild's submission under Program 5, the Commission considers that the subsidy amounts more accurately represent the benefit received by that exporter, consistent with the Manual.

Further, like in its examination of Program 5, the Commission has identified it did not include interest in its subsidy calculations for this program in SEF 495. Accordingly, the Commission has adjusted upwards its calculation of the subsidy amount received by each

exporter under this program by the benchmark interest rate calculated in its analysis of Program 17.

7.6.8 Program 26 – Export-Oriented Working Capital Credit Program

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

InfraBuild submits that the subsidy provided under this program is similar in nature to the subsidy in Program 17 in respect of the exemption of taxes, duties and stamp duties.

As stated in its response to InfraBuild's submission on this point under Program 17, the Commission considers that there are no applicable taxes to be taken into account in the calculation of the subsidy provided under this program.

Grace period

InfraBuild refers to a term of the Principles of Implementation[111] for loans provided under this program which states "*Terms of the loan shall be 3 years at a maximum, with a 1 year grace period for payment of the principal amount.*"

InfraBuild submits that the grace period provided should be taken into account in any comparison of the loans.

The Commission notes that InfraBuild's reference is to Article 23 of the Principles of Implementation, which applies only to loans denominated in Turkish Lira. The Commission notes that all loans provided under this program were denominated in currencies other than the Lira. Accordingly, Article 18 of the Principles of Implementation is the relevant reference, which provides that "*Term of the loan shall be 3 years as a maximum*". No grace period is provided for under Article 18. Accordingly, the Commission has retained its determination of the benchmark rate for this program as per SEF 495.

7.6.9 Program 27 – Short Term Export Credit Insurance Program

InfraBuild notes that Colakoglu did not incur marine insurance costs for sales to Australia and requests that the Commission confirms this detail.

The Commission confirms that in all export sales used in the determination of export prices, insurance was treated as the responsibility of the importer.

7.7 ADRP Review No. 110

In its application to the ADRP, InfraBuild raised two grounds in relation to subsidies. The grounds were:

> Ground 3: The Commissioner erred in terminating the investigation under section 269TDA, due to an incorrect calculation and determination of the level of subsidisation arising from the cumulation of the benefits conferred under Programs

[111] Case 495 EPR item number 13(2), p.170.

5, 17 and 22; and by failing to take account of the tax free element of the benefits conferred under Programs 5, 8, 22, 23 and 25.

Ground 4: The reviewable decision was not the correct or preferable decision because the Commissioner's calculation of the subsidy under Program 17 was done not having regard to the differences in short-term and long-term interest rates.

The applicant's arguments in relation to this ground were rejected by the ADRP and are largely addressed at section 7.6. Accordingly, the Commission has not commented further on the grounds raised by InfraBuild in its application to the ADRP.

7.8 Subsidy assessment – Colakoglu

7.8.1 Program 8 – Exemption from property tax

In Colakoglu's verification report, the Commission considered Program 8 applicable to Colakoglu and that it received a benefit under this program.

As discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has since determined that a benefit has been conferred under this program and that this benefit is countervailable.

7.8.2 Program 10 & 12 – Domestic Processing Regime/Inward Processing Certificate Exemption Program

As discussed in its findings in respect of these programs in **Non-confidential Appendix A**, the Commission has determined that Program 10 is covered by Program 12, and that while a benefit has been conferred, this benefit is not countervailable.

7.8.3 Program 28 – Support and Stability Fund for participating in trade fairs in abroad

In Colakoglu's verification report, the Commission noted that Colakoglu has reported receiving a benefit in respect of this program, but this benefit was not countervailable as it was not in respect of the goods. As discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has confirmed that, while a benefit has been conferred under this program, this benefit is not countervailable.

7.8.4 Program 29 – Support on subscribing to e-trade websites

In Colakoglu's verification report, the Commission noted that Colakoglu has reported receiving a benefit in respect of this program.

As discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has since determined that Colakoglu received a benefit under this program, and that that benefit is countervailable.

7.8.5 Program 31 – Social Security Insurance Premium Deductions

In Colakoglu's verification report, the Commission noted that Colakoglu has reported receiving a benefit in respect of the following programs:

- Minimum Wage Support;
- Employment of Handicapped Staff;
- Employment of Unemployed; and
- Employment of Additional Employee.

Colakoglu submitted the programs listed above are available to all enterprises in Turkey and therefore not specific. As discussed in its findings in respect of these programs in **Non-confidential Appendix A**, the Commission has found that these programs are related. The Commission found that while a benefit has been conferred under these programs, this benefit is not countervailable.

7.8.6 Program 32 – Turkish Employers' Association of Metal Industries (MESS) Assistance

In Colakoglu's verification report, the Commission noted that Colakoglu has reported receiving a benefit in respect of this program, but this benefit was not countervailable as it was not in respect of the goods. As discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has since determined that, while a benefit has been conferred under this program, this benefit is not countervailable in respect of the goods.

7.8.7 Subsidy margin

Based on the information available to the Commission, the Commission has calculated a subsidy margin for Colakoglu of **0.01 per cent**.

The Commission's countervailable subsidy calculations for Colakoglu are contained in **Confidential Attachment 22**.[112]

7.9 Subsidy assessment – Diler

7.9.1 Program 5 – Deductions from Taxable Income for Export Revenue

As detailed in Diler's verification report, the Commission had regard to the information in Diler's 2017 financial year audited financial statement and tax return to establish that Diler had claimed deductions from taxable income relating to export revenue. Diler's 2018 financial year tax return, which overlaps three quarters of the investigation period was not available at the time of publication of this report or at verification on account that Diler had not yet lodged its tax return. The Commission understands this is not due until 30 April 2019. As a result, whilst it was considered that Diler had received a benefit under

[112] This attachment has been kept confidential as it contains commercially sensitive information relating to Colakoglu.

Program 5 the benefit received was only identified to the extent that it related to Diler's 2017 financial year which ends on December 31.

In terms of working out the benefit received during the investigation period, with respect to the findings in relation to this program discussed in **Non-confidential Appendix A**, the Commission has determined the benefit received by Diler under this program is countervailable. However, since Diler's 2018 tax return is not yet available the value of the benefit received by Diler has been determined by having regard to;

- the value of its foreign export earnings for the investigation period;
- the value of its income tax deductions relevant to the 2017 financial year;
- the maximum allowable deduction available under this program (relevant to 2018 periods only); and
- the tax rate applicable to Turkish enterprises in 2017 and 2018.

7.9.2 Program 8 – Exemption from property tax

In Diler's verification report, the Commission found that Diler had received a benefit under Program 8.

As discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has since determined that a benefit has been conferred under this program and that this benefit is countervailable.

7.9.3 Program 17 – Rediscount Program

In Diler's verification report, the Commission initially calculated a benefit by comparing the interest payable on its rediscount loans obtained from the Export Credit Bank of Turkey (Turkish Eximbank) to a benchmark rediscount loan interest rate which Diler calculated as part of its REQ. Diler's benchmark rediscount loan interest rate was worked out based on the interest rates applicable to its short-term commercial loans obtained from privately owned banks. Relying on the data in Diler's REQ the Commission found that Diler had received a benefit under Program 17.

As discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has instead used a benchmark rate worked out using a weighted average interest rate for short-term commercial loans obtained from privately owned banks by all cooperating exporters who reported obtaining such loans. The Commission used this benchmark to determine the benefit conferred to Diler under this program. As a result, the benefit received by Diler in relation to Program 17 is higher than the amount initially determined in the Diler verification report. The Commission has also determined that the benefit received is countervailable.

7.9.4 Program 22 – Assistance to Offset Costs Related to AD/CVD Investigations

In Diler's verification report, the Commission found that Diler had received a benefit under Program 22. The benefit received under this program was incorporated in the preliminary subsidy margin published in relation to the verification of Diler's REQ.

However, as discussed in its findings in respect of this program in **Non-confidential Appendix A**, after further consideration of the evidence relating to this program, the Commission has since determined that, while a benefit has been conferred under this program, this benefit is not countervailable in relation to the goods.

7.9.5 Program 26 – Export-Oriented Working Capital Credit Program

In Diler's verification report, the Commission found that Diler had received loans provided pursuant to Program 26. However the benefit received under this program was not incorporated in the preliminary subsidy margin published in relation to the verification of Diler's REQ.

Following further consideration of the evidence relating to this program, as discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has since determined that Diler has received a benefit under this program, and that this benefit is countervailable.

7.9.6 Subsidy margin

Based on the information available to the Commission, the Commission has calculated a subsidy margin for Diler of **0.97 per cent**.

The Commission's countervailable subsidy calculations for Diler are contained in **Confidential Attachment 23**.[113]

7.10 Subsidy assessment – Habas

7.10.1 Program 1 – Natural Gas for Less than Adequate Remuneration

In Habas' verification report, the Commission stated it would further examine this program before determining whether a subsidy has been received and whether that subsidy is countervailable.

As discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has determined that, no benefit has been conferred under this program.

7.10.2 Program 5 – Deductions from Taxable Income for Export Revenue

As detailed in Habas' verification report, the Commission had regard to the information in Habas' 2017 financial year audited financial statement and tax return to establish that Habas had claimed deductions from taxable income relating to export revenue. Habas' 2018 financial year tax return, which overlaps three quarters of the investigation period was not available at the time of publication of this report or at verification on account that Habas had not yet lodged its tax return. The Commission understands this is not due until 30 April 2019. As a result, whilst it was considered that Habas had received a benefit

[113] This attachment has been kept confidential as it contains commercially sensitive information relating to Diler.

under Program 5 the benefit received was only identified to the extent that it related to Habas' 2017 financial year which ends on December 31.

In terms of working out the benefit received during the investigation period, with respect to the findings in relation to this program discussed in **Non-confidential Appendix A**, the Commission has determined the benefit received by Habas under this program is countervailable. However, since Habas' 2018 tax return is not yet available, the value of the benefit received by Habas has been determined by having regard to;

- the value of its foreign export earnings for the investigation period;
- the value of its income tax deductions relevant to the 2017 financial year;
- the maximum allowable deduction available under this program (relevant to 2018 periods only); and
- the tax rate applicable to Turkish enterprises in 2017 and 2018.

7.10.3 Program 11 – Investment Encouragement Program VAT and Import Duty Exemptions

As discussed in its findings in respect of these programs in **Non-confidential Appendix A**, the Commission has determined that Program 11 is covered by *Program 25 – Investment Incentive Program*.

7.10.4 Program 17 – Rediscount Program

In Habas' verification report, the Commission initially calculated a benefit by comparing the interest payable on its rediscount loans obtained from the Turkish Eximbank to a benchmark rediscount loan interest rate which the Commission calculated having regard to the interest rates reported by other cooperating exporters. The verification found this approach necessary on account that Habas did not have any short-term commercial loans from privately owned banks which permitted a comparison. Habas' benchmark rediscount loan interest rate was therefore worked out based on the interest rates applicable to the other cooperating exporters' short-term commercial loans obtained from privately owned banks. Relying on the data in Habas' REQ and the other cooperating exporters, the Commission found that Habas had received a benefit under Program 17.

As discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has instead used a benchmark rate worked out using a weighted average interest rate for short-term commercial loans obtained from privately owned banks by all cooperating exporters who reported obtaining such loans. The Commission used this benchmark to determine the benefit conferred to Habas under this program. As a result, the benefit received by Habas in relation to Program 17 is higher than the amount initially determined in Habas' verification report. The Commission has also determined that the benefit received is countervailable.

7.10.5 Program 23 – Social Security Premium Support (Employer's Share)

In Habas' verification report, the Commission assessed that Habas had not received a benefit in relation to this program based on the information provided by Habas is its REQ. Habas outlined that benefits it received under this program were in respect of its industrial gas divisions and should therefore not be considered as related to its steel production.

For the purpose of determining a preliminary subsidy margin in the verification report the amounts identified in relation to Program 23 were not included.

Following further examination of the available evidence the Commission has established that the benefit received by Habas in connection with its industrial gas division is a benefit that flows through to its steel business.

As discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has found that the benefit received under this program is countervailable.

7.10.6 Program 25 – Investment Incentive Program

In Habas' verification report, the Commission found that Habas benefits from a reduction of corporate tax and exemptions from payment of VAT and customs duty on imported machinery in connection with its port facilities and that those facilities are used to support its steel business.

The verification team also considered it reasonable that the benefit received under this program in relation to Habas' industrial gas division has been conferred in part to the production and sale of rebar through the production of steel billets manufactured in Habas' melt shop operations.

As discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has found that the benefit received under this program in connection with its port and gas divisions is countervailable.

7.10.7 Program 31 – Social Security Insurance Premium Deductions

In Habas' verification report, the Commission noted that Habas has reported receiving a benefit in respect of the following programs:

- Minimum Wage Support;
- Employment of Handicapped Staff;
- Employment of Unemployed; and
- Employment of Additional Employee.

Habas submitted the programs listed above are available to all enterprises in Turkey and therefore not specific. As discussed in its findings in respect of these programs in **Non-confidential Appendix A**, the Commission has found that these programs are related. The Commission found that while a benefit has been conferred under these programs, this benefit is not countervailable.

7.10.8 Program 32 – Turkish Employers' Association of Metal Industries (MESS) Assistance

In Habas' verification report, the Commission noted that Habas has reported receiving a benefit in respect of this program, but this benefit was not countervailable as it was not in respect of the goods.

As discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has since determined that, while a benefit has been conferred under this program, this benefit is not countervailable.

7.10.9 Subsidy margin

The Commission has calculated a subsidy margin for Habas of **0.87 per cent**.

The Commission's countervailable subsidy calculations for Habas are contained in **Confidential Attachment 24**.[114]

7.11 Subsidy assessment – Kroman

7.11.1 Program 5 – Deductions from Taxable Income for Export Revenue

As detailed in Kroman's verification report, the Commission had regard to the information in Kroman's 2017 financial year audited financial statement and tax return to establish that Kroman had claimed deductions from taxable income relating to export revenue. Kroman's 2018 financial year tax return, which overlaps three quarters of the investigation period was not available at the time of publication of this report or at verification on account that Kroman had not yet lodged its tax return. The Commission understands this is not due until 30 April 2019. As a result, whilst it was considered that Kroman had received a benefit under Program 5 the benefit received was only identified to the extent that it related to Kroman's 2017 financial year which ends on December 31. Kroman provided data relating to what it intended on claiming for the 2018 financial year however the supporting documentation which would substantiate this information would be the tax return itself which as discussed is yet to be lodged.

In terms of working out the benefit received during the investigation period, with respect to the findings in relation to this program discussed in **Non-confidential Appendix A**, the Commission has determined the benefit received by Habas under this program is countervailable. However, since Kroman's 2018 tax return is not yet available the value of the benefit received by Kroman has been determined by having regard to;

- the value of its foreign export earnings for the investigation period;
- the value of its income tax deductions relevant to the 2017 financial year;
- the maximum allowable deduction available under this program (relevant to 2018 periods only); and
- the tax rate applicable to Turkish enterprises in 2017 and 2018.

On account of the approach outlined in SEF 495 and further adopted in this report, the value of the benefit received was higher when compared to the amount determined in Kroman's verification report.

[114] This attachment has been kept confidential as it contains commercially sensitive information relating to Habas.

7.11.2 Program 10 & 12 – Domestic Processing Regime/Inward Processing Certificate Exemption Program

As discussed in its findings in respect of these programs in **Non-confidential Appendix A**, the Commission has determined that Program 10 is covered by Program 12, and that while a benefit has been conferred, this benefit is not countervailable.

7.11.3 Program 17 – Rediscount Program

In Kroman's verification report, the Commission initially calculated a benefit by comparing the interest payable on its rediscount loans obtained from the Turkish Eximbank to a benchmark rediscount loan interest rate which Kroman calculated as part of its REQ. Kroman's benchmark rediscount loan interest rate was worked out based on the interest rates applicable to its short-term commercial loans obtained from privately owned banks. Relying on the data in Kroman's REQ the Commission found that Kroman had received a benefit under Program 17.

As discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has instead used a benchmark rate worked out using a weighted average interest rate for short-term commercial loans obtained from privately owned banks by all cooperating exporters who reported obtaining such loans. The Commission used this benchmark to determine the benefit conferred to Kroman under this program. As a result, the benefit received by Kroman in relation to Program 17 is higher than the amount initially determined in the Kroman verification report. The Commission has also determined that the benefit received is countervailable.

7.11.4 Program 19 – Investments Provided under Turkish Law No. 5746

As discussed in its findings in respect of these programs in **Non-confidential Appendix A**, the Commission has determined that *Program 6 – R&D Income Tax Deduction* is covered by Program 19.

In Kroman's verification report, the Commission determined that Kroman received a benefit under this program and calculated the benefit received using a similar methodology to that used for Program 5 in the verification report.

The Commission has since determined that, while a benefit has been conferred under this program, this benefit is not countervailable.

7.11.5 Program 21 – Industrial R&D Projects Grant Program

In Kroman's verification report, the Commission found that a benefit under Program 21 has been conferred. The benefit received under this program was therefore incorporated in the preliminary subsidy margin published in Kroman's verification report.

However, following further consideration of the available evidence, as discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has determined that, while a benefit has been conferred under this program, this benefit is not countervailable.

7.11.6 Program 31 – Social Security Insurance Premium Deductions

In Kroman's verification report, the Commission noted that Kroman reported receiving a benefit in respect of the following programs:

- Minimum Wage Support;
- Employment of Handicapped Staff;
- Employment of Unemployed; and
- Employment of Additional Employee.

Kroman submitted the programs listed above are available to all enterprises in Turkey and therefore not specific. As discussed in its findings in respect of these programs in **Non-confidential Appendix A**, the Commission has found that these programs are related. The Commission found that while a benefit has been conferred under these programs, this benefit is not countervailable.

7.11.7 Program 32 – Turkish Employers' Association of Metal Industries (MESS) Assistance

In Kroman's verification report, the Commission noted that Kroman reported receiving a benefit in respect of this program, but this benefit was not countervailable as it was not in respect of the goods. As discussed in its findings in respect of this program in **Non-confidential Appendix A**, the Commission has since determined that, while a benefit has been conferred under this program, this benefit is not countervailable.

7.11.8 Subsidy margin

The Commission has calculated a subsidy margin for Kroman of **0.52 per cent**.

The Commission's countervailable subsidy calculations for Kroman are contained in **Confidential Attachment 25**.[115]

7.12 Subsidy assessment – All other exporters

The Commission considers that the volumes exported by the exporters who have cooperated with the investigation represent the total volume of exports that are relevant to the investigation.

The subsidy margin for all other exporters has been determined on the basis of all facts available and having regard to reasonable assumptions pursuant to section 269TAACA. In determining the countervailable subsidies for those entities, the Commissioner considers it reasonable to base the subsidy margins on the assumption that those entities may have received the highest level of subsidisation received by the cooperating exporters under each of the countervailable programs.

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[115] This attachment has been kept confidential as it contains commercially sensitive information relating to Kroman.

Based on the information available to the Commission, the Commission has calculated a subsidy margin for all other exporters of **1.33 per cent**.

The Commission's countervailable subsidy calculations for all other exporters are contained in **Confidential Attachment 26**.[116]

7.13 Summary of subsidy margins

Table 18 summarises what programs have been found countervailable and the corresponding subsidy margins for each exporter.

Exporter	Programs	Subsidy margin
Colakoglu	8 – Exemption from property tax 29 – Support on subscribing to e-trade websites	0.01%
Diler	5 – Deductions from Taxable Income for Export Revenue 8 – Exemption from property tax 17 – Rediscount Program 26 – Export-Oriented Working Capital Credit Program	0.97%
Habas	5 – Deductions from Taxable Income for Export Revenue 17 – Rediscount Program 23 – Social Security Insurance Premium Support (Employer's Share) 25 – Investment Incentive Program	0.87%
Kroman	5 – Deductions from Taxable Income for Export Revenue 17 – Rediscount Program	0.52%
All other exporters	5 – Deductions from Taxable Income for Export Revenue 8 - Exemption from property tax 17 – Rediscount Program 23 – Social Security Insurance Premium Support (Employer's Share) 25 – Investment Incentive Program 26 – Export-Oriented Working Capital Credit Program 29 – Support on subscribing to e-trade websites	1.33%

Table 18 Countervailable subsidies and subsidy margins

7.14 Volume of subsidised imports

Section 269TDA(7) provides that the Commissioner must terminate a countervailing investigation, in so far as it relates to a country, if satisfied that the total volume of goods that has been, or may have been, exported to Australia during a reasonable examination

[116] This attachment has been kept confidential as it contains commercially sensitive information relating to each exporter.

period and in respect of which a countervailable subsidy has been, or may be, received, is negligible.

Pursuant to section 269TDA(8), a negligible volume for Turkey is a volume less than four per cent of the total volume of goods imported into Australia over a reasonable examination period.[117]

Using the ABF import database and having regard to the information collected and verified from the importers and exporters, the Commission determined the volume of goods exported to Australia from Turkey during the investigation period. Based on this information, the Commission is satisfied that, when expressed as a percentage of the total Australian import volume of the goods, the volume of subsidised goods from Turkey was greater than four per cent of the total Australian import volume and is therefore not negligible.[118]

Accordingly, the Commissioner does not propose to terminate the subsidy investigation under section 269TDA(7).

7.15 Level of subsidisation

Section 269TDA(2) provides that the Commissioner must terminate a countervailing investigation, in so far as it relates to an exporter of the goods, if satisfied either that no countervailable subsidy was received in respect of the goods, or if a subsidy was received, the level of the subsidy did not at any time during the investigation period exceed a negligible level.

Pursuant to section 269TDA(16)(b), a countervailable subsidy received in respect of goods exported to Australia from Turkey is negligible if, when expressed as a percentage of the export price of the goods, the level of the subsidy is not more than two per cent. [119]

Based on its investigation into countervailable subsidies provided to Turkish exporters of the goods to Australia, the Commission is satisfied that the total level of countervailable subsidies, when expressed as a percentage of the export price of the goods, never, at any time during the investigation period, exceeded two per cent for each exporter and is therefore negligible.

Accordingly, the Commissioner is satisfied it is necessary to terminate the countervailable subsidy investigation under section 269TDA(2) in respect of all exporters from Turkey.

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[117] Turkey is classed as a Developing Country pursuant to Part 4, Division 1 of the *Customs Tariff Regulations 2004*.

[118] Confidential Attachment 27 - Worksheet 1, Table 1.5 refers.

[119] Turkey is classed as a Developing Country pursuant to Part 4, Division 1 of the *Customs Tariff Regulations 2004*.

8 PROPOSED TERMINATION OF INVESTIGATION

8.1 Dumping investigation

Under section 269TDA(1), if the Commissioner is satisfied that there has been no dumping, or negligible dumping, by the exporter of any of those goods, the Commissioner must terminate the investigation in so far as it relates to the exporter.

Based on the findings in Chapter 6, no evidence was found that dumping had occurred in relation to any the goods exported to Australia by Colakoglu, Diler, Habas, Kroman, or any other exporter from Turkey. Therefore the investigation must be terminated in accordance with section 269TDA(1)(b)(i) in so far as it relates to these exporters.

Further, under section 269TDA(3), if the Commissioner is satisfied that the total volume of goods the subject of the application that have been, or may be, exported to Australia over a reasonable examination period from a particular country of export and that have been, or may be, dumped, is negligible, the Commissioner must terminate the investigation as far as it relates to that country.

Based on the findings in Chapter 6, the Commissioner is satisfied that it is necessary to terminate the dumping investigation in so far as it relates to Turkey on the basis that the total volume of goods that have been exported to Australia over a reasonable examination period, being the investigation period, from Turkey that have been dumped from all Turkish exporters is negligible, in accordance with section 269TDA(3).

8.2 Subsidy investigation

Under section 269TDA(2), if the Commissioner is satisfied that there has been no countervailable subsidy received, or a negligible amount of countervailable subsidy has been received in respect of some or all of those goods but it never, at any time during the investigation period, exceeded the negligible level, the Commissioner must terminate the investigation in so far as it relates to the exporter.

Section 269TDA(16)(b) provides that for the purposes of section 269TDA(2) a countervailable subsidy received in respect of goods exported to Australia is negligible if the subsidy, when expressed as a percentage of the export price of the goods, is less than 2 per cent.

Based on the findings in Chapter 7 and Non-Confidential Appendix A, the Commissioner is satisfied that, for the goods exported by Colakoglu, Diler, Habas, Kroman and all other exporters a countervailable subsidy has been received in respect of some or all of those goods exported to Australia. However, the subsidies received by any exporter of the goods from Turkey never at any time during the investigation period exceeded the negligible level of countervailable subsidy under section 269TDA(16).

Therefore the investigation must be terminated in accordance with section 269TDA(2)(b)(ii) in so far as it relates to these exporters.

9 APPENDICES AND ATTACHMENTS

Non-confidential Appendix A	Assessment of Programs
Confidential Attachment 1	269TAF(3) Conversion analysis
Confidential Attachment 2	Colakoglu Export Price
Confidential Attachment 3	Colakoglu CTMS
Confidential Attachment 4	Colakoglu Domestic Sales
Confidential Attachment 5	Colakoglu Normal Value
Confidential Attachment 6	Colakoglu Dumping Margin
Confidential Attachment 7	Diler Export Price
Confidential Attachment 8	Diler CTMS
Confidential Attachment 9	Diler Domestic Sales
Confidential Attachment 10	Diler Normal Value
Confidential Attachment 11	Diler Dumping Margin
Confidential Attachment 12	Habas Export Price
Confidential Attachment 13	Habas CTMS
Confidential Attachment 14	Habas Domestic Sales
Confidential Attachment 15	Habas Normal Value
Confidential Attachment 16	Habas Dumping Margin
Confidential Attachment 17	Kroman Export Price
Confidential Attachment 18	Kroman CTMS
Confidential Attachment 19	Kroman Domestic Sales
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Confidential Attachment 21	Kroman Dumping Margin
Confidential Attachment 22	Colakoglu Subsidy Margin
Confidential Attachment 23	Diler Subsidy Margin

Confidential Attachment 24	Habas Subsidy Margin
Confidential Attachment 25	Kroman Subsidy Margin
Confidential Attachment 26	All Other Exporters Subsidy Margin
Confidential Attachment 27	Volume of Subsidised Imports Assessment
Confidential Attachment 28	Program 1 – Natural Gas LTAR
Confidential Attachment 29	Program 4 – Analysis of electricity pricing
Confidential Attachment 30	Program 17 – Rediscount Loans
Confidential Attachment 31	Program 26 – Export Oriented Working Capital Credit Program
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Confidential Attachment 33	Analysis of length
Non-confidential Attachment 1	GoT email submission
Non-confidential Attachment 2	269TAF(3) and 269TAF(4) Currency Calculation
Non-confidential Attachment 3	Program 1 – BOTAS Natural Gas prices
Non-confidential Attachment 4	Program 19 – GoT R&D expenditure

APPENDIX A ASSESSMENT OF PROGRAMS

A1 Introduction

A1.1 Definition of Government, public and private bodies

In its assessment of each program, the Commission has had regard to the entity responsible for providing the financial contribution (if any) under the relevant program, as part of the test under section 269T(1) for determining whether a financial contribution is a subsidy. Under section 269T(1), for a contribution to be a subsidy, the contribution must have been made by:

- a government of the country of export or country of origin of the goods; or
- a public body of that country or a public body of which that government is a member; or
- a private body entrusted or directed by that government or public body to carry out a governmental function.

A1.1.1 Government

As described in section 16.2 of the Manual, the Commission considers that the term "government" is taken to include government at all different levels, including at a national and sub-national level.

A1.1.2 Public bodies

The term "public body" is not defined in the Act. Determining whether an entity is a "public body" requires evaluation of all available evidence of the entity's features and its relationship with government, including the following:

(1) The objectives and functions performed by the body and whether the entity in question is pursuing public policy objectives. In this regard relevant factors include:
   - o legislation and other legal instruments,
   - o the degree of separation and independence of the entity from a government, including the appointment of directors, and
   - o the contribution that an entity makes to the pursuit of government policies or interests, such as taking into account national or regional economic interests and the promotion of social objectives.

(2) The body's ownership and management structure, such as whether the body is wholly- or part-owned by the government or has a majority of shares in the body. A finding that a body is a public body may be supported through:
   - o the government's ability to make appointments,
   - o the right of government to review results and determine the body's objectives, and

- the government's involvement in investment or business decisions.

The Commission considers this approach is consistent with the WTO Appellate Body decision of *United States – Countervailing Measures (China)* [120] In that case the Appellate body referred to the following three indicia which may assist in assessing whether an entity was a public body vested with or exercising government authority:

- Where a statute or other legal instrument expressly vests government authority in the entity concerned;
- Where there is evidence that an entity is, in fact, exercising governmental functions; and
- Where there is evidence that a government exercises meaning control over an entity and exercises governmental authority in the performance of government functions.

These principles have also previously been considered in the Federal Court of Australia.[121]

A1.1.3 Private bodies

Where an entity is neither a government nor public body, the Commission will consider it a private body, in which case, a government direction to make a financial contribution in respect of the goods must be established in order for the contribution to be considered a subsidy, as defined by section 269T(1).

Pursuant to section 16.3 of the Manual, in determining the character of an entity which may have provided a financial contribution, the Commission will consider whether a private body has been:

- "entrusted" to carry out a government function, which occurs when a government gives responsibility to a private body; or
- "directed" to carry out a government function, which occurs in situations where the government exercises its authority over a private body.

Accordingly, not all government acts will be considered as entrusting or directing a private body. Encouragement or mere policy announcements by government of themselves are not sufficient to satisfy this test. However, threats and inducements may be evidence of entrustment or inducements. It is where the private body is considered a proxy by government to give effect to financial contributions will this test be satisfied.

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[120] DS379 United States – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China.

[121] See; *Panasia Aluminium (China) Limited v Attorney-General of the Commonwealth* [2013] FCA 870, [27] - [70]; *Dalian Steelforce Hi Tech Co Ltd V Minister for Home Affairs* [2015] FCA 885, [50] - [73]

A2 Duplicated programs

The Commission has determined that the following programs are covered under other programs examined as part of this investigation:

- *Program 6: R&D Income Tax Deduction*

  The GoT has advised that this program is covered under *Program No.19 – Investments Provided under Turkish Law No. 5746*.

  In its REQ, Kroman advised it received a deduction from its taxable income under this program, however, states that the deduction is pursuant to Law 5746.

  Based on the information provided, the Commission is satisfied that this program, including the deduction received by Kroman, is covered under Program No. 19 and is therefore discussed under that program.

- *Program 10: Import duty rebates/drawbacks under Article 22 of Turkey's Domestic Processing Regime (RDP) Resolution 2005/839 (RDP duty drawback program)*

  The GoT has advised that this program is covered under *Program No. 12 – Inward Processing Certificate Exemption Program*. Responses from exporters are consistent with this submission, with exporters advising they have received benefits under this program or Program No. 12.

  Based on the information provided, the Commission is satisfied that this program is covered under Program No. 12 and is therefore discussed under that program.

- *Program 11: Investment Encouragement Program VAT and Import Duty Exemptions*

  The GoT has advised that its RGQ response in respect of this program applies also in respect of *Program No. 25 – Investment Incentive Program*. After reviewing the characteristics of each program, the Commission is satisfied that this program is covered under Program No. 25. The Commission has therefore discussed Program 11 under that program.

- *Program 14: Pre-shipment Foreign Currency Export Credits*

  The GoT has advised that its RGQ response in respect of this program applies also in respect of *Program No.13 – Pre-shipment Turkish Lira Export Credits*. After reviewing the characteristics of each program, the Commission is satisfied that this program is covered under Program No. 13. The Commission has therefore discussed Program 14 under that program.

- *Program 24: Social Security Premium Support (Employee's Share)*

  Under the *Social Security Premium Support (Employee's Share)* element of Program 25, for certain regions of Turkey, the GoT will cover the employee's share

of the social security premium, calculated on the basis of the legal minimum wage, for any additional employment created by the investment.

On this basis, the Commission is satisfied that this program is not a stand-alone program, but actually an element within *Program No. 25 – Investment Incentive Program* and is therefore discussed under that program.

A3 Assessment of Programs

A3.1 Program 1: Natural gas for less than adequate remuneration

A3.1.1 Background

The applicant submits that Turkish steel producers with vertically integrated power plants received countervailable subsidies by purchasing natural gas at discounted prices from Boru Hatlari ile Petrol Taşima A.Ş. (**BOTAS**) and that BOTAS is a government authority.

In making its submission, the applicant refers to the following findings by the USDOC in respect of Habas in its 2017 investigation into steel concrete reinforcing bar exported from Turkey[122]:

1. BOTAS is a government authority providing a financial contribution in the form of goods or services (being the sale of natural gas);

2. Natural gas sold by BOTAS during the applicable investigation period is predominantly used by and specific to power producers, including Habas; and

3. In order to determine the benefit received, a comparison of the price paid by Habas during the applicable investigation period was compared to a benchmark of natural gas prices based on the Organisation for Economic Cooperation and Development (**OECD**) prices for Europe.

The applicant considers that this subsidy remains in force and that the levels found in the USDOC investigation are relevant to its application. The applicant also noted that BOTAS recently increased its gas prices by 50 per cent to power generators, indicating prices have continued to be provided by BOTAS at discounted levels.

Based on the information available, the Commission is satisfied that Habas is the only exporter who has purchased natural gas from BOTAS for power production in connection with the goods.

[122] *Issues and Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Steel Concrete Reinforcing Bar from the Republic of Turkey*, United States Department of Commerce, 15 May 2017 (**US Final Affirmative Determination**).

A3.1.2 Legal basis

The Commission is not aware of any legal basis for the provision of natural gas for less than adequate remuneration.

The natural gas market in Turkey is regulated under *Law No. 4646 on Natural Gas Market in Turkey*.

A3.1.3 WTO notification

The Commission is not aware of any WTO notification of this program.

A3.1.4 Eligibility criteria

The Commission understands that any entity in any industry regardless of its geographical region can purchase natural gas from BOTAS.

A3.1.5 Is there a subsidy?

Nature of BOTAS

In order for there to be a subsidy under section 269T, there must be a financial contribution by either a government of the country of export or country of origin, a public body of that country or a private body entrusted or directed by that government to carry out a government function, and that the financial contribution confers a benefit.

BOTAS is defined under Turkish Law as a “state economic enterprise”, established in accordance with the provisions of *Decree Law No. 233 on State Economic Enterprises* and is 100 per cent owned by the GoT.

Pursuant to Decree Law No. 233, state economic enterprises engage in commercial activities and operate on a commercial basis, with decisions on pricing for goods and services made by the enterprise. However, decisions on investment and financing are subject to approval by the GoT and upon request, prices can be set at a level determined by the government. Board members of state economic enterprises are also appointed by the government.

The Commission notes that, in its response, the GoT identified BOTAS as a government authority whose Board and senior management are government officials.

Given its ownership structure and the degree of control exercised over BOTAS by the GoT both through its board appointments and under Decree Law No. 233, the Commission is satisfied that BOTAS is a public body for the purposes of section 269T.

Provision of Natural Gas

The applicant’s submission urged the Commission to examine whether the provision of natural gas to power plants operated by Habas for the production of electricity used in the manufacture of the goods is a subsidy.

Habas owns and operates three power plants, one of which the Commission has determined produces electricity for the production of steel at its plant in Izmir, Turkey.

In order to determine whether a subsidy has been provided towards the production of electricity by Habas, the Commission must determine whether a benefit has been conferred through the provision of natural gas at a price reflecting less than adequate remuneration.[123]

Consideration by the Commission

In accordance with part 17.3 of the Manual – *Provision of goods and services by the government*, the amount of benefit where there has been a provision of goods or services by the government is the difference between the price paid by enterprises for the government provided goods or service, and adequate remuneration for the product or service in relation to prevailing market conditions. If the price paid to the government is less than this amount, a benefit has been conferred.

Normally, adequate remuneration has to be determined in the light of prevailing market conditions on the domestic market of the exporting country, and the calculation of the subsidy amount must reflect only that part of the purchase of goods or services which is used directly in the production or sale of the like goods during the investigation period.

The Manual sets out that the first step is to establish whether the goods or services in question are provided both by the government and by private operators. If so, the price charged by the government body would normally constitute a benefit to the extent that it is below the lowest price available from one of the private operators to an entity involved for a comparable purchase. The amount of the benefit is the difference between these two prices.

The Commission has examined natural gas purchases by all cooperative exporters over the investigation period and has observed that all exporters, including Habas, purchased significant volumes of natural gas from private operators over the investigation period.

The Commission has therefore compared the lowest monthly average of gas prices paid to private operators in Turkey with the average gas price paid by Habas to BOTAS for the corresponding month. In every month of the investigation period, the Commission found that BOTAS prices were higher than the lowest corresponding price offered by private operators.

Accordingly, the Commission has found that no benefit has been provided to Habas under this program and therefore there is no subsidy under section 269T.

[123] Section 269TACC(3)(d).

Comments on applicant submissions

As the applicant has referred to the findings by the USDOC in respect of natural gas purchases from BOTAS, the Commission considers it appropriate to comment on the USDOC findings.

In its investigation, the USDOC considered the natural gas market in Turkey distorted due to the percentage of natural gas supplied by BOTAS to Turkish consumers.[124] It therefore used its tier two benchmark, being "world market prices that would be available to purchasers in the country under investigation" as the basis for comparison to determine whether BOTAS natural gas was provided at less than adequate remuneration. The USDOC chose a comparison benchmark based on European gas prices with some adjustments.

As discussed above, the Commission will normally use a benchmark based on prevailing domestic market conditions if there are private operators in the market. While in Turkey BOTAS supplies approximately 80 per cent of the natural gas market, a not insignificant proportion is met by private providers.[125]

In considering whether a comparison with domestic private prices was therefore appropriate, the Commission has had regard to the following observations:

- each of the cooperating exporters (including Habas) sourced natural gas from private operators, with Habas being the only exporter who bought gas from BOTAS;
- the largest private provider to exporters during the investigation period was Palgaz Doğalgaz Dağ. San. Ve Tic. A.S. (Palgaz), which supplied natural gas to multiple exporters. The Commission has examined net profit margins for Palgaz for the years preceding the investigation period, and has observed that a profit has been made in four of the previous five years;[126]
- the GoT's RGQ in respect of this program states that, pursuant to the provisions of Law No. 4646, the natural gas market in Turkey is based on free market principles, and that all market participants are free to set their own pricing, including BOTAS.

The Commission has also had regard to the applicant's submission concerning a recent 50 per cent increase in BOTAS natural gas prices offered to power generators, and that this is an indication that gas prices have been offered at discounted levels.

In its examination of gas prices paid by Habas during the investigation period, the Commission observed a price spike around August 2018. This price increase corresponded with a significant depreciation of the TRY. The Commission is satisfied that

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[124] US Final Affirmative Determination.

[125] *Turkish Natural Gas Market Report 2017*, Republic of Turkey, Energy Market Regulatory Authority, 2018, Graph 4.1.

[126] JCR Eurasia Rating – Corporate Credit Rating – Palgaz Dogalgaz Dagitim San ve Tic A.S. available at http://www.jcrer.com/Upload/Files/Reports/20170619145458_jcrer_palgaz_summary_2017.pdf

this depreciation was a significant driver of the price increase by BOTAS, which is consistent with the source material provided by the applicant as part of its application.[127]

Having considered the legislative framework behind the natural gas market in Turkey and the existence of multiple private operators, the largest of which appears to be operating at a profit, the Commission is satisfied that a comparison of BOTAS prices with private operators is appropriate for determining whether a benefit has been conferred.

The Commission also wishes to note that it does not consider power generators to be the predominant beneficiary or in receipt of a disproportionate benefit from BOTAS natural gas prices. The Commission notes that any entity in any industry regardless of its geographical region can purchase natural gas from BOTAS. While the power generation sector is the largest single user of natural gas with approximately 36 per cent, industry and households each separately make up approximately 25 per cent of consumption[128], and further, power generators must pay a premium to prices charged to all other customers.[129]

A3.2 Program 4: Provision of Lignite for Less than Adequate Remuneration

A3.2.1 Background

Turkish Coal Enterprises (**TKI**) is a state-economic enterprise responsible for the sale of lignite coal, established in accordance with the provisions of *Decree Law No. 233 on State Economic Enterprises* and is 100 per cent owned by the GoT.[130] [131]

The applicant submits that power plants operated by Colakoglu and Diler purchased lignite from TKI during the investigation period for less than adequate remuneration, which in turn was used to produce electricity used in the production of the goods.

A3.2.2 Legal basis

The Commission is not aware of any legal basis for the provision of lignite for less than adequate remuneration.

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[127] Case 495 EPR item number 001, Non-confidential Attachment C-1.4

[128] *Turkish Natural Gas Market Report 2017*, Republic of Turkey, Energy Market Regulatory Authority, 2018, Table 8.2.

[129] See Non-confidential Attachment 3 setting out BOTAS prices for January 2018 to September 2018. While the Commission notes that it has not reviewed BOTAS prices for the first three months of the investigation period (as this information was unavailable), it has assumed based on the available data that this pricing structure was in place for this period.

[130] Article 3, Charter Of General Directorate for Turkish Coal Enterprises Establishment.

[131] Implementation of Privatization Law No. 4046.

A3.2.3 WTO notification

The Commission is not aware of any WTO notification of this program.

A3.2.4 Eligibility criteria

The Commission is not aware of eligibility criteria for entities receiving lignite for less than adequate remuneration.

A3.2.5 Is there a subsidy?

Nature of TKI

Pursuant to Decree Law No. 233, state economic enterprises (such as TKI) engage in commercial activities and operate on a commercial basis, with decisions on pricing for goods and services made by the enterprise. However, decisions on investment and financing are subject to approval by the GoT and upon request, prices can be set at a level determined by the government. Board members of state economic enterprises are also appointed by the government.

Article 3 of TKI's Articles of Incorporation provides that TKI is a Public Economic Enterprise, which is a type of state economic enterprise founded to produce and market monopoly goods and services by taking into consideration public benefits and whose goods and services are regarded as privilege due to public nature of its services.

Article 4 of TKI's Articles of Incorporation provides that TKI must utilise its resources for meeting the countrywide requirements and making maximum contribution to Turkey's economy.

Given the objectives of TKI as set out in its Articles of Incorporation, its ownership structure and the degree of control exercised over TKI by the GoT under Decree Law No. 233, the Commission is satisfied that TKI satisfies the criteria discussed above under Part A1.1 of this Appendix and is therefore a public body for the purposes of section 269T.

Colakoglu

Based on information provided by Colakoglu in its REQ and other publically available information[132], the Commission has determined that the power plant operated by Colakoglu uses steam coal rather than lignite in the production of electricity. The Commission is therefore satisfied Colakoglu has not purchased lignite from TKI as an input into its manufacture of the goods during the investigation period and has received no subsidy under this program.

[132] *Europe Beyond Coal: European Coal Plant Database*, 12 Feb 2019, available at https://beyond-coal.eu/data/

Diler

The Commission has determined that Diler purchased electricity as an input into the manufacture of the goods during the investigation period from a related power plant entity. While no information was provided during the investigation on the use of lignite by the related entity, the Commission has had regard to data provided by Diler in respect of their electricity expenditure, as any subsidy on lignite will flow through to the production costs of electricity produced by the related entity.[133] The Commission has determined that Diler paid a higher monthly average rate for electricity over the investigation period than the average monthly market price.[134] As such, the Commission is satisfied that no benefit was conferred in the connection with the purchase of electricity by Diler.

Accordingly, the Commission is satisfied no subsidy in respect of the goods was received by Diler under this program.

A3.3 Program 5: Deductions from Taxable Income for Export Revenue

A3.3.1 Background

Pursuant to *Income Tax Law No. 193*, all taxpayers in Turkey may make a deduction for undocumented expenditure of up to 0.5 per cent of their gross income from exports, construction, maintenance, and assembly and transportation activities outside of Turkey. This deduction is in addition to any other deductions available to taxpayers which are supported by documentation.

A3.3.2 Legal basis

The program is governed by Article 40 of *Income Tax Law No. 193*, as amended by Law No. 4108.

A3.3.3 WTO notification

The Commission is not aware of any WTO notification of this program.

A3.3.4 Eligibility criteria

The Commission understands that this deduction is open to any Turkish taxpayer who has derived income from exports, construction, maintenance, assembly or transportation activities conducted outside of Turkey.

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[133] See Confidential Attachment 29 – Analysis of electricity pricing over the investigation period. This attachment has been kept confidential as it contains commercially sensitive information regarding Diler electricity purchases.

[134] Further information on the Turkish electricity market is provided below on EPIAS under *Program 30 – Electricity for More than Adequate Remuneration.*

There is no application or approval process for taxpayers to access this deduction. The deduction is claimed by taxpayers as part of their tax filings and is shown in their annual tax returns.

A3.3.5 Is there a subsidy?

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 an amount up to 0.5 per cent of income derived from eligible activities) otherwise due to the GoT by those entities.

As the deduction is available for income derived from export activities (among other things), the Commission considers that a financial contribution under this program would be made in connection with all exports of goods.

Where received, this financial contribution is considered to confer a benefit because of the savings realised by the entity in not having to pay the full amount of tax on such income which would otherwise be payable.

Where exporters of the goods have received a deduction under this program during the investigation period, that deduction confers a benefit in relation to the goods and the financial contribution satisfies the definition of a subsidy under section 269T.

The Commission has determined Diler, Habas and Kroman have each received a benefit under this program during the investigation period. No benefit under this program was reported by Colakoglu in its REQ nor was any benefit identified in its previous years' annual tax returns. Accordingly, the Commission is satisfied no benefit was received by Colakoglu under this program.[135]

A3.3.6 Is the subsidy countervailable?

A subsidy is a countervailable subsidy if it is specific. Specificity is defined in section 269TAAC.

Section 269TAAC(2)(c) provides that a subsidy is specific if it is contingent, in fact or in law and whether solely or as one of several conditions, on export performance.

Annex I of the SCM Agreement provides an illustrative list of export subsidies. Paragraph (f) of the Annex provides the following example:

> *The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.*

Based on the eligibility criteria set out in Law No. 193, the Commission is satisfied that a deduction under this program is not available in respect of domestic consumption. Therefore, having regard to information available on this program, the Commission is

[135] Deductions under Program 5 are reported as part of exporter annual tax returns.

satisfied that a deduction under this program is contingent on export performance, being the income derived from exports or overseas activity.

Accordingly, the Commission has determined that the requirements for specificity under section 269TAAC(2)(c) have been satisfied and that the subsidy available under this program is countervailable.

A3.3.7 Amount of subsidy

Benefits for income tax programs are expensed to the year in which the benefit is received, and the benefit is taken to have been received on the date on which the entity would otherwise have had to pay the taxes associated with the exemption.[136] Accordingly, the Commission has determined that any amount deductable under this program in relation to the investigation period (or a portion thereof) is to be attributed to the investigation period.

Cooperative Exporters

In accordance with section 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.

The Commission has then applied annual interest at the interest rate calculated in its analysis of Program 17.[137]

In accordance with section 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.

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[136] Part 17.3 of the Manual, p.93.

[137] See section 7.6.2 of above for a discussion on the inclusion of interest.

A3.4 Program 8: Exemption from Property Tax

A3.4.1 Background

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.

A3.4.2 Legal basis

The exemption is provided by Article 4 of *Property Tax Law No. 1319*.

A3.4.3 WTO notification

The Commission is not aware of any WTO notification of this program.

A3.4.4 Eligibility criteria

Entities wishing to benefit from this program must notify the related municipality when they first build or acquire a building or land in an OIZ (or other specified area listed in Article 4 of Property Tax Law No. 1319). The municipality then refrains from assessing the relevant land and building (as applicable) for property tax.

A3.4.5 Is there a subsidy?

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 otherwise due to the GoT (at a municipal level) by those entities.

Where received, a financial contribution under this program is considered to confer a benefit because of the savings realised by the entity in not having to pay the full amount of tax which would otherwise be payable.

Based on exporter submissions received, the Commission has identified that Colakoglu and Diler have received a benefit under this program in respect of property located within the Kocaeli Dilovasi OIZ used in connection with the manufacture of the goods.

A3.4.6 Is the subsidy countervailable?

A subsidy is a countervailable subsidy if it is specific. Specificity is defined under section 269TAAC.

Section 269TAAC(2)(b) provides that a subsidy is specific if, subject to section 269TAAC(3), it is limited to entities carrying on business within a designated geographical region.

The Commission is satisfied this program provides an exemption from paying tax on property located in designated regions, thereby satisfying the criteria in section 269TAAC(2)(b).

The Commission does not consider that section 269TAAC(3) applies as the subsidy favours enterprises within OIZs over those located elsewhere.

A3.4.7 Amount of subsidy

Benefits for income tax programs are expensed to the year in which the benefit is received, and the benefit is taken to have been received on the date on which the entity would otherwise have had to pay the taxes associated with the exemption.[138] Accordingly, the Commission has determined that any amount deductable under this program in relation to the investigation period (or a portion thereof) is to be attributed to the investigation period.

Cooperative Exporters

The Commission has determined that Colakoglu and Diler received a benefit under this program during the investigation period, in accordance with section 269TACC(3)(b).

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

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.

The Commission has then applied annual interest at the interest rate calculated in its analysis of Program 17.[139]

In accordance with section 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.

A3.5 Program 12: Inward Processing Certificate Exemption Program

A3.5.1 Background

The program, otherwise known as the *Import duty rebates/drawbacks under Article 22 of Turkey's Domestic Processing Regime*[140], allows Turkish manufacturers to apply for an Inward Processing Certificate (**IPC**), which permits them to obtain raw materials and intermediate unfinished goods used in the production of exported goods without paying customs duty or VAT. Having obtained an exemption, manufacturers then have a stated limited time to export the goods.

The program can be classified into two systems: Suspension and Drawback.

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[138] Part 17.3 of the Manual, p.93.

[139] See section 7.6.2 above for a discussion on the inclusion of interest.

[140] See GoT RGQ, p.61.

Under the Suspension System, tax exemptions are provided to Turkish manufacturers on the import of raw materials used in the production process and on the export of final goods. Applicants for the exemption must submit a letter of guarantee or deposit covering all duties and VAT to customs authorities at importation.

Under the Drawback System, import charges are paid during importation, but are reimbursed after export commitments are fulfilled. If the relevant goods are not exported, import duty and VAT are not reimbursed. Reimbursement of VAT and import duty can only be claimed when the relevant products are exported.

The applicant makes reference to the imposition of a countervailing subsidy rate by the USDOC in respect of this program following its 2017 investigation into Habas.[141] The applicant submits that the investigation by the USDOC demonstrates that a subsidy is provided under this program and that the subsidy is specific and remains current.

A3.5.2 Legal basis

The program is governed by *Decree on Inward Processing Regime No. 2005/8391*.

A3.5.3 WTO notification

The Commission is not aware of any WTO notification of this program.

A3.5.4 Eligibility criteria

Any exporter may apply to utilise the program.

Exporters must apply to the GoT to receive a benefit under the program. Applications are assessed on the following criteria set out in Article 9 of Decree No. 2005/8391:

- that it is possible to determine the imported products are used in obtaining the processed product;
- that producers do not adversely affect the image of the Turkish goods negatively;
- that the processing activity creates added value and increases capacity utilization, competitiveness and export potential of the processed product; and
- the performances of the entities within the scope of their inward processing licences/permits.

A3.5.5 Is there a subsidy?

Based on information provided to the Commission, the Commission has determined that each of the cooperating exporters have utilised this program under the Suspension System.

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[141] US Final Affirmative Determination.

Section 17.3 of the Manual – *Remission or drawback of import charges upon export* provides that, in the case of an exemption of import charges upon export, such as provided under the Suspension System, a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product (making normal allowances for waste) or if the exemption covers charges other than import charges imposed on the input. The amount of the benefit will be the import charges that otherwise would have been paid on the inputs not consumed in the production of the exported product and the amount of charges other than import charges covered by the exemption.

However, the Commission may determine that the entire exemption amount constitutes a benefit if the foreign government has not examined the inputs in order to confirm that such inputs are consumed in the production of the exported goods, in what amounts, and the taxes that are imposed on the inputs. If it is found that there is a system in place that confirms this information, the Commission will examine that system to see if it is reasonable.

Based on the GoT RGQ and regulations on the Inward Processing Regime[142], the Commission has determined that the GoT has a system in place for monitoring compliance with the Inward Processing Certificate Exemption Program (for both Drawback and Suspension systems) as follows:

- In order to apply for an IPC, exporters enter into the online register the products and quantities intended for export, and the product and quantity of imports required to produce the stated exports;

- Following the issue of the IPC by the Ministry of Economy, the exporter may begin importing the required raw materials. When the imported material arrives, Turkish Customs enters the import information, including the IPC number indicated on the Customs Entry Document, into its online system. Upon exportation, Turkish Customs enters the relevant information, including the IPC number indicated on the Customs Exit Declaration, into the online system. Turkish Customs and the Ministry of Economy systems are linked, and all imports and exports under a given IPC can be viewed in the IPR e-portal allowing tracking of all imports and exports made under a particular IPC;

- Upon completion of production and exportation, the exporter submits realised import and export lists to the Ministry of Economy in order to confirm the export of the finished goods produced from the relevant imported inputs; and

- Upon confirmation, the Turkish Government will close off the relevant IPCs.

Exporters must also provide to Turkish Customs at the time of import a letter of guarantee or pledge of money covering all possible duties otherwise payable if the IPC is not followed.

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[142] Available at Exhibit 18, GoT RGQ.

The Commission is satisfied from the information available that the GoT has in place a reasonable system for confirming which inputs are consumed in the production of the exported goods, in what amounts, and the taxes that are imposed on those inputs.

Accordingly, consistent with the approach set out in the Manual, the Commission is satisfied that no subsidy is provided under this program.

A3.6 Program 17: Rediscount Program

A3.6.1 Background

Under this program, Turk Eximbank (as well as commercial banks approved by the Central Bank of Turkey) provides financial support, by way of a pre-shipping financing facility, to exporters in the preparatory stage of exports, with the intention of increasing the competitiveness of Turkish exporters in foreign markets.

Upon approval of an application, Turk Eximbank will issue the loan amount, minus interest, to the applicant.[143] Loans under the program are contingent on an export commitment by the applicant which must be satisfied, along with repayment of the loan, within 360 days. These commitments are made against promissory notes issued on behalf of the applicant (usually issued by a commercial bank for a fee).

A3.6.2 Legal basis

The program is governed by the *Implementation Principles for Rediscount Program*.[144]

A3.6.3 WTO notification

This program has been notified to the WTO. [145]

A3.6.4 Eligibility criteria

The program is available to Turkish exporters, Foreign Trade Corporate Companies (FTCC)[146] and Sectoral Foreign Trade Companies (SFTCs)[147], subject to assessment of their credit-worthiness and risk.

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[143] For example, where interest payable on $100,000 is $4,000 over the term of the loan, the exporter will receive payment of $96,000, with the whole $100,000 payable on maturity.

[144] GoT RGQ – Exhibit 20.

[145] Part IV – *Communication on Subsidies – New and full notification pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures – Turkey*, 28 August 2017.

[146] Entities which have an export performance of at least USD 100 million or above in the previous year and paid in capital TL 2 million or above qualify for **FTCC** status in the following year.

[147] SFTCs are company entities formed under Turkish law made up of at least ten small and medium sized enterprises (SMEs) or five SMEs in priority development zones intended to encourage SMEs to engage in export activities.

A3.6.5 Is there a subsidy?

Nature of Turk Eximbank

The Export Credit Bank of Turkey, otherwise known as Turk Eximbank, is a wholly state-owned bank, acting as the government's major export incentive instrument and is the sole official export credit agency in Turkey. The Bank maintains close cooperation with related entities of the government, with its policies and operations formulated within the framework of export strategies pursued by the GoT.

The Bank operates in the framework of the Banking Law and the regulations of the Banking Regulation, the Supervision Agency of Turkey and its Laws, Principles and Articles of Association, which set out its objectives and scope of operations.

Turk Eximbank is under the responsibility of the Prime Ministry.

The Bank's main sources of funds are direct funding from the Treasury through capital injections as well as through borrowing from commercial banks and international financial markets. Losses incurred by Turk Eximbank are covered by the GoT.[148]

Having regard to the above, the Commission has determined, taking into account the considerations set out in Part A1.1 of Appendix A, that Turk Eximbank satisfies the criteria of a public body for the purposes of the definition of subsidy in section 269T.

Nature of the contribution

In accordance with section 16.3 of the Manual, the Commission considers a loan is considered a direct transfer of funds and therefore is considered as a financial contribution.

As loans made under this program are contingent on an export commitment by recipients, the Commission is satisfied that such loans constitute a financial contribution in respect of exports, including exports of the goods. The Commission is also satisfied that the financial contribution is provided by a public body (as discussed above).

Section 269TACC(3)(b) provides that, when determining whether a financial contribution has conferred a benefit, the making of a loan by a government or public body does not confer a benefit unless the loan requires the recipient to repay a lesser amount than would otherwise be payable under a comparable commercial loan.

The Commission considers that loans granted under this program by Turk Eximbank are on terms more favourable than the recipient could actually obtain on the market, with the benefit being the amount of the difference between the interest rate paid by the exporter of the goods under this program and the interest rate that would be payable on the market.

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[148] *Turk Eximbank – Laws, Principles, Articles of Association*, September 2013.

Accordingly, the Commission is satisfied that a loan provided under the Rediscount Program is a subsidy as defined in section 269T.

A3.6.6 Is the subsidy countervailable?

A subsidy is a countervailable subsidy if it is specific. As provided for in section 269TAAC(2)(c), a subsidy is specific if it is contingent, in fact or in law, and whether solely or as one of several conditions, on export performance.

The Commission is satisfied, on the basis that loans made under this program are contingent on an export commitment from recipients, that a subsidy under this program is countervailable.

A3.6.7 Amount of subsidy

The Commission has undertaken an analysis of the information provided by cooperating exporters in relation to loans they have sourced from 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 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 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.[149]

The Commission notes that some exporters submitted a benchmark rate which took interest rates offered for short-term loans from private banks and government owned commercial banks weighted for the period those loans overlapped with the investigation period. The Commission has not used such weighting in the determination of its benchmark as it considers the preferable method for calculating the benchmark is to take all commercial rates available during the investigation period, regardless of which point in the period that rate is available.

[149] See Confidential Attachment 30 – Rediscount Program. This attachment has been kept confidential as it contains commercially sensitive information relating to loans obtained by the exporters.

Cooperative Exporters

The Commission has determined that Diler, Habas and Kroman received a financial contribution that conferred a benefit under this program during the investigation period, in accordance with section 269TACC(3)(b).

In accordance with section 269TACD(1), the amount of the subsidy has been determined for each exporter as the difference between the benchmark rate as described above and the actual interest rate incurred at the time the loan was sourced.

The amount of subsidy received in respect of the goods has been calculated by taking the interest rate differential, expressed as a percentage, and, consistent with the Commission's treatment of short-term loans[150], multiplying it by the value of the loan. In accordance with section 269TACD(2), this amount has then been apportioned to each unit of the goods using the value of all exports for each entity during the investigation period.

A3.7 Program 19: Investments Provided under Turkish Law No. 5746

A3.7.1 Background

This program provides a range of tax deductions to eligible entities in connection with their R&D activities, with the intent to support and encourage, through R&D and innovation:

- the production of technological knowledge, innovation in the product and production processes;
- enhancement in product quality and standards;
- increases in productivity;
- reduction of production costs;
- commercialization of technological knowledge;
- development of pre-competition cooperation;
- technology intensive production and acceleration of technology intensive production;
- entrepreneurship and investments;
- inflows of foreign direct investments in R&D; and
- innovation and enhancement of R&D personnel and qualified staff employment.

[150] Part 17.3 of the Manual, p.94, Loans.

Deductions can be claimed in the following categories:

- *R&D allowance* – certain expenses related to expenditure on research and development can be deducted from income tax;
- *Income Tax Withholding Incentive* – wages for certain employees working in research and development are exempt from a portion of income tax: 90 per cent for those with a PhD and 80 per cent for all other employees;
- *Insurance Premium Support* – half of social security insurance premiums payable by employers are paid for on behalf of the recipient by the GoT; and
- *Stamp Duty Exemption* – stamp duty is not levied on documentation in connection with activities falling within the scope of the program.

A3.7.2 Legal basis

The program is governed by the *Law on supporting Research and Development Activities No. 5746*.

A3.7.3 WTO notification

The Commission is not aware of any WTO notification of this program.

A3.7.4 Eligibility criteria

In order to be eligible to receive benefits under this program, entities must satisfy the following criteria:

- undertake R&D activities in Turkey;
- employ at least 15 full-time equivalent R&D personnel;
- have sufficient R&D management capability and capacity regarding to technological assets, research and development human resources, intellectual property, project and information resources; and
- undertake R&D and innovation projects of which subject, duration, budget and human resources needs have been defined.

Applicants must apply through the Ministry of Science, Industry and Technology who assess the R&D capacity of the applicant and the compatibility of the applicant with the requirements of Law 5746.

A3.7.5 Is there a subsidy?

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 otherwise due to the GoT by those entities.

Where received, a financial contribution under this program is considered to confer a benefit because of the savings realised by the entity in not having to pay the full amount of tax which would otherwise be payable.

The Commission has determined that Kroman received a benefit under this program during investigation period, by way of a deduction of R&D expenditure not otherwise covered under other applicable programs (see Program 21 below). The information provided to the Commission indicates that this expenditure was in relation to the two following projects:

- development of a full automatic production line allowing automatic loading of billets, conveyance and cutting allowing preparation of high quality semi-finished products for the rolling process; and

- development of a software system which allows monitoring and storage of data created during use of its coil rolling mill.

The Commission has reviewed the information provided by Kroman in respect of these projects and has determined that this R&D expenditure is related to the production of the goods.

The Commission is satisfied that the deduction provided under this program provides a benefit in respect of the goods and is therefore a subsidy as defined in section 269T.

A3.7.6 Is the subsidy countervailable?

A subsidy is a countervailable subsidy if it is specific. Section 269TAAC(3) provides that a subsidy is not specific, subject to section 269TAAC(4), if:

(a) eligibility for, and the amount of, the subsidy are established by objective criteria or conditions set out in primary or subordinate legislation or other official documents that are capable of verification; and

(b) eligibility for the subsidy is automatic; and

(c) those criteria or conditions are neutral, do not favour particular enterprises over others, are economic in nature and are horizontal in application; and

(d) those criteria or conditions are strictly adhered to in the administration of the subsidy.

The Commission has examined the eligibility criteria for the program and considers that eligibility is established by objective and verifiable criteria set out in Law 5746. While an application to receive a deduction under this program is subject to assessment by a panel set up by the Ministry, such discretion may not necessarily lead to a determination that a subsidy is specific. However, when there is evidence that the exercise of discretion has led to one of the following factors described in section 269TAAC(4) being fulfilled, a determination of specificity may be found:[151]

[151] Part 18.3 of the Manual. p.110, Discretion of granting authority.

(a) the fact that the subsidy program benefits a limited number of particular enterprises;

(b) the fact that the subsidy program predominantly benefits particular enterprises;

(c) the fact that particular enterprises have access to disproportionately large amounts of the subsidy; or

(d) the manner in which a discretion to grant access to the subsidy has been exercised.

In its consideration of the above factors, the Commission has examined all expenditure by the GoT on R&D activities for 2017.

As shown in the table below, approximately 7.6 per cent of expenditure has been in the industrial production and technology sector, which the Commission considers the relevant sector for this investigation.

Investment sector	**Percentage**
Exploration and exploitation of the earth	25.9%
Environment	2.6%
Exploration and exploitation of space	1.4%
Transport, telecommunication and other infrastructures	11.8%
Energy	2.7%
Industrial production and technology	7.6%
Health	1.6%
Agriculture	16.0%
Education	2.2%
Culture, recreation, religion and mass media	0.1%
Political and social systems, structures and processes	0.7%
General advancement of knowledge: R&D financed from general university funds (GUF)	0.1%
General advancement of knowledge: R&D financed from other sources than GUF	7.5%
Defence	19.8%
Total	**100%**

Table A.2 General government expenditure on R&D by investment sector[152]

Based on the information available to the Commission, there is no evidence to indicate that any of the factors in section 269TAAC(4) have been manifested in the administration of this program.

Accordingly, having considered the factors set out in section 269TAAC(4), the Commission is satisfied that the requirements of section 269TAAC(3) have been met.

[152] See Non-confidential Attachment 4– Program 19 GoT R&D expenditure.

Accordingly, the Commission considers a subsidy under this program is not specific and is therefore not countervailable under section 269TAAC.

A3.8 Program 21: Industrial R&D Projects Grant Program

A3.8.1 Background

The *Industrial R&D Projects Grant Program* is administered by the Scientific and Technological Research Council of Turkey (**TUBITAK**) and is intended to increase research-technology development capability, innovation culture and competitiveness of recipient entities through the provision of direct grants to recipients.

The program supports R&D projects aiming to:

- develop or improve new products;
- develop new techniques to diminish the cost and/or raise the quality and standard of a product; and
- develop new production technologies.

A3.8.2 Legal basis

The program is governed by the TUBITAK *Implementation Principles*[153] for the program.

A3.8.3 WTO notification

The Commission is not aware of any WTO notification of this program.

A3.8.4 Eligibility criteria

Any entity company established in Turkey may apply.

Applications are evaluated by TUBITAK based on three criteria:

- the project's R&D content and technological-innovative aspects;
- the project plan and the entity infrastructure; and
- economic and social benefits expected from the outcomes.

Nature of TUBITAK

TUBITAK is the leading agency for management, funding and conduct of research in Turkey with a mission to advance science and technology, conduct research and support Turkish researchers. It is an autonomous institution related with the Turkish Ministry of Science, Industry and Technology, with its duties and powers ultimately set by the GoT.

[153] GoT RGQ – Exhibit 27.

TUBITAK is responsible for promoting, developing, organizing, conducting and coordinating research and development in line with Turkish national targets and priorities. It also acts as an advisory agency to the Turkish Government on science and research issues, and is the secretariat of the Supreme Council for Science and Technology which is the highest science and technology policy making body in Turkey.[154]

The Commission has considered the criteria regarding public bodies as discussed in Part A1.1 of Appendix A and has determined, based on its connection and role within the GoT, as well as its guiding role to the government on science and technology policy, that TUBITAK is a public body for the purposes of section 269T.

Nature of the contribution

The Commission considers that the laws governing this program provide for a financial contribution by TUBITAK to eligible entities, by way of a direct grant paid to recipients.

The Commission has determined that Kroman has received a benefit under this program during investigation period, by way of a direct grant towards research and development expenditure. The information provided to the Commission indicates that this expenditure was in relation to the two following projects:

- development of a full automatic production line allowing automatic loading of billets, conveyance and cutting allowing preparation of high quality semi-finished products for the rolling process; and

- development of a software system which allows monitoring and storage of data created during use of its coil rolling mill.

The Commission notes that Kroman also received a benefit for these projects under Program 19.

The Commission has reviewed the information provided in respect of these projects and has determined that this R&D expenditure is related to the production of the goods.

The Commission is satisfied that a grant provided under this program provides a benefit in respect of the goods and is therefore a subsidy as defined in section 269T.

A3.8.5 Is the subsidy countervailable?

Like its examination of countervailability under Program 19, the Commission has examined the eligibility criteria for this program and considers that eligibility is established by objective and verifiable criteria. It also notes that an application to receive a grant under this program is subject to assessment by a panel set up by TUBITAK, however, as discussed under Program 19, such discretion may not necessarily lead to a determination that a subsidy is specific unless one of the factors in section 269TAAC(4) is fulfilled.

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[154] http://www.tubitak.gov.tr/en/about-us/content-who-we-are

Given the similarities between this program and Program 19, the Commission considers that the analysis around the factors in section 269TAAC(4) undertaken in respect of Program 19 is equally applicable to a subsidy received under this program.

Accordingly, the Commission considers a subsidy under this program is not specific and is therefore not countervailable under section 269TAAC.

A3.9 Program 22: Assistance to Offset Costs Related to Anti-Dumping/Countervailing Subsidy Duty Investigations

A3.9.1 Background

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

A3.9.2 Legal basis

The TSEA was established under *Law No. 5910 – Law on the Establishment and Duties of Turkish Exporters Assembly and Exporter Associations*.

Financial support is provided pursuant to *Implementation Procedures and Principles on Financial Support for the Attorney/Legal Consultancy Fees paid by Companies as part of Investigations of Trade Policy Measures and Practices of Generalized System of Preferences* (**Implementation Procedures and Principles**).[155]

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.

A3.9.3 WTO notification

The Commission is not aware of any WTO notification of this program.

A3.9.4 Eligibility criteria

In order to claim a contribution under this program, TSEA members must be under an anti-dumping, subsidy or safeguards measures investigation and have exported goods worth at least USD 500,000 within the two years prior to the investigation.

A3.9.5 Is there a subsidy?

Nature of the Turkish Steel Exporters' Association

TSEA is a sub-organisation of the Turkish Exporters Assembly and is a private entity funded by contributions from its members.[156]

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[155] GoT RGQ, Exhibit 28.

[156] Law No. 5910, Article 18.

As it is a private body, the Commission has had regard to whether TSEA is entrusted or directed by the government to carry out a government function (see Part A1.1 of **Non-confidential Appendix A** above for further discussion).

Article 1 of Law 5910 provides that:

> *The objective of this Law is to regulate the procedures and principles related with the foundation, operation, duties, bodies, expenses and auditing of the exporters' associations and the Turkish Exporters Assembly and the rights and obligations of its members in order to contribute to the economy by increasing export through organizing the exporters and improving cooperation.*

Pursuant to Article 4(1), exporters are obliged by law to be a member of the related association, which for the purposes of the entities relevant to this investigation is the TSEA, and are obliged to contribute to the association pursuant to Article 18 of Law 5910.

The duties of associations are described in Article 3.3 of Law 5910. Article 1 of the Implementation Procedures and Principles, prepared in accordance with Article 3(3)(a) of Law 5910, provides that the purpose of the Implementation Procedures and Principles is to "…regulate the financial support covered by the budget of the Exporters' Associations [(TSEA)] for the attorney/legal consultancy fees paid by companies as part of investigations abroad of trade policy measures…"

Decisions on whether applications satisfy the eligibility criteria to receive funding are made by the TSEA, however, there is no discretion with the association on whether to accept or reject an application.[157]

Considering the above, the Commission is satisfied that while it is a private entity, exporters are legally required to be a member of TSEA and TSEA is legally required to provide support to those members, which can include financial support in connection with investigations of trade policy measures.

Given the mandatory nature of these obligations, imposed by the GoT through legislation, and the intended purpose of the legislation as per Article 1 of Law 5910, being to contribute to the Turkish economy by increasing exports, the Commission is satisfied TSEA has been entrusted to carry out a government function.

This determination is further supported by a previous submission by TSEA in *Investigation 264 – Steel Reinforcing Bar Exported from Korea, Malaysia, Singapore, Spain, Taiwan, Thailand and Turkey*[158] in which it describes itself as "a semi governmental organization".

Accordingly, the Commission considers that a financial contribution by TSEA is a contribution by a private body directed to carry out a government function.

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[157] Articles 5 and 6, Implementation Procedures and Principles.

[158] Case 264 EPR item number No.52, p.5.

Nature of the contribution

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.

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.

A3.10 Program 23: Social Security Premium Support (Employer's Share)

A3.10.1 Background

This program, otherwise known as "Employer's Share in Insurance Premiums Program" was requested by the applicant to be included as part of the investigation into countervailable subsidies.

The Commission has determined that this program ceased as of 31 December 2012.[159] However, the GoT has identified "Social Security Premium Incentive under the Law 6486" as a program providing similar social security benefits to employers as the Social Security Premium Support. Accordingly, its response under Program 23 has been based on the current Social Security Premium Incentive program in place. Habas has also taken the same approach in respect of this program in its response.

The Commission has accepted this approach and has assessed this program pursuant to the criteria applicable to the Social Security Premium Incentive. As such, a reference to "program" throughout the remainder of this Part A3.10 is a reference to the Social Security Premium Incentive.

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[159] Paragraph 3.3.2.2, *Trade Policy Review, Report by the Secretariat – Turkey*, WTO, available at https://www.wto.org/english/tratop_e/tpr_e/s331_e.pdf

The program is intended to increase production and employment levels by reducing the costs of social security insurance premiums payable by employers.

Under Program 31 (discussed below), five per cent of an employer's social security premium share is paid by Treasury if that employer submits all relevant social security documentation and pays the employee's share of premiums, as well as the rest of the employer's share, within the statutory periods. This incentive is an across the board application regardless of sector or region.

The remaining six per cent of an employer's social security premiums is covered by Treasury under this program if an employer is operating in certain provinces determined by the GoT (meaning that employers will not pay any of the employer's share of social security premiums).

A3.10.2 Legal basis

The program is governed by Article 81 of the *Social Security and General Health Insurance Law No. 5510* and the *Social Security Premium Incentive Law No. 6486*.

A3.10.3 WTO notification

The Commission is not aware of any WTO notification of this program.

A3.10.4 Eligibility criteria

The Commission understands that this program is available to employers located within certain provinces in Turkey who comply with the following insurance requirements:

- employers submit, within the required timeframe to the Social Security Institution, the premium and service documents pursuant to the Law regarding the insurance holders they employ;
- the amount belonging to employer's share not covered by Treasury is paid within legal timeframes; and
- there should not be any premium, administrative fine, and any default fine or default increment debts owing to the Social Security Institution by the employer.

The expiry date for this program varies depending on the relevant province. Eligible provinces and their applicable expiry dates are set out in Decrees no. 2016/9728 and 2018/11190.[160]

[160] Available at Exhibit 31, GoT RGQ.

A3.10.5 Is there a subsidy?

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.

Due to the nature of this program, being a general deduction on employer social security insurance premiums regardless of the activities undertaken by the employer, it is considered that a financial contribution under this program would be made in connection with the production or exports of any goods by the recipient entity.

Where received, this financial contribution is considered to confer a benefit because of the savings realised by the entity in not having to pay the full amount of premiums otherwise payable.

Where exporters of the goods have received a deduction under this program during the investigation period, that deduction confers a benefit in relation to the goods and the financial contribution satisfies the definition of subsidy under section 269T.

The Commission has determined that Habas has received a benefit under this program in respect of its gas production facilities located in Elazig and Hatay. As discussed below under *Program 25 – Investment Incentive Program*, the Commission has determined these facilities are used in connection with the production of the goods.

A3.10.6 Is the subsidy countervailable?

A subsidy is a countervailable subsidy if it is specific. Specificity is defined under section 269TAAC.

Section 269TAAC(2)(b) provides that a subsidy is specific if, subject to section 269TAAC(3), it is limited to entities carrying on business within a designated geographical region.

The Commission is satisfied this program provides an exemption based on, among other things, the geographical location of entities, thereby satisfying the criteria in section 269TAAC(2)(b).

The Commission does not consider that section 269TAAC(3) applies as the subsidy favours enterprises within OIZs over those located elsewhere.

A3.10.7 Amount of subsidy

In accordance with section 269TACD(1), the amount of the subsidy received in respect of the goods is the benefit amount as reported by Habas.

The Commission has allocated the amount of the benefit by having regard to all company turnover.

The Commission has then applied annual interest at the interest rate calculated in its analysis of Program 17.[161]

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

A3.11 Program 25: Investment Incentive Program

A3.11.1 Background

The program, which includes the *Investment Encouragement Program VAT and Import Duty Exemptions*[162], is intended to encourage investment to boost production and employment, to encourage large scale and strategic investments with high research and development content for increased international competitiveness, to increase foreign direct investments, to reduce regional development disparities and to promote investments for clustering and environment protection. It is divided into four different schemes, with the level of support available dependant on which scheme an entity is eligible:

- General Investment Incentives Scheme;
- Regional Investment Incentives Scheme;
- Large-Scale Investment Incentives Scheme; and
- Strategic Investment Incentives Scheme.

To be eligible to receive support under the program, an entity must hold an Investment Incentive Certificate issued by the GoT.

Support measures available under the program include:

- *VAT Exemption* – exemption for imported and/or domestically delivered machinery and equipment within the scope of the Investment Incentive Certificate;
- *Customs Duty Exemption* – exemption for imported machinery and equipment within the scope of the Investment Incentive Certificate;
- *Tax Reduction* – income or corporate tax is calculated on basis of reduced rates until the total amount of reduced tax reaches the amount of contribution to the investment;
- *Social Security Premium Support (Employee's Share)* – for additional employment created by the investment, the employee's share of the social security premium (calculated on basis of the legal minimum wage) will be covered by the GoT;

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[161] See section 7.6.2 above for a discussion on the inclusion of interest.

[162] See GoT RGQ, pp.61, 110 and 111.

- *Social Security Premium Support (Employer's Share)* – for additional employment created by the investment, the employer's share of the social security premium calculated on basis of the legal minimum wage will be covered by the GoT;

- *Income Tax Withholding Allowance* – income tax with regard to additional employment created by the investment, within the scope of the investment incentive certificate, will not be liable to withholding taxes;

- *Interest Rate Support* – a portion of the interest/profit share regarding the investment loan equivalent, at most 70 per cent of the fixed investment amount registered in the Investment Incentive Certificate, will be covered by the GoT for a maximum of the first five years;

- *Land Allocation* – land may be allocated for investments, depending on the availability of such land;

- *VAT Refund* – VAT collected on construction expenses, made within the scope of strategic investments with a minimum fixed investment amount of TRY 500 million, will be rebated.

A3.11.2 Legal basis

The program is governed by *Decree on State Incentives in Investments No. 2012/3305* of the Council of Ministers.

A3.11.3 WTO notification

This program has been notified to the WTO.

A3.11.4 Eligibility criteria

The Decree sets out a range of investments eligible to receive support under the program, along with minimum investment requirements. Investments in specified regions are eligible for additional support.

Investors apply to the GoT with their proposal. Evaluation is made on the basis of macro-economic programmes, supply and demand conditions and sectoral, financial and technical terms, whereupon eligible investment projects are granted an Investment Incentive Certificate.

A3.11.5 Is there a subsidy?

Port Facilities

Habas owns and operates its own port facilities in Izmir, located approximately 6kms away from its rolling mill where the goods are produced. The port is used mainly to unload scrap metal and to load steel products and was used during the investigation period for

the export of the goods to Australia.[163] Izmir is a specified region listed in Annex 1 of the Decree.

From information provided by Habas in its REQ, the Commission has determined that the port received the following measures under this program during the investigation period:

- VAT Exemption[164] and Customs Duty Exemption[165] in respect of machinery and equipment used at the port; and
- Tax Reduction[166] in respect of corporate tax payable by Habas.

The Commission considers that each measure above provides a financial contribution from the GoT, being the foregoing of revenue otherwise due to the GoT. Where received, the financial contribution is considered to confer a benefit because of the saving realised in not having to pay the full amount of tax and customs which would otherwise be payable.

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

Habas has stated in its response that the machinery and equipment used at the port for which it received a VAT and Customs Duty exemption was not used in the production of the goods.

The Commission wishes to note that a benefit does not need to be only in relation to the **production of the goods** in order to be a subsidy. Pursuant to section 269T(1), a contribution which confers a benefit **in relation to the goods** may be a subsidy (providing the other requirements of section 269T(1) are met). A benefit in relation to the goods may be a benefit in respect of activity much broader than the production of the goods, such as transportation, shipping or loading activities.

The Commission has examined documentation provided by Habas in respect of the subject machinery and has determined, based on product brochures and marketing material provided on the manufacturer's website, that the machinery is used primarily for movement of scrap metal, which is a raw input used in the production of the goods.

The Commission considers that the movement of scrap is an activity in relation to the goods and accordingly, is satisfied that a benefit received in relation to the machinery is a benefit in relation to the goods and that such a benefit is therefore a subsidy under section 269T.

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[163] Habas website, http://www.habas.com.tr/Category/Alias/seaport-services

[164] Article 10, Decree on State Incentives in Investments No. 2012/3305.

[165] Article 9, Decree on State Incentives in Investments No. 2012/3305.

[166] Article 15, Decree on State Incentives in Investments No. 2012/3305.

Tax reduction in respect of corporate tax

Habas is entitled under this program to a reduction in the corporate tax rate payable for investments it has made in relation to its port facilities.

The Commission has examined tax records provided by Habas as part of its REQ, along with the Investment Incentive Certificate issued by the GoT[167], and is satisfied Habas received a deduction under this program during the investigation period in respect of the port.

The Commission is further satisfied Habas used the port for the export of the goods to Australia and accordingly, this deduction is a benefit is a subsidy pursuant to section 269T.

Industrial Gas Facilities

From information provided by Habas in its REQ, the Commission has determined that Habas has received a benefit under this program, by way of a reduction in respect of its corporate tax payable, in respect of its gas production facilities located in Elazig and Hatay, both of which are specified regions listed in Annex 1 of the Decree. Habas, in response to queries from the Commission, has advised its Elazig and Hatay facilities are involved in the production, distribution and sale of oxygen, nitrogen, argon and other industrial gases, along with tubes and gas containers generally used in medical treatment and industrial manufacturing, which are related not to the goods.

As a result of the Commission's conduct of other cases relating to the production of steel products, the Commission understands that industrial gases such as those mentioned in the Habas response are consumed in the production of steel.

While Habas has stated the Investment Incentive Certificate it received conferred a benefit in relation to its industrial gas division, the available information provided by Habas does not support that the benefit was necessarily isolated to the activities undertaken by the industrial gas division.

Further, the benefits received in relation to the industrial gas division, while separately identified under the relevant investment certificate number are aggregated on the Habas 2017 financial year tax return where the calculated corporate tax amount is reported. Also, the certificate data provided in relation to the industrial gas division does not specify whether this certificate was valid during the investigation period. On the basis of the investment commencement date and the data provided in connection with the port facility investment, the Commission considers it reasonable to assume that the certificate relating to the industrial gas division is also still valid. Accordingly, the Commission considers it reasonable that the benefit received in relation to the industrial gas division has been conferred in part to the production and sale of rebar through the production of steel billets manufactured in Habas's melt shop operations.

[167] Case 495 EPR item number 023, Confidential Exhibit S1.

A3.11.6 Is the subsidy countervailable?

A subsidy is a countervailable subsidy if it is specific. Specificity is defined under section 269TAAC.

Section 269TAAC(2)(b) provides that a subsidy is specific if, subject to section 269TAAC(3), it is limited to entities carrying on business within a designated geographical region.

The Commission is satisfied this program provides an exemption based on, among other things, the geographical location of entities.

However, a program will not be specific if the criteria in section 269TAAC(3) are satisfied.

The Commission has examined the eligibility criteria for the program and considers that eligibility is established by objective and verifiable criteria set out in the Decree. However, the Commission notes that the Decree:

- lists specific industries which are eligible to receive benefits (Annex 2-A);
- lists specific industries where large scale investment is eligible to receive benefits (Annex-3); and
- excludes other types of investment areas from receiving a benefit (Annex-4).

Based on the above, the Commission does not consider the criteria in section 269TAAC(3) satisfied by this program, and therefore has determined this program is specific and countervailable.

A3.11.7 Amount of subsidy

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

In accordance with section 269TACD(1), the Commission has determined the amount of subsidy received by Habas in respect of the port machinery as follows:

- VAT Exemption

  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.

  As the machinery is utilized not only for the movement of scrap used in the production of the goods, the Commission has apportioned the benefit amount to the sales of goods exported to Australia during the investigation period by the proportion of total sales (domestic and export) of all products sold by Habas during the investigation period.

  The Commission has then amortized the apportioned benefit over the expected life of the machinery. In the absence of information provided by Habas, the

Commission has used data from the Australian Taxation Office[168] to determine an appropriate amortization period.

The Commission has then applied annual interest at the interest rate calculated in its analysis of Program 17.[169]

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

The Commission notes that Habas has submitted in its response that any VAT payable on purchases is offset by VAT from sales and therefore no benefit is received under the VAT exemption. The Commission does not agree with this submission, as VAT on sales can only be offset against VAT actually paid. As no VAT has actually been paid on the machinery, there is no VAT amount (in respect of the machinery) to be offset.

- Customs Duty Exemption

  From the information provided by Habas, the Commission is satisfied the port machinery was purchased and imported from the European Union.

  While a Customs Duty exemption was provided in respect of the machinery, the Commission is satisfied that the tariff rate between the European Union and Turkey in relation to the machinery was zero per cent[170], and is therefore satisfied that no benefit was received by Habas as a result of this measure being applied.

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

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. In accordance with Article 15 of the Decree, this amount will remain the same from year-to-year throughout the validity of the relevant investment certificate.

The Commission has therefore calculated the subsidy to Habas under this measure by having regard to the value of the allowable deduction made in relation to the port investment, as reported in its 2017 tax return, as follows:

- taking one quarter of the deducted amount for that period of the 2017 tax year which overlaps the investigation period; and

- on the basis that the deductable amount is the same from year-to-year while the certificate is valid, assuming a deductible value for the 2018 tax year the same as

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168 Australian Taxation Office Taxation Ruling TR2018/14 –Transport, postal and warehousing (Port assets).

169 See section 7.6.2 above for a discussion on the inclusion of interest.

170 WTO Tariff Download Facility – Turkey, available at http://tariffdata.wto.org/ReportersAndProducts.aspx

2017, and taking three quarters of that amount for that period of the 2018 tax year which overlaps the investigation period.

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.[171]

The Commission has then applied annual interest at the interest rate calculated in its analysis of Program 17.[172]

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

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

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's 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 attributed based on the value of turnover reported in relation to the steel business division.[173]

The Commission has then applied annual interest at the interest rate calculated in its analysis of Program 17.[174]

A3.12 Program 26: Export-Oriented Working Capital Credit Program

A3.12.1 Background

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.

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[171] Confidential Appendix H-1 of Habas' REQ.

[172] See section 7.6.2bove for a discussion on the inclusion of interest.

[173] The Commission notes that in SEF 495, the benefit was calculated with regard to all company revenue. Following submissions received on SEF 495, the Commission considers it more appropriate to attribute the benefit only in respect of its steel division. See section 7.6.7 above for further discussion.

[174] See section 7.6.2 above for a discussion on the inclusion of interest.

It is administered Turk Eximbank.

A3.12.2 Legal basis

The program is governed by the *Implementation Principles for Export-Oriented Working Capital Credit Program*.[175]

A3.12.3 WTO notification

This program has been notified to the WTO.

A3.12.4 Eligibility criteria

Manufacturers, manufacturer-exporters and firms engaged in foreign currency earning activities which are established in Turkey and which produce export oriented Turkish products are eligible to apply for this credit program, subject to assessment of their credit-worthiness and risk.

A3.12.5 Is there a subsidy?

Given that this program provides for a loan by Turk Eximbank on terms more favourable than the recipient could actually obtain on the market,[176] the Commission considers that the determination by the Commission under Part A3.6.5 regarding *Program 17 – Rediscount Program* on whether Program 17 is a subsidy applies equally to a subsidy received under this program.

Accordingly, the Commission is satisfied that a loan provided under this program is a subsidy as defined in section 269T.

A3.12.6 Is the subsidy countervailable?

A subsidy is a countervailable subsidy if it is specific. As provided for in section 269TAAC(2)(c), a subsidy is specific if it is contingent, in fact or in law and whether solely or as one of several conditions, on export performance.

The Commission is satisfied, on the basis that loans made under this program are contingent on an export commitment from recipients, that a subsidy under this program is countervailable.

A3.12.7 Amount of subsidy

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

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[175] GoT RGQ – Exhibit 33.

[176] See Confidential Attachment 31 – Export-Oriented Working Capital Credit Program. This attachment has been kept confidential as it contains commercially sensitive information relating to exporter loans.

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 considers individual exporter benchmarks appropriate for long term loans given the timeframes over which such loans were offered.

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. [177]

Cooperative Exporters

The Commission has determined that Diler received a financial contribution that conferred a benefit under this program during the investigation period, in accordance with section 269TACC(3)(b).

In accordance with section 269TACD(1), the amount of the subsidy has been determined for Diler as the difference between the benchmark rate as described above and the actual interest rate incurred at the time the loan was sourced.

The amount of subsidy received in respect of the goods has been calculated by taking the interest rate differential, expressed as a percentage, and, consistent with the Commission's treatment of long term loans as set out in section 17.3 of the Manual – *Attributing amortized benefits to each year including the investigation period*, amortizing the value of the loan over the life of the loan. In accordance with section 269TACD(2), this amount has then been apportioned to each unit of the goods using the value of all exports for each entity during the investigation period.

A3.13 Program 27: Short Term Export Credit Insurance Program

A3.13.1 Background

The Short Term Export Credit Insurance Program is a non-cash program run by Turk Eximbank offered to manufacturer exporters, exporters, overseas investors and other entities engaged in foreign currency earning services.

[177] See Confidential Attachment 31 – Export-Oriented Working Capital Credit Program. This attachment has been kept confidential as it contains commercially sensitive information relating to exporter loans.

It provides Turkish exporters with one-year blanket insurance cover for exports purchased on short-term credits. It covers up to 90 per cent of losses due to political and commercial risks eventuating for shipments.

The program provides a post-shipment facility (in that it covers risk arising only after shipment) and covers commercials risks (including insolvency of the buyer, payment default or repudiation of the goods) and political risks (including transfer risks, import restrictions, cancellation of import permits, seizure, non-payment by a public buyer and non-payment due to war, rebellion, etc.). Other types of risk are not covered.

Premiums are determined following an application by exporters and are based on, among other things, countries of export, and are calculated once monthly shipments have been notified to Turk Eximbank. Throughout the policy period, exporters must notify Turk Eximbank of all exports, including when no claim is being made.

A3.13.2 Legal basis

The program is governed by the *Implementation Principles for Short Term Export Credit Insurance*.[178]

A3.13.3 WTO notification

This program has been notified to the WTO.

A3.13.4 Eligibility criteria

Manufacturer-exporters, exporters, exporters, overseas investors/contractors and entities engaged in foreign currency earning services are eligible for the program.

A3.13.5 Is there a subsidy?

Section 17.3 of the Manual, under *Export credit guarantee or insurance programs*, which reflects paragraph (j) of Annex I of the SCM Agreement, provides that an export insurance program (such as the program under investigation) will only be considered a subsidy if the premiums charged for access to the program are inadequate to cover the long term operating costs and losses of the program.

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 67.5million after pay outs of claims.[179]

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[178] Available at Exhibit 36, GoT RGQ.

[179] *Turk Eximbank Annual Report 2017*, p.30 – premiums collected: USD 39million, pay outs: USD 16.05million, recovered amounts 2 million; *Turk Eximbank Annual Report 2016*, p.45 – premiums collected: USD 33.1million, pay outs: USD 13.5million, recovered amounts: USD 2.4million; *Turk Eximbank Annual report 2015*, p.43 – premiums collected: USD 31.5million, pay outs: USD 12.6million, recovered amounts: USD 1.7million.

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.

A3.14 Program 29: Support on subscribing to e-trade websites

A3.14.1 Background

The program provides a grant to recipients towards meeting the subscription costs for e-trade websites.[180]

The program is administered by the Ministry of Economy of the GoT.

A3.14.2 Legal Basis

The Commission is not aware of any legal basis for this program.

A3.14.3 WTO notification

The Commission is not aware of any WTO notification of this program.

A3.14.4 Eligibility Criteria

The Commission is not aware of the eligibility criteria for this program.

A3.14.5 Is there a subsidy?

From the information available, the Commission has determined that Colakoglu has received a financial contribution under this program from the GoT, by way of direct payment towards the online subscription costs for trade publications Trade Atlas and Steel Orbis.

A3.14.6 Is the subsidy countervailable?

Due to the lack of relevant information provided in respect of this program, the Commission has based its finding on all the facts available[181] and made such assumptions as considered reasonable.

In accordance with section 269TAAC(2)(a), the Commission considers, based on the information provided by these publications, that this subsidy is limited to and predominantly benefits particular entities involved in steel manufacturing.

Therefore, the Commission considers this subsidy program to be specific, and therefore countervailable.

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[180] Case 495 EPR item number 011, p.45

[181] Case 495 EPR item number 011, p.45 and Confidential Attachment H-6.4(f)

A3.14.7 Amount of subsidy

In accordance with section 269TACD(1), the amount of the subsidy received in respect of the goods is the grant amount as reported by Colakoglu.

The Commission allocated the amount of the grant to sales of all steel products as a proportion of sales revenue to determine a subsidy margin.

A3.15 Program 30: Electricity for more than adequate remuneration

A3.15.1 Background

The USDOC in its investigation into steel concrete reinforcing bar exported from Turkey[182] examined whether Habas received a financial contribution from the GoT as a result of electricity sold to the government for more than adequate remuneration.

The USDOC found that, while Habas sold electricity during the relevant period of their investigation, it was sold on a commercial basis. Accordingly, the USDOC did not find this program to be countervailable.

In the present investigation by the Commission, electricity was produced and sold by Colakoglu and Habas during the investigation period.

A3.15.2 Legal basis

The Commission is not aware of any legal basis for the sale of electricity to the GoT for more than adequate remuneration.

A3.15.3 WTO notification

The Commission is not aware of any WTO notification of this program.

A3.15.4 Eligibility criteria

The Commission is not aware of any eligibility criteria for this program.

A3.15.5 Is there a subsidy?

The Commission has examined electricity sales data provided by Habas in respect of the investigation period and determined all sales were made through the Turkish central electricity market operator, EPIAS, or to non-government entities.

In its REQ, Colakoglu states that its electricity sales were also through EPIAS.

EPIAS is majority owned by the GoT, through a 30 per cent share held by the government-run Turkish Electricity Transmission Company (TEIAS) and through its ownership of the Turkish Stock Exchange, Borsa Instanbul A.S, which owns a further 30

[182] US Final Affirmative Determination.

per cent.[183] However, EPIAS is not a purchaser of electricity, but acts as a transparent market place for the purchase and sale of power between market participants.[184] The Commission has reviewed legislation underpinning EPIAS as well as commentary by the World Bank[185] and the International Energy Agency[186] and is satisfied that sales conducted through EPIAS are made in market conditions.

In light of the above, the Commission is satisfied no subsidy has been provided under this program.

A3.16 Program 31: Social Security Insurance Premium Deductions

A3.16.1 Background

Pursuant to the *Social Insurance and Universal Health Insurance Law No. 5510*, all employers in Turkey are required to pay, on top of employee wages, social security insurance premiums into a consolidated fund run by the Social Security Institution. The standard rate of for insurance premiums is 20 per cent of an employee's wages, with 11 per cent payable by the employer, and the remaining 9 per cent payable by the employee.

The GoT offers various deductions for employers to their social security premiums, with the deducted amounts then covered by Treasury. The Commission has examined a number of these deductions as part of its countervailing investigation, which are discussed below.

A3.16.2 Legal basis

While all deductions are in respect of premiums due under the Social Insurance and Universal Health Insurance Law, the deductions are governed by various legal instruments, detailed as part of the discussion on each deduction below.

A3.16.3 WTO notification

The Commission is not aware of any WTO notification for any of the deductions examined.

A3.16.4 Eligibility criteria

General

Each of the deductions examined by the Commission are available to all employers throughout Turkey, regardless of industry sector or regional location. However, to be

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183 *EPIAS Turkish Energy Exchange Annual Report 2017*, p.29.

184 *Electricity Market Law No. 6446*, Article 1.

185 *Turkey's Energy Transition – Milestones and Challenges*, World Bank, Part 2.2.2.

186 *Energy Policies of IEA Countries – Turkey*, International Energy Agency, p.160.

eligible to claim these deductions, employers must comply with the following requirements:

- employers submit, within the required timeframe to the Social Security Institution, the premium and service documents required under law regarding the insurance holders they employ;
- the amount belonging to employer's share not covered by Treasury is paid within the required timeframes; and
- there should not be any premium, administrative fine, and any default fine or default increment debts owing to the Social Security Institution by the employer.

A3.16.5 Deductions

A. General Deduction

Pursuant to Article 81 of the Social Insurance and Universal Health Insurance Law, employers who meet the general eligibility criteria are eligible for a deduction to their social security insurance premiums.

B. Minimum Wage Support

This deduction is intended to assist employers in meeting an increase to the minimum wage in January 2016, with the shortfall in premiums met by the Treasury of the GoT.

The Commission notes this program was terminated at the end of September 2018, however, was available throughout the entirety of the investigation period.

The deduction was implemented through an amendment to the Social Insurance and Universal Health Insurance Law by the *Law on Amending Military Service Law and Some Other Laws No. 6661*. Provisional Article 68, inserted into the Social Insurance and Universal Health Insurance Law, sets out the legal basis for this program.

The Commission is not aware of any additional requirements on employers to claim this deduction.

C. Employment of Handicapped Staff

This deduction is available for the employment of employees with disabilities.

The deduction is governed by Article 30 of *Labor Law No. 4857*. Under this law, employers with more than 50 employees are required to employ certain minimum numbers of people with disabilities. Those employers who employ above these minimum thresholds are only required to pay 50 per cent of the employer’s share of social security contributions, with Treasury paying the shortfall.

Employment of Unemployed

Employers who hire personnel registered with the Turkey Employment Agency (known as Iskur) are eligible for a deduction to their social security premiums.

This deduction was available under 31 December 2017 (covering part of the investigation period).

The deduction is governed by Provisional Article 17 of *Unemployment Insurance Law No. 4447* and Cabinet Decree 687 dated 9 February 2017.

Employment of Additional Employees

Law No. 6111 amended *Unemployment Insurance Law No. 4447* to insert a new Provisional Article 10 to provide for a deduction by employers of their social security premiums in connection with the employment of additional employees.

A3.16.6 Is there a subsidy?

The Commission considers these deductions 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.

Due to the nature of these deductions, being a general deduction on employer social security insurance premiums regardless of the activities undertaken by the employer, it is considered that a financial contribution under this program would be made in connection with the production or exports of any goods by the recipient entity.

Where received, this financial contribution is considered to confer a benefit because of the savings realised by the entity in not having to pay the full amount of premiums otherwise payable.

Where exporters of the goods have received a deduction under this program during the investigation period, that deduction confers a benefit in relation to the goods and the financial contribution satisfies the definition of subsidy under section 269T.

A3.16.7 Is the subsidy countervailable?

Based on the information available, the Commission is satisfied that this program is not specific, as per section 269TAAC, as it is available generally to Turkish employers, regardless of sector or region.

Accordingly, the Commission does not consider this program countervailable in respect of the goods.

A4 Further programs where no subsidy was found

A4.1 Discontinued programs

In addition to the programs discussed above, the applicant requested the Commission include the following programs in its investigation:

- Program 2 – Land for Less than Adequate Remuneration
- Program 3 – Electricity for Less than Adequate Remuneration
- Program 7 – Withholding of Income Tax on Wages and Salaries

Each of these programs were established pursuant to *Law 5084 on Encouragement of Investments and Employment and Amendment of Certain Laws*. The Commission notes that each of these programs ceased in December 2012, and further, none of the exporters were located in a region eligible to receive a benefit under these programs while the programs were operational. The Commission further notes that the United States Department of Commerce in its investigation of Habas also found these programs were not used. Accordingly, the Commission has had no further regard to these programs.

A4.2 Remaining programs

Program Number	Program Name	Background	Legal basis under Turkish Law	WTO notification	Eligibility criteria	Is there a subsidy?
9	Exemption from Income Tax on Wages Paid to Workers	The Free Zones Law encompasses matters related to the establishment of free zones, with the objective of increasing export-oriented investment and production in Turkey, among other things. Under the Law, wages of employees of entities that export at least 85 per cent of the FOB value of the goods they produce in the free zones are exempted from income or corporate taxes.	The exemption was provided by Interim Article 3 of the *Free Zones Law No. 3218*, published in the Official Gazette in June 1985. The exemption will remain in effect under the end of the taxation year that Turkey becomes a full member of the European Union.	The Commission is not aware of any WTO notification of this program.	Real persons or entities wishing to conduct business within a free zone must apply for an Operating Licence from the General Directorate of Free Zones, Overseas Investment and Services.	The GoT advised in its RGQ that no exporters operate within the free zones. The Commission has seen no evidence indicating exporters have used this program in respect of the goods during the investigation period and accordingly is satisfied there is no subsidy under this program.
13	Pre-shipment Turkish Lira Export Credits	The Commission understands that the *Pre-Shipment Export Credit Program* covers both *Pre-shipment Turkish Lira Export Credits* and *Pre-shipment Foreign Currency Export Credits*. Under this program, Turk Eximbank provides short-term export credits to manufacturers, exporters and export-oriented manufacturers to meet their financing needs especially at the pre-shipment stage. The program is administered by Turk Eximbank and uses selected commercial banks as intermediaries.	The Commission is not aware of any legal basis for this program.	Yes	Exporters, manufacturer-exporters and manufacturers supplying exporters and SFTCs are eligible for the program.	The Commission has seen no evidence indicating exporters have used this program in respect of the goods during the investigation period.
15	Pre-export Credits	This program provides a short-term credit facility to export-oriented manufacturers, manufacturer-exporters and	The Commission is not aware of any legal basis for this program.	Yes	Exporters, manufacturer-exporters and manufacturers supplying exporters, but	The Commission has seen no evidence indicating exporters have used this program in respect of the

Program Number	Program Name	Background	Legal basis under Turkish Law	WTO notification	Eligibility criteria	Is there a subsidy?
		exporters in the preparatory stage of exports. It aims to increase the competitiveness of exporters in international markets and support export projects in the preparatory stage. The program is administered by Turk Eximbank.			excluding SFTCs and FTCCs.	goods during the investigation period.
16	Short-term Export Credit Discounts	The *Short Term Export Credit Discount Program* was established in October 1996 and revised in 2012 as the *Post-Shipment Rediscount Credit Program*. The *Post-Shipment Rediscount Credit Program* is a post-shipment finance facility, aimed at increasing the competitiveness of Turkish exporters in international markets by enabling them to sell Turkish goods on deferred payment terms and eliminating overseas risks. It is administered Turk Eximbank.	The Commission is not aware of any legal basis for this program.	Yes (referred to as the *Post-Shipment Rediscount Credit Program*)	The Commission is not aware of the eligibility criteria for this program.	The Commission has seen no evidence indicating exporters have used this program in respect of the goods during the investigation period.
18	Foreign Trade Company Export Loans	This program aims to provide financial support to large export trading companies for their export financing needs, with credit available in TL and foreign currency options. It is administered by Turk Eximbank.	The Commission is not aware of any legal basis for this program.	Yes (referred to as the *Foreign Trade Companies (FTC) Short-term Export Credit Programme*)	Available to all entities with SFTC and FTCC status	The Commission has seen no evidence indicating exporters have used this program in respect of the goods during the investigation period.
20	Turkish Development Bank Loans	Under this program, the Development and Investment Bank of Turkey provides working capital and investment loans to	The Commission is not aware of any legal basis for this program.	The Commission is not aware of any WTO	The Commission is not aware of the eligibility criteria for this program.	The Commission has seen no evidence indicating exporters have used this program in respect of the

Program Number	Program Name	Background	Legal basis under Turkish Law	WTO notification	Eligibility criteria	Is there a subsidy?
		entities in the industry, tourism, education, health and energy sectors.		notification of this program.		goods during the investigation period.
28	Support and Stability Fund for participating in trade fairs in abroad	This program provides a grant to recipients to participate in trade fairs abroad. The program is administered by the Ministry of Economy of the GoT.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of the eligibility criteria for this program.	From the information available, the Commission has determined that Colakoglu and Kroman have each received a financial contribution under this program from the GoT. However, as the benefits received were in respect of export markets other than Australia (for Colakoglu, Italy; and for Kroman, Turkmenistan), the Commission is satisfied no subsidy was provided in respect of the goods during the investigation period.
32	Turkish Employers' Association of Metal Industries (**MESS**) Assistance	MESS provides various support to its members.	The Commission is not aware of any legal basis for this program.	The Commission is not aware of any WTO notification of this program.	The Commission is not aware of the eligibility criteria for this program.	MESS aims to assist its members with industrial relations issues and acts on behalf of its members in enterprise bargaining.[187] After consideration of the criteria set out at Part A1.1, the Commission is satisfied MESS is not a government or public body or a private body entrusted to carry out a government function and therefore the Commission is satisfied that any contribution provided under this program is not a subsidy as defined in section 269T.

[187] https://www.mess.org.tr/en/homepage/