AKDENİZ İHRACATÇI BİRLİKLERİ
GENEL SEKRETERLİĞİ

Sayı: 17812098-TİM.AKİB.GSK.SAN.2024/548-5781 Mersin, 13/11/2024
Konu: BK / Ütü Masaları Sübvansiyona Karşı Telafi Edici Önlem

Sayın Üyemiz,

T.C. Ticaret Bakanlığı İthalat Genel Müdürlüğünden alınan bir yazıda, Birleşik Krallık (BK) tarafından BK Gümrük Tarife Cetveline göre 7323.93.00.10, 7323.99.00.10, 8516.79.70.10, 8516.90.00.51 gümrük tarife pozisyonlarında yer alan ülkemiz menşeli **ütü masaları** ithalatına karşı 8 Eylül 2023 tarihinden bu yana %4,02 oranında uygulanmakta olan sübvansiyona karşı telafi edici önleme ilişkin nihai kararın, bir firmamızca yeniden incelenmesi (reconsideration) için 9 Ekim 2023 tarihinde BK ilgili otoritesine (Trade Remedies Authority-TRA) yaptığı başvuru kapsamında nihai kararın yeninden değerlendirildiği ifade edilmektedir.

Devamla, konuya ilişkin olarak TRA tarafından 8 Kasım 2024 tarihinde yayımlanan yeniden değerlendirme raporuna göre, sübvansiyon marjlarının ihracatçı firmalarımız lehine güncellenerek %3,31 oranında uygulanmasının önerildiği bildirilmektedir. Ek'te yer alan mezkur rapora ayrıca https://www.trade-remedies.service.gov.uk/public/case/AS0020/submission/dabdef4c-e549-4514-abed-6a6cf237bd53/ adresinden erişim sağlanabilmektedir. Bununla birlikte, soruşturma ile ilgili detaylı bilgiler de https://www.trade-remedies.service.gov.uk/public/case/AS0020/#public-file adresinde yer almaktadır.

Öte yandan, TRA tarafından yeniden değerlendirilen mezkur karara ilişkin ilgili herhangi bir tarafın üst mahkemeye itirazda bulunabileceği belirtilmiştir. İlgili ayrıntılara https://www.gov.uk/tax-upper-tribunal adresinden ulaşılabilmektedir.

Bilgilerini rica ederim.

H. Okan ŞENEL
Genel Sekreter V.

Ek: Final Reconsideration Report

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Trade Remedies Authority

Reconsideration of an original decision in the subsidy investigation into ironing boards from the Republic of Türkiye (AS0020)

20 June 2024

1 Introduction / Executive Summary

1. This reconsideration report is produced for the Secretary of State for Business and Trade (the Secretary of State) to consider whether to accept or reject the TRA's reconsidered decision, in accordance with regulation 14(9) of the Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019, (the R&A Regulations)[1].

2. The reconsideration has been carried out by a team who were not part of the case team on the original investigation.

3. On 7 September 2023, the Secretary of State made the decision to accept our recommendation for countervailing measures on ironing boards originating from the Republic of Türkiye and gave effect to that decision in the public notice 2023/18 dated 7 September 2023, which took effect from 8 September 2023.

4. An application from Milenyum Metal Dis Ticaret ve Sanayi A.S. (Milenyum Metal) (the Applicant) was received on 9 October 2023, requesting a reconsideration on the following two grounds.

   - Ground 1: "The TRA should not have included subsidy amounts which were lower than 1% in its calculation of the Individual Subsidy Amount".

   - Ground 2: "The calculation of the Individual Subsidy Amount was affected by a manifest error in the calculation of the profits of Milenyum Metal in determining the subsidy amount for corporate-tax exemptions.".

5. The Applicant is represented by Van Bael and Bellis.

6. A reconsideration was initiated on 8 December 2023.

7. In this reconsideration we have considered the question whether the decisions made during the original investigation, when assessed against the grounds in the application for reconsideration, were reasonable ones, and if not, how they should be amended.

[1] The Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (legislation.gov.uk)

1.1 Reconsidered decision

8. Having completed the reconsideration, the TRA recommends the original decision is varied in part.

9. In respect of ground 1 we disagree with the Applicant's ground and have provided additional detail regarding the method adopted in the investigation and set out our interpretation of the relevant regulations.

10. In respect of ground 2, though we disagree in part that the original investigation should have taken an alternative approach in respect of calculating the benefit for the subsidy amount for corporate tax exemptions, we do agree with the Applicant that there has been a miscalculation of the subsidy amount for corporate tax exemptions. We recommend that the amount of countervailing duty set in the original decision is varied in order to remove the effects of this miscalculation.

11. The countervailing amount should be varied from 4.02% to 3.31%.

12. The details of the reconsidered decision are provided in this report.

2 Background

13. On 21 February 2022 the TRA received an application for a trade remedies investigation (the original application) lodged by a UK producer. The UK producer alleged that ironing boards imported into the UK from the Republic of Türkiye are being subsidised and are causing injury to the UK Industry.

14. The original application contained evidence of imports of subsidised goods and of resulting material injury that was sufficient to justify the initiation of the subsidy investigation. The case was initiated by the TRA on 7 April 2022, and the Notice of Initiation was published on the same date.

15. In accordance with paragraphs 11(5) and (6) of Schedule 4 to the Taxation (Cross-border Trade) Act 2018 (the Act), the TRA made its final affirmative determination. Pursuant to paragraph 17(4) of the Act, the TRA made its recommendation to the Secretary of State for an ad-valorem countervailing duty on the goods concerned for a period of five years from the day after publication of the Secretary of State's notice giving effect to the recommendation, plus the period from 26 May 2023 until the date of publication of that notice (during which the provisional measure was in place).

16. In Trade Remedies Notice 2023/18: definitive countervailing duty on ironing boards originating from Turkey[2], published on 7 September 2023, the Secretary of State (having decided to accept the TRA's recommendation) gave effect to the recommendation.

17. Further to the TRA's conclusion in the subsidy investigation into ironing boards, and the subsequent decision of the Secretary of State, the TRA received an application from the Applicant on 9 October 2023 which requested a reconsideration of the TRA's recommendation to the Secretary of State regarding the determination for a countervailing duty on ironing boards.

18. The Applicant's grounds for requesting a reconsideration in relation to the recommendation to applying a countervailing measure are –

    - Ground 1: The TRA should not have included subsidies with a value less than 1% in its calculation of the subsidy amount.

[2] Trade remedies notice 2023/18: definitive countervailing duty on ironing boards originating from Turkey - GOV.UK (www.gov.uk)

a. The TRA's approach to the calculation of the Individual Subsidy Amount is not supported by the text of the relevant legislation.

b. The calculation of the Individual Subsidy Amount should be undertaken in a non-discriminatory manner.

- Ground 2: The calculation of the Individual Subsidy Amount is inherently flawed by errors in the calculation of the subsidy amount for the corporate tax exemptions

a. The TRA should have determined the amount of benefit conferred on the basis of a consistent allocation of turnover.

b. The calculation of the Individual Subsidy Amount has been affected by a manifest error in the determination of the subsidy amount for the cooperate tax exemptions.

2.1 Timing of the reconsideration application

19. The Secretary of State's public notice, Trade remedies notice 2023/18: definitive countervailing duty on ironing boards originating from Turkey - GOV.UK (www.gov.uk)[3] gave effect to the TRA's recommendation for a countervailing measure from 8 September 2023.

20. In accordance with regulation 10(2) of the R&A Regulations, the TRA must reject an application for a reconsideration of an original decision that was published in a public notice unless it was received within one month beginning on the day after the notice was published, or (if later) within one month beginning on the day after the notice came into effect.

21. The application for reconsideration was received on 9 October 2023.

22. In accordance with regulation 12 of the R&A Regulations[4], the TRA initiated a reconsideration on 8 December 2023.

23. Under regulation 13(9) of the R&A Regulations[5], the TRA has discretion to reconsider an original decision in whatever way it considers appropriate in the circumstances, subject to any contrary provisions in the R&A Regulations. In the absence of provisions dictating a contrary approach, the TRA considers that the

[3] Trade remedies notice 2023/18: definitive countervailing duty on ironing boards originating from Turkey - GOV.UK (www.gov.uk)
[4] The Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (legislation.gov.uk)
[5] The Trade Remedies (Reconsideration and Appeals) (EU Exit) Regulations 2019 (legislation.gov.uk)

appropriate approach to a reconsideration is to review whether the original decision made by the TRA was in accordance with the regulations correctly interpretated and was a reasonable decision to reach at the time it was made.

3 Analysis of grounds: TRA's recommendation of a countervailing amount

25. The Applicant has submitted two grounds.

26. This report will consider each of the grounds in turn. For completeness, the relevant sections of the Applicant's grounds have been reproduced in this report. This report will provide a description of the original investigation's approach to the issues which form the basis of the Applicant's grounds for reconsideration. This is then set out together with the detail of any additional analysis undertaken as part of the reconsideration. The TRA's finding as the result of the reconsideration in light of each of the Applicant's grounds for reconsideration is then set out.

3.1 Ground 1 – The TRA should not have included subsidies with a value of less than 1% in its calculation of the subsidy amount.

Applicant's Ground:

3.1.1 The Applicant's first part of its Ground 1 in the Reconsideration Application was as follows:

"The TRA's approach to the calculation of the Individual Subsidy Amount is not supported by the text of the relevant legislation.

8. *The TRA had initially outlined the above-described approach to the calculation of the Individual Subsidy Amount in the Statement of Essential Facts ("SEF") issued by the TRA on 26 April 2023. In its comments in response to the SEF, Milenyum Metal raised concerns regarding the TRA's approach to this calculation, in particular with respect to the inclusion of subsidy amounts that were lower than 1% in the determination of the Individual Subsidy Amount. As can be seen in Figure 1 above, this was the case for three of the four countervailable subsidy schemes identified by the TRA, each of which had been calculated by the TRA as being considerably lower than 1%.*

9. In particular, Milenyum Metal referred to regulation 25(4) of the Trade Remedies (Dumping and Subsidisation) (EU Exit) Regulations 2019 (as amended) (the "Dumping and Subsidisation Regulations"). Regulation 25(4) establishes the definition of "qualifying countervailable subsidy" for the purposes of applying regulation 25, which provides a broader methodology governing the determination of the amount of the countervailable subsidy that is attributable to the period of investigation ("POI"). The definition is as follows:

"For the purpose of paragraphs (2) and (3), a 'qualifying countervailable subsidy' is one which has a value of at least 1 per cent [emphasis added] of all the sales of the goods to which the countervailable subsidy is attributable."

10. Milenyum Metal submitted in its response to the SEF that the TRA should have disregarded the three countervailable subsidies for which an amount lower than 1% had been determined in its calculation of the Individual Subsidy Amount, as these were not "qualifying countervailable subsidies" within the meaning of regulation 25(4).

11. The TRA appears to have dismissed this argument in the Original Decision, explaining its reasoning as follows at paragraphs 179 – 181 of the Final Determination:

"179. However, in accordance with regulation 25(1) of the Regulations, any countervailable subsidy that is received in the POI and confers its benefit directly within the POI can be included in the overall subsidy amount.

180. During the investigation, we established that all of the subsidies listed above were received in the POI; we also identified how much benefit they conferred directly within the POI, without needing to apportion benefits across wider periods.

181. Consequently, we determined that regulations 25(2) and 25(3) do not apply to these subsidies, and as a result, these subsidies do not need to be "qualifying countervailable subsidies" in order to be included in the overall subsidy amount."

12. Milenyum Metal considers, however, that this does not represent an interpretation of regulation 25 that is supported by the text of the regulations. First, the TRA appears to suggest in paragraph 179 of the Final Determination that regulation 25(1) accords to it a discretion to include "any countervailable subsidy that is received in the POI and confers its benefit directly within the POI in the overall subsidy amount". This is expanded upon by the TRA at paragraph 180 of the Final Determination, in which the TRA asserts that the mere fact that a subsidy was judged to be received in the POI allowed the TRA to proceed to simply establish how much benefit they conferred directly within the POI, without needing to apportion benefits across wider periods.

13. Such an approach is not consistent with regulation 25 of the Dumping and Subsidisation Regulations. The starting point in this regard is the title of regulation 25 itself (i.e., "Determination of the amount of the countervailable subsidy that is attributable to the period of investigation") which indicates that the object and purpose of the provision as a whole is the issue of determining

precisely how much of a given countervailable subsidy might be attributed to the POI.

14. To this end, it is clear that regulation 25(1) does not provide the TRA with the discretion it seemingly asserts at paragraph 179 of the Final Determination to conclude that, because a subsidy is received during the POI, it can simply proceed to consider that the whole benefit was conferred directly within the POI without engaging in any further examination as to the applicability of paragraphs (2) to (4) to the facts at hand (indeed the TRA states that it actually excluded the applicability of regulations 25(2) and 25(3) — and in doing so crucially excluded the possibility of benefitting from regulation 25(4)).

15. While regulation 25(1) establishes the general principle for determining the amount of the countervailable subsidy that is attributable to the POI, it is evident from the structure of regulation 25(1) that the TRA does not have a discretion to simply end the analysis there without considering the relevance of paragraphs (2) to (4) of regulation 25. Rather, regulation 25(1) is subject to an important qualification:

"(1) Subject to paragraphs (2) to (4), the amount of the countervailable subsidy that is attributable to the period of investigation is the amount received in the period of investigation."

16. Clearly, the implication of this qualification is that the TRA must consider the relevance of paragraphs (2) to (4) in all circumstances, and the mere revelation that a subsidy was received during the POI does not remove the need for this consideration in a given case — which the TRA indeed does not appear to have undertaken in the process which led to the Original Decision. Notably, regulation 25(3) provides that even where a [qualifying] countervailable subsidy is received during the POI, it may be the case that only part of this is actually attributable to the POI. This provision thus recognises the need for a thorough examination of whether a countervailable subsidy is attributable either in whole or in part to the POI, which remains possible even where the subsidy is received during the POI.

17. In failing to engage in the more thorough examination required under regulation 25 of the Dumping and Subsidisation Regulations, and instead following an approach of the nature outlined in paragraphs 179-181 of the Final Determination — which bypasses the requirements of regulation 25 — the TRA has applied an interpretation of regulation 25 which is consistent neither with the letter nor the purpose of that provision. Moreover, the TRA's interpretation is clearly at odds with the fundamental principle of non-discrimination and equal treatment (see Subsection 2.1.3).

18. As a consequence, the TRA ultimately proceeded to establish a considerably higher Individual Subsidy Amount in respect of Milenyum Metal than might have been the case if it had given the required consideration to paragraphs (2) to (4) of regulation 25 of the Dumping and Subsidisation Regulations."

Original investigation

27. The original investigation assessed all subsidies identified in Annex II to the confidential version of the Applicant's questionnaire response to establish whether the subsidies were countervailable. Four subsidy schemes were found to be countervailable (as per the table below, replicated from paragraph 113 of the Final Determination).

Table 3: Subsidy schemes used to calculate the subsidy amount

Scheme	Subsidy type	Legislation
Corporate-tax exemptions	Preferential tax programme	Free Zones Law No. 3218
Income-tax exemptions	Preferential tax programme	Free Zones Law No. 3218
Property-tax exemptions	Preferential tax programme	Property Tax Law No. 1319
Eximbank loans	Export credits and financing	Various

Source: Questionnaire responses

28. For each of the subsidy schemes, the original investigation used the information provided by the Applicant in its questionnaire annex responses in order to identify the amount of benefit received and when it was received.

29. The **corporate tax exemption** subsidy scheme relates to earnings generated by the company for operating in a free zone in Türkiye. The amount of benefit is the taxable amount (profit) multiplied by the appropriate tax rate (25%). The original investigation was provided with evidence to identify how much benefit was received for the relevant tax year, which coincided with the period of investigation (POI). The original investigation reported in the final determination–

"115. The nature of the subsidy is a direct tax exemption, and the benefit is conferred upon the whole of a business holding a Free-Zone operating licence. We determined that this subsidy confers a benefit on the ability of manufacturer-exporters to produce and export the Goods Concerned, and we verified the benefit conferred on Milenyum Metal during the POI."

30. As the benefit was conferred on the company as a whole, the original investigation established the amount of subsidy for the goods concerned by apportioning the profit based on the turnover of the goods concerned, excluding

expenses related to selling expenses which the Applicant had identified as shipments not relating to the UK exports, as reported in paragraphs 119 to 126 of the final determination.

31. The **income tax exemptions** subsidy scheme is based on the income tax payable by the company on behalf of the workers which is foregone after the deduction of minimum living allowance. This is calculated by the Revenue Administration and the benefit is received on a monthly basis. In annex D2 of the Applicant's questionnaire submission, Milenyum Metal provided the total amount of benefit attributable to the POI from the income-tax exemption, and they provided sufficient source documentation for the original investigation to verify the figures. Although some of the monthly exemptions were formally approved after the POI, the original investigation confirmed that the benefits conferred related to the POI, in accordance with regulation 25 of the D&S Regs. This is stated at paragraph 131 of the final determination which states –

"131. In their questionnaire response, Milenyum Metal reported that income-tax exemptions conferred a benefit on their company during the POI."

32. The original investigation accepted Milenyum Metal's figure as the Concise and Premium Service Statements confirmed how much benefit was received for the relevant tax year, which coincided with the POI. Paragraph 135 goes on to note that "…*We were able to identify the exact amount of the exemptions from Milenyum Metal's questionnaire submission, as Milenyum Metal had provided the total amount of the benefit attributable to the POI from the income tax exemption, along with sufficient source documentation for us to verify the figure*".

33. As the benefit was conferred on the company as a whole, the original investigation apportioned the total benefit across the total sales to establish the amount of subsidy for the goods concerned.

34. For the **property tax exemptions,** the Applicant was not required to pay the annual property tax on their factory premises within the enterprise zone. The original investigation reported in the final determination –

"153. Furthermore, we found evidence that benefits were conferred in practice during the POI. Milenyum Metal received property-tax exemptions for the factory at their main land plot. For the POI, they received an exemption of between 28,000 TRY and 35,000 TRY, as shown in their tax declaration to Melikgazi Municipality Revenue Administration in Kayseri44. (We also confirmed that, for the properties that were not eligible for exemptions, Milenyum Metal did pay property taxes.)"

35. As the benefit was conferred on the company as a whole, the original investigation apportioned the total benefit across the total sales to establish the amount of subsidy for the goods concerned.

36. For the **Eximbank loans** the benefit from the loan interest was calculated on the basis of benefit accruing. The Applicant provided the interest payment attributable to the POI. At paragraph 140 of the final determination, the original investigation reported –

> *"140. We determined both that Eximbank loans can in principle benefit the Goods Concerned, and that in practice the loans Milenyum Metal received did confer benefits in the POI."*

37. The original investigation explained the steps they took at paragraphs 144 – 147 of the final determination.

> *"144. We calculated the benefit attributable to the POI using the source documentation provided by Milenyum Metal for each loan.*
>
> *145. We compared the interest payments made in the POI with average commercial rates reported by the Central Bank of the Republic of Türkiye. For each loan that involved payment of interest in advance, we calculated the benefit conferred as the difference between the upfront payment at the loan's actual interest rate and the payment that would have been expected at a commercial rate. This is in accordance with regulation 21(4) of the Regulations.*
>
> *146. From the benefit attributable to the POI, we deducted the fees necessary to receive the Eximbank loans which exceeded those expected for comparable commercial loans.*
>
> *147. Finally, we calculated the benefit attributable to the Goods Concerned. Since the benefits from the Eximbank loans were conferred on Milenyum Metal as a whole (and not solely upon the Goods Concerned), we apportioned the benefits attributable to the POI across all Milenyum Metal's sales by value."*

38. As the benefit was conferred on the company as a whole, the original investigation apportioned the total benefit across the total sales to establish the amount of subsidy for the goods concerned.

39. Although not expressly stated, it is clear that these were recurring benefits made over a number of years. The original investigation was aware that this was the

case and adopted the approach of looking at the amount of the recurring benefit received during the POI.

Relevant legislation

40. Regulation 23 of the D&S Regulations sets out the steps the TRA is required to take in order to determine the amount of the subsidy attributable to goods. It states:

41. **"Calculation steps**

23.—(1) The TRA must calculate the amount of subsidy attributable to goods.

(2) In order to make its calculation the TRA must determine—

(a) the total amount of the countervailable subsidy in accordance with regulation 24 (determination of the amount of benefit conferred);

(b) the amount of the countervailable subsidy that is attributable to the period of investigation in accordance with regulation 25 (determination of the amount of the countervailable subsidy that is attributable to the period of investigation); and

(c) which goods the countervailable subsidy may be allocated to during the period of investigation in accordance with regulation 26 (determination of the goods the subsidy is attributable to during the period of investigation).

(3) The TRA must determine the rate of subsidy attributable to the goods by dividing the countervailable subsidy amount determined in accordance with regulation 25 (determination of the amount of subsidy that is attributed to the period of investigation) by the value of goods determined in accordance with regulation 26 (determination of the goods the subsidy is attributable to during the period of investigation).

(4) The amount of the subsidy must be expressed as an ad valorem rate of the value of the subsidised imports.

(5) Where an overseas exporter benefits, directly or indirectly, from more than one countervailable subsidy during the period of investigation, the TRA must follow the steps in paragraphs (2) to (4) for each of those subsidies.

(6) For the purpose of paragraph 4(4) of Schedule 4 to the Act, the specified period is the period of investigation.

42. Regulation 25 of the D&S Regulations provides as follows:

“Determination of the amount of the countervailable subsidy that is attributable to the period of investigation

25.—(1) Subject to paragraphs (2) to (4), the amount of the countervailable subsidy that is attributable to the period of investigation is the total amount received in the period of investigation.

(2) Where a qualifying countervailable subsidy is not received during the period of investigation, but part of it is attributable to the period of investigation, the part that is attributable to the period of investigation must be included in the subsidy amount.

(3) Where a qualifying countervailable subsidy is received during the period of investigation, but only part of it is attributable to the period of investigation, the part that is attributable to the period of investigation must be included in the subsidy amount.

(4) For the purpose of paragraphs (2) and (3), a “qualifying countervailable subsidy” is one which has a value of at least 1 per cent. of all the sales of the goods to which the countervailable subsidy is attributable.”

Relevant guidance

43. The TRA’s guidance on “How we carry out a subsidy investigation” includes details on determining the amount of the subsidy attributable to the POI, as follows:

“**Determining the amount of the subsidy that can be attributed to the period of investigation**

To attribute the right proportion of a subsidy to the period of investigation, we need to establish whether the subsidy was in place during our period of investigation and if it is non-recurring.

Many types of subsidy are financial payments or arrangements which are made repeatedly and with immediate effect (for example, a production output subsidy).

Non-recurring subsidies may be used for one-off purposes, for example purchasing fixed assets. With these, the total value of the subsidy will be spread over the normal life of the assets, in line with industry standards for depreciating assets.

This approach means that non-recurring subsidies such as the provision of land or equipment which were provided several years before the period of investigation can be countervailable if they have an effect during the period of investigation.

Qualifying countervailable subsidies

When we calculate the subsidy amount for the period of investigation, we introduce a qualifying threshold for some subsidies, as follows:

- If the total amount of the subsidy received during the period of investigation also provided a benefit solely in the same period, there is no qualifying threshold
- If only part of the subsidy provided a benefit during the period of investigation (regardless of whether it was received before or during the period of investigation), we will only consider it to be a qualifying countervailable subsidy if it is more than 1% of the value of all sales of goods to which it is attributable

This process specifically relates to attributing the subsidy amount to our period of investigation and is not part of the process by which we establish whether a subsidy is potentially countervailable at the beginning of our investigation.

Determining the amount of the subsidy that can be attributed to the period of investigation

We will determine the amount of subsidy that can be attributed to the period of investigation, as follows:

- If the total amount of the subsidy received during the period of investigation also provided a benefit solely in the same period, then the whole subsidy amount is countervailable – in other words, we will attribute the entire subsidy amount to our period of investigation
- When a qualifying countervailable subsidy was received during the period of investigation, but only part of it provided a benefit during that time, we will recommend a remedy which will counteract that proportion of the subsidy. For example, the subsidy may be a grant for building work that is received during the period of investigation but gives the recipient a benefit over a 10-year period
- When a qualifying countervailable subsidy was in place before the period of investigation but it provided a benefit during the period of investigation,

we will assign only part of the subsidy amount to the period of investigation and recommend a remedy that reflects this

- In the latter two instances, the subsidy amount will be depreciated or amortised (gradually written off) by an appropriate method (see Amortisation/Depreciation)
- If the subsidy is not a qualifying countervailable subsidy and was received before the period of investigation, it will be disregarded".

Reconsideration finding

44. The Applicant contends that the original investigation misapplied regulation 25 of the D&S Regulations by failing to consider paragraphs (2) to (4) of regulation 25 and by exercising discretion where none is afforded by the regulations (paragraphs 12, 14, 16 and 17 of the Application). It also contends that regulation 25(4) requires all individual countervailable subsidies with a value of less than 1 per cent. of all the sales of the relevant goods to be disregarded, irrespective of whether or not they provide a benefit solely in the POI (paragraph 18 of the Application).

45. We set out below our interpretation of regulation 25 and then the way in which the case team applied this to determine the amount of the countervailable subsidies attributable to the POI.

46. Regulation 25 of the D&S Regulations sets out how the TRA is to determine the amount of the countervailable subsidy that is attributable to the POI. Regulation 25(1) contains what is, in effect, the default position for a countervailable subsidy received in the POI, which is that the amount attributable to the POI is the total amount received in the POI. However, as the Applicant has pointed out, this is subject to other requirements in paragraphs (2) to (4) which arise where attribution of only part of a subsidy amount to the POI is appropriate.

47. These rules apply where the benefit of the countervailable subsidy applies over a longer period than a single financial year and the value of the subsidy needs to be attributed to reflect this. The two situations in which this can occur are first where the countervailable subsidy is received outside the POI, but a part of the benefit is realised in the POI (addressed in regulation 25(2)), and, secondly, where the countervailable subsidy is received in the POI but part of the benefit relates to periods outside the POI (addressed in regulation 25(3)).

48. Regulation 25(4) provides that the requirement to attribute only part of a subsidy only applies in the situation where the countervailable subsidy has a value of at

least 1 per cent. of all the sales of the goods to which the countervailable subsidy is attributable (which it defines as a “qualifying countervailable subsidy”). Regulation 25(4) expressly limits the scope of its application by use of the words “[f]or the purpose of paragraphs (2) and (3) […]”. It is therefore only in the circumstances set out in paragraphs (2) and (3) that the concept/definition of a qualifying countervailable is relevant, i.e. where only part of a countervailable subsidy is attributable to the POI.

49. This means that where a subsidy received in the POI provides a benefit solely within the POI, there is no qualifying threshold, and the full amount is attributable to the POI.

50. Where a countervailable subsidy is received in the POI but provides a benefit over a longer period, if it meets the 1% qualifying countervailable subsidy threshold then regulation 25(3) and (4) limit the inclusion within the subsidy amount to only the part of the countervailable subsidy that is attributable to the POI. If the countervailable subsidy does not meet the 1% qualifying countervailable subsidy threshold (i.e. it has a value less than 1%), then regulations 25(3) and (4) do not apply to limit the inclusion to only the part attributable to the POI. Instead, the default position in regulation 25(1) applies, and the full amount of the countervailable subsidy received in the POI is attributable to POI and included in the subsidy amount.

51. This is reflected in the TRA’s guidance on subsidy investigations. As set out at paragraph 43 above, the guidance on 'determining the amount of the subsidy that can be attributed to the period of investigation’, notes that non-recurring subsidies may be used for one-off purposes, such as purchasing fixed assets, in which case the total value of the subsidy will be spread over the normal life of the assets. It draws a distinction between such non-recurring subsidies and subsidies consisting of financial payments or arrangements which are made repeatedly and with immediate effect. Under the sub-heading ‘Qualifying countervailable subsidies’, the guidance goes on to state: “If the total amount of the subsidy received during the period of investigation also provided a benefit solely in the same period, there is no qualifying threshold”.

52. Paragraphs 27 to 39 illustrate the steps taken by the original investigation. In summary, for the countervailable subsidies identified, the amount of subsidy attributable to the POI was calculated using information provided by the Applicant.

53. Examination of the internal working documents confirms the original investigation was in accordance with relevant aspects of the TRA guidance, referred to in

paragraph 43 and adopted the interpretation of regulation 25 set out above when determining the amount attributable to the POI for the four subsidies.

54. The amount of countervailable subsidy which could be attributed to the POI was determined. For the tax schemes – corporate tax, property tax and income tax – these annual (and monthly for income tax) subsidies where the tax was foregone were received and benefitted solely in the POI. For the Eximbank loans, the attribution to the POI was determined by the interest payments paid during the POI as per the information provided by the Applicant.

55. The original investigation determined that all the subsidy schemes had been received in the POI and provided a benefit solely in the POI. Therefore, as the benefit from the countervailable subsidies were not spread over a longer period than the POI, the circumstances in regulation 25(3) did not arise and so the original investigation determined that the qualifying 1% threshold did not apply.

56. The original investigation then calculated the amount of countervailable subsidy which was attributable to the goods concerned. This was done by apportioning the subsidy across all sales, to then determine the proportion relating to the goods concerned.

57. We consider paragraph 179 of the final determination to mean that any countervailable subsidy that is received in the POI and which confers a benefit solely within the POI, i.e. not across a longer period, so outside the circumstance address in regulation 25(3), is attributed to the POI and included in the overall subsidy amount. As explained above, this is because regulation 25(4) states that it applies for the purposes of paragraphs (2) and (3). It is therefore only in the circumstances covered in paragraphs (2) and (3) that the definition of a “qualifying countervailable subsidy” is relevant i.e., when a countervailable subsidy is only attributable in part to the POI.

58. We also note that paragraph 180 refers to the original investigation having identified how much benefit each subsidy conferred directly within the POI, without needing to apportion benefits across wider period. Based on the evidence referred to above (paragraphs 27-39), which shows that the each of the four subsidies were recurring, annual subsidies and that the information provided in relation to each by the Applicant provided the amount of benefit received in the POI, we find that the original investigation found that the benefit from each subsidy was conferred solely in the POI and so, as set out in paragraph 181, the original investigation determined that regulation 25(3) did not apply..

59. For the reasons set out above, the reconsideration finding is that the decision in the original investigation was in accordance with the regulations correctly

interpreted and the approach taken to determine the amount of each of the four countervailable subsidies that was attributable to the POI was reasonable. There is no basis for suggesting that these benefits were anything other than recurring benefits with annual effects which were properly considered to be attributable to the POI.

Applicant's Ground

3.1.2 The Applicant's second part of its Ground 1 in the Reconsideration Application was as follows

"The calculation of the Individual Subsidy Amount should be undertaken in a non-discriminatory manner.

19. …. Milenyum Metal respectfully submits that the application of regulation 25 to the calculation of the Individual Subsidy Amount has been founded on an unreasonable discrimination, which has caused — and threatens to continue to cause — significant prejudice to its legitimate commercial interests.

20. In particular, this discrimination flows from the operation of the definition of "qualifying countervailable subsidy" in regulation 25(4) and its effect on the operation of paragraphs 2 and 3 of regulation 25 of the Dumping and Subsidisation Regulations. By providing for what is in effect a de minimis threshold of 1%, yet conditioning the benefit of this on the requirement that only part of the qualifying countervailable subsidy is received during the POI, regulation 25 establishes a difference in treatment between the beneficiaries of any identified countervailable subsidy, which is unjustifiable on the basis of any objective considerations.

21. In this regard, Milenyum Metal wishes to draw the attention of the TRA to section 28(1)(Requirement to have regard to international obligations) of the TCBTA 2018,7 which in essence provides that in exercising their functions under Part 1 of the TCBTA 2018, which includes their functions in respect of subsidisation under Schedule 4 of the TCBTA 2018 by virtue of section 13(1) of the same Act, that the TRA and SoS "must have regard to international agreements to which Her Majesty's government in the United Kingdom is party that are relevant to the exercise of the function".

22. Of particular relevance in this context is the Agreement on Subsidies and Countervailing Measures (the "SCM Agreement"),8to which the United Kingdom is party by virtue of its status as a Member of the World Trade Organization ("WTO"). Article 19 of the SCM Agreement frames the imposition and collection of countervailing duties by WTO Members and, in particular, imposes a non-

discrimination obligation on WTO Members when imposing countervailing duties at Article 19.3:

"19.3 When a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be subsidized and causing injury [emphasis added], except as to imports from those sources which have renounced any subsidies in question or from which undertakings under the terms of this Agreement have been accepted. Any exporter whose exports are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to cooperate, shall be entitled to an expedited review in order that the investigating authorities promptly establish an individual countervailing duty rate for that exporter."

23. It is evident from the plain meaning of the terms used in the first sentence of Article 19.3 of the SCM Agreement that the imposition of countervailing duties in respect of a product found to be subsidised and causing injury is required to be done on a non-discriminatory basis with respect to all imports of such products, with only limited exception being provided for in the first sentence of Article 19.3 (i.e., in respect of imports from sources which have renounced the subsidies at issue or from which undertakings under the terms of the SCM Agreement have been accepted).

24. The imposition of countervailing duties pursuant to the application of regulation 25 of the Dumping and Subsidisation Regulations does not appear to be done in a manner that is consistent with the UK's non-discrimination obligation under Article 19.3 of the SCM Agreement. Instead, regulation 25 operates a discrimination in the imposition of countervailing duties, according to whether the entirety or only part of a countervailable subsidy is received in the POI. Where the entirety of a subsidy is received in the POI, the imports of the Good Concerned would not benefit from the application of the de minimis threshold under regulation 25(4). Thus, even where a subsidy was calculated to be of a value inferior to 1%, it would still be included in the composition of the final subsidy amount. By contrast, in the case that only part of a subsidy is received in the POI, the imports of the Good Concerned would benefit from the application of what is essentially a de minimis threshold in the notion of "qualifying countervailable subsidy", disregarding from the calculation of the subsidy amount any subsidy received in part outside the POI which is of a value less than 1%. The effect is that an overseas exporter of the Goods Concerned in the former case (i.e., where the entirety of a subsidy is determined to be received in the POI) would be subjected to a higher countervailing duty amount

by virtue of mere chance with regard to the entirety of the countervailable subsidy happening to be deemed to be received during the POI.

25. Such a different treatment is clearly not justifiable because what really matters for the purpose of calculating the subsidy amount is the amount of the countervailable subsidy that is attributable to the POI, and not the amount of a countervailable subsidy which is received during the POI. If an overseas exporter receives – during the POI - a countervailable subsidy amounting to 0.5% of all the sales of the goods to which the countervailable subsidy is attributable, while another overseas exporter receives a countervailable subsidy of 1% during a longer period, so that the portion of subsidy attributable to the POI amounts to 0.5% of all the sales of the goods to which the countervailable subsidy is attributable, there is no valid reason why, in the first case, the 0.5% margin should be taken into account and in the other case not. The TRA's interpretation of regulation 25 is therefore contrary to the fundamental principle of equal treatment and non-discrimination.

26. Should the TRA conclude that its interpretation of regulation 25 is nevertheless correct, quod non, the inevitable conclusion would be that regulation 25 itself is illegal, and should therefore be disregarded, insofar as it is at odds with higher-ranking principles, such as the fundamental principle of equal treatment and non-discrimination, as well as the international obligations set out in the SCM Agreement, to which the United Kingdom is party.

27. As a consequence, Milenyum Metal respectfully submits that the TRA reconsider the application of regulation 25 in the calculation of the Individual Subsidy Amount and reiterates its request that the TRA disregard those subsidy values which were identified as being lower than the 1% threshold."

Relevant legislation

60. Section 28 of the Act states:

"28 Requirement to have regard to international obligations

(1) In exercising any function under any provision made by or under this Part—

(a) the Treasury,

(b) the Secretary of State,

(c) HMRC,

(d) the TRA, and

(e) any other public body,

must have regard to international arrangements to which Her Majesty's government in the United Kingdom is a party that are relevant to the exercise of the function.

(2) This section is not to be read as affecting the circumstances in which any obligation to have regard to such matters would otherwise have arisen.

61. Paragraph 4 of Schedule 4 to the Act defines the meaning of the term “the amount of the subsidy”:

“*Meaning of “the amount of the subsidy”*

4(1) For the purposes of this Schedule**,** “the amount of the subsidy”, in relation to goods, means the amount of the benefit conferred during a specified period by the countervailable subsidy as attributed to the goods in question.

(2) Regulations may make provision—

(a) about how the amount of the benefit conferred by the countervailable subsidy is to be determined for those purposes;

(b) about what constitutes or does not constitute “benefit” for those purposes;

(c) about how the amount of the benefit conferred is to be attributed to the goods in question.

(3) Such regulations may, among other things, make provision about the use of sampling or cumulative assessments.

(4) “Specified period” means such period as may be specified by regulations.”

62. Article 14 of the WTO Agreement on Subsidies and Countervailing Measures (the SCMA) provides as follows:

“Article 14

Calculation of the Amount of a Subsidy in Terms of the Benefit to the Recipient

For the purpose of Part V, any method used by the investigating authority to calculate the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 shall be provided for in the national legislation or implementing

regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained. […]"

63. Article 19.3 of the WTO Agreement on Subsidies and Countervailing Measures (the SCMA) states:

> 19.3 When a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be subsidized and causing injury, except as to imports from those sources which have renounced any subsidies in question or from which undertakings under the terms of this Agreement have been accepted. Any exporter whose exports are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to cooperate, shall be entitled to an expedited review in order that the investigating authorities promptly establish an individual countervailing duty rate for that exporter.

Reconsideration finding

64. Regulation 25

As set out above, the second part of the Applicant's first ground for reconsideration is that it contends regulation 25 of the D&S Regulations is discriminatory, in contravention of Article 19.3 of the SCMA, and that the subsidy amount should be calculated in a non-discriminatory manner. In particular, the Applicant states that the discrimination arises from the different treatment "according to whether the entirety or only part of a countervailable subsidy is received in the POI"[6]. The remainder of paragraph 24 goes on to state:

> " *Where the entirety of a subsidy is received in the POI, the imports of the Good Concerned would not benefit from the application of the de minimis threshold under regulation 25(4). Thus, even where a subsidy was calculated to be of a value inferior to 1%, it would still be included in the composition of the final subsidy amount. By contrast, in the case that only part of a subsidy is received in the POI, the imports of the Good Concerned would benefit from the application of what is essentially a de minimis threshold in the notion of "qualifying countervailable subsidy", disregarding from the calculation of the subsidy amount any subsidy received in part outside the POI which is of a value less than 1%. The effect is that an overseas exporter of the Goods Concerned in the former case (i.e., where the entirety of a subsidy is*

[6] Paragraph 24 of the Application

determined to be received in the POI) would be subjected to a higher countervailing duty amount by virtue of mere chance with regard to the entirety of the countervailable subsidy happening to be deemed to be received during the POI."

65. The Applicant contends in paragraphs 20 and 24 of the Application that regulation 25(4) of the D&S Regulations provides for what is in effect a *de minimis* threshold of 1 per cent., and that making the application of this threshold conditional on the requirement that only part of the qualifying countervailable subsidy is received during the POI is unjustifiable, in particular in light of the requirements of Article 19.3 of the SCMA.

66. We do not agree with the Applicant's allegation that there is a difference of treatment. This allegation depends on its assertion that regulation 25 requires the TRA to take a subsidy of less than 1 per cent. received during the POI into account in the case where it forms part of a larger subsidy, and to leave it out of account where it does not do so.

67. The TRA considers that this assertion is incorrect. Crucially, regulation 25(3) and (4) read together have the effect that where a subsidy of more than 1 per cent. (that is, a "qualifying countervailable subsidy") is received during the POI and only part of that subsidy is attributable to the POI, only the part that is attributable is included in the subsidy amount. However, where a subsidy of less than 1 per cent. is received during the POI, the provision that applies is regulation 25(1), rather than regulation 25(3). The result therefore is that the amount that is attributable to the POI is the total amount received. Regulation 25(3) is not relevant in this situation, because it only applies to qualifying countervailable subsidies and it is clear that the definition provided by regulation 25(4) prevents a subsidy of less than 1 per cent. from being a qualifying countervailable subsidy.

68. The Applicant relies on an example in paragraph 25 of the Application, in order to illustrate the apparent discrimination. In this paragraph it compares a countervailable subsidy received in the POI which has a value of 0.5% of all the sales of goods to which the countervailable subsidy is attributable on one hand, and, on the other, a countervailable subsidy with a value of 1% received over a longer period, a portion of which, amounting to 0.5% of all the sales of goods to which the countervailable subsidy is attributable, is received in and is attributable to the POI. The Applicant's assumption is that in the latter case, simply because there is another connected amount received in and attributable to a period outside the POI, the amount of 0.5 % received in the POI will be disregarded by TRA. However, for the reason stated above, that is not the case. In both

instances, the amount of 0.5% received during the POI will fall under regulation 25(1) and both would be included in the amount of the subsidy that is attributable to the POI.

69. For completeness, although it is not relevant on the present facts, nor to the example put forward by the Applicant to illustrate its arguments, regulation 25(2) is concerned with the situation where the subsidy is received outside the POI and not within it, and the rule (read in conjunction with regulation 25(4)) determines when it will be appropriate to attribute part of the subsidy to the POI. The effect of regulation 25(2) read in conjunction with regulation 25(4) is that such part will be attributed to the POI, notwithstanding that none of it was received during the POI, if the subsidy is more than 1 per cent of all of the sales of the goods to which the countervailable subsidy is attributable in the financial year of receipt, but not otherwise. In such cases, it is appropriate that smaller subsidies (i.e. with a value less than 1%) are treated as having been expensed in the period in which they were received. The TRA's guidance notes that "[m]any types of subsidy are financial payments or arrangements which are made repeatedly and *with immediate effect* (for example, a production output subsidy)" (emphasis added). It goes on to note that "[i]f the subsidy is not a qualifying countervailable subsidy and *was received before* the period of investigation, it will be disregarded" (emphasis added). Although the converse position (that is, where the subsidy is not a qualifying countervailable subsidy, but it is received during the POI, is not referred to expressly in the TRA's guidance note, the position is the default one under regulation 25(1), namely that the amount received would be attributed to the POI.

70. The TRA's interpretation of regulation 25 set out above is consistent with the wider subsidies legislation in Schedule 4 to the Act and Part 3 of the D&S Regulations. As noted above, paragraph 4(1) of Schedule 4 to the Act states that the term "amount of the subsidy", in relation to goods, means the amount of the benefit conferred *during a specified period* by a countervailable subsidy as attributed to the good in question. Regulation 23(6) of the D&S Regulations provides that for the purpose of paragraph 4(4) of Schedule 4 to the Act, the specified period is the period of investigation. The TRA is therefore required to determine the amount of the benefit conferred during the POI by a countervailable subsidy. Regulation 25 requires the TRA to do this by considering firstly the amount received in the POI, with the default position that such amounts are attributable to the POI. It then requires the TRA to consider whether the benefit of any subsidy provided before the POI is attributable to the POI, and whether any subsidy provided in the POI will provide a benefit to subsequent periods such that only part of it should be attributable to the POI.

71. As the TRA's guidance makes clear, this addresses the situation where the benefit of the subsidy is only partly attributable to the POI, such as where non-recurring countervailable subsidies are used to purchase fixed assets and so the benefit is spread across a longer period.

72. ***Article 19.3 of the SCMA***

The Applicant contends in paragraphs 22 to 27 of the Application that Article 19.3 applies to the imposition of countervailing duties, including the calculation of the amount of the subsidy. Whilst we do not consider that there has been any discrimination in the present case, we also note that in our view Article 19.3 of the SCMA is concerned with ensuring that the duty that has been imposed is applied to imports *from any source* without discrimination. Other provisions of the SCMA address the calculation of the amount of the subsidy, with Article14 of the SCMA providing members with discretion as to how this should be done, subject to certain guidelines. We do not agree that Article 19.3 is concerned with the way in which the amount of the subsidy is determined prior to the decision to levy a countervailing duty on imports from those sources.

73. ***Requirement to have regard to international obligations***

Finally, as the Applicant notes, section 28 of the Act requires the TRA when exercising its functions under the Act to have regard to the UK's international obligations that are relevant to the exercise of the function. However, for the reasons set out above, we consider that regulation 25 of the D&S Regulations is compatible with the provisions of the SCMA.

74. ***Conclusion***

For the reasons set out above, we find that approach taken in the original investigation and the decision to apply the requirements of regulation 25 were reasonable.

3.2 Ground 2 – The calculation of the Individual Subsidy Amount is flawed by errors in the calculation of the subsidy amount for corporate tax exemptions.

Applicant's ground:

3.2.1 The Applicant's first part of its Ground 2 in the Reconsideration Application was as follows:

"The TRA should have determined the amount of benefit conferred on the basis of a consistent allocation of turnover.

"28. At the outset, and as a preliminary submission, Milenyum Metal wishes to raise its concerns with respect to the approach of the TRA to the calculation of the benefit for the subsidy amount for the corporate tax exemptions deemed to be countervailable.

29. In essence, Milenyum Metal considers that the methodology followed by the TRA in order to allocate the total benefits associated to the corporate-tax exemption ([CONFIDENTIAL – commercially sensitive information]) between the Goods Concerned (([CONFIDENTIAL – commercially sensitive information) and other goods (([CONFIDENTIAL – commercially sensitive information), and which focuses on the calculation of the profits generated by each of the two categories of goods during the POI, is manifestly inaccurate and therefore inappropriate.

30. In order to properly analyse where Milenyum Metal's profits was allocated for the purposes of this calculation, the TRA would have needed to base its calculations on detailed information relating to sales and costs. Rather, the TRA has adopted something of a hybrid approach to the calculation of the benefit, allocating by turnover in every respect — with the exception of transport costs. This approach essentially amounts to guesswork in practice and is, as a result, not one which carries any realistic prospect of yielding a reasonably accurate calculation of profits — something which cannot be known without information on costs of production.

31. And in fact, the TRA's methodology results in the paradoxical situation whereby the sales of "other goods", i.e., ([CONFIDENTIAL – commercially sensitive information). If this was really the case, Milenyum Metal would better cease selling any product other than the Goods Concerned. In fact, taking the TRA's calculations for good, quod non, the Goods Concerned would have an exceptional (not to say, incredible) profitability of 15.4% despite the TRA itself acknowledging in Section H8.1 of the Final Recommendation that the normal rate of profit for the ironing board industry is approximately 5%. Based on the

foregoing, it should be concluded that the methodology applied by the TRA is manifestly inappropriate, insofar as it artificially inflates Milenyum Metal's profits associated with the Goods Concerned.

32. Milenyum Metal therefore submits that such methodology should be disregarded in favour of an alternative - and more appropriate - methodology. In particular, Milenyum Metal considers that a more fair and objective methodology would be that of allocating the benefit associated with the corporate tax exemption on a turnover basis, which would at least have the advantage of being grounded on objective information as available in the existing evidence."

Original investigation

75. The original investigation established that the Applicant (the cooperating exporter in the original investigation) was eligible for a corporate tax exemption of 25% during the POI. This was based on the location of its production facilities within a Turkish Free Zone.

76. The Applicant stated in its questionnaire response, CONFIDENTIAL Questionnaire Annex II, the total amount of subsidy received.

77. As the Applicants' confidential records did not breakdown profits in a manner to identify the goods concerned, the original investigation isolated its profit from the sales of the Goods Concerned to directly calculate the subsidy attributed to these goods.

78. To isolate the profit for the sales of the goods concerned, the costs of production were allocated to the goods concerned based on the proportion of the sales of the goods concerned to total sales. For example, where the sales of the goods concerned to the UK represented 20% of the total sales turnover, the original investigation assigned 20% of the expenses to the goods concerned, with the exception of expenses relating to transportation as the Applicant reported that they were not related to transactions to the UK. The profit was then derived from subtracting the expenses of the goods concerned from the sales revenue of the goods concerned. This methodology was agreed with Milenyum Metals during the verification visit as the most accurate method of allocation and the verification activities confirmed it matched the figure reported in the CONFIDENTIAL CTM Upwards annex.

79. The original investigation relied on the information submitted by the Applicant to derive the amount of the corporate tax exemption subsidy which should be attributed to the Goods Concerned. The use of turnover of the Goods Concerned

as a basis for the calculation was in line with how Milenyum Metal had completed its submissions.

80. The submitted CONFIDENTIAL income statement for the questionnaire annex provided the POI breakdown on All Goods and Goods Concerned and Like Goods. The case team attributed a proportion of the costs of production based on the turnover. This then allowed the case team to identify the associated profit to which the 25% corporate tax could be applied.

81. The calculation is expressed in confidential subsidy calculation, a copy of which was provided to the Applicant on 3 May 2023

82. Though at verification Milenyum Metal had stated that all the selling expenses and shipping costs related to solely to sales to the USA, following publication of the SEF., it claimed instead that in fact part of those expenses related to sales of ironing boards to the UK. Based on this information, the original investigation revised the subsidy calculation, resulting in an individual subsidy amount of 3.0660% (reduced from 3.4869%). This is explained in the final determination at paragraph 122.

Reconsideration finding

83. The corporate tax exemption applies to the profits generated by the company.

84. Where the submitted information did not permit an exact calculation of profit of the goods concerned, the original investigation took the approach as described above, removing an expense element at the request of the Applicant as they purported the expenses did not relate to the UK transactions. The original investigation calculated the rate of subsidy by dividing the countervailable subsidy amount determined for each subsidy by the value of goods determined in accordance with regulation 26 (determination of the goods the subsidy is attributable to during the period of investigation).

85. In the absence of detailed records showing the precise costs of production in relation to the goods concerned, the decision to apportion the costs and expenses on a turnover ratio is a reasonable approach to identify how much of the subsidy amount was to be apportioned on the goods concerned in the POI. Where the original investigation was provided with specific information relating to costs of production – provided either during verification activities or post publication of the SEF – it was reasonable for the original investigation to apportion those specific costs.

86. The reconsideration finding is that the approach taken by the original investigation to isolate the profits on the basis of turnover is reasonable.

However, the Applicant also alleged that the TRA calculated the profit generated for the goods concerned incorrectly, resulting in an error in its calculation of the subsidy amount for corporate tax exemptions. This is considered below.

Applicant's ground:

3.2.2 The Applicant's second part of its Ground 2 in the Reconsideration Application was as follows:

The calculation of the Individual Subsidy Amount has been affected by an error in the determination of the subsidy amount for the corporate tax exemptions.

33. ….Milenyum Metal respectfully submits that the calculation of the Individual Subsidy Amount is incorrect, as having been based on a profit calculation in the determination of the subsidy amount for the corporate-tax exemptions which was itself incorrect.

34. In particular, Milenyum Metal wishes to draw the attention of the TRA to the figures used for transport costs in the context of this calculation. It appears in the Intermediate Subsidy Calculation that the TRA relied upon a figure for profit which reflected selling expenses incorporating approximately TRY ([CONFIDENTIAL – commercially sensitive information) (approximately USD ([CONFIDENTIAL –commercially sensitive information) of transportation costs for export to the UK of a total quantity of ([CONFIDENTIAL – commercially sensitive information) pieces of the Goods Concerned, most of which was sold under ([CONFIDENTIAL – commercially sensitive information) terms. This would equate to a transport cost per piece of approximately USD 0.05, a figure which is manifestly too low to be realistic considering that – as explained – almost all UK sales of the Goods Concerned were made under ([CONFIDENTIAL – commercially sensitive information) terms, which means that the associated transportation costs should include ([CONFIDENTIAL – commercially sensitive information). The TRA's calculation is therefore affected by a manifest error and Milenyum Metal respectfully submits that no qualified observer could reasonably reach the conclusion that a figure of only TRY ([CONFIDENTIAL –commercially sensitive information) of transportation costs for ([CONFIDENTIAL – commercially sensitive information) pieces of ironing boards is an accurate one.

35. The above conclusion is further confirmed by the analysis of the calculation worksheet "Up-to-date UK sales listing" in the Excel file "Intermediate Subsidy Calculations F- Final (NONC)", which shows that the figure of TRY ([CONFIDENTIAL – commercially sensitive information) determined by the TRA was calculated by only taking into account ([CONFIDENTIAL – commercially sensitive information) sales to the UK during the POI, therefore disregarding all

([CONFIDENTIAL – commercially sensitive information) sales. However, as already explained, the vast majority of Milenyum Metal's sales to the UK during the POI were made on an ([CONFIDENTIAL – commercially sensitive information) basis, with only a marginal share of transactions being conducted on a ([CONFIDENTIAL – commercially sensitive information) basis. Therefore, the TRA's calculation disregarded all the transportation costs associated with these ([CONFIDENTIAL – commercially sensitive information) sales. In addition, it appears that the transportation costs of Milenyum Metal's ([CONFIDENTIAL – commercially sensitive information) sales to the UK during the POI were themselves not correctly calculated.

36. Bearing the above in mind, Milenyum Metal respectfully requests that the TRA reconsider its Original Decision with respect to the calculation of the Individual Subsidy Amount, in particular to ensure that the calculation of profits generated by the Goods Concerned is based on an accurate figure, which reasonably reflects ([CONFIDENTIAL – commercially sensitive information) transportation costs (which represent the vast majority of Milenyum Metal's sales of the Goods Concerned during the POI). In particular, it is submitted that the total transportation cost related to the ([CONFIDENTIAL – commercially sensitive information) containers shipped to the UK during the POI (out of ([CONFIDENTIAL – commercially sensitive information) containers shipped by Milenyum Metal over the POI) can be estimated as TRY([CONFIDENTIAL – commercially sensitive information) (instead of TRY ([CONFIDENTIAL – commercially sensitive information) used by the TRA in its calculation).

[Table not reprinted]

37. Taking into account the above figures for transportation cost, the selling expenses associated with the sales of the Goods Concerned during the POI should be corrected, passing from approximately TRY ([CONFIDENTIAL – commercially sensitive information) to approximately TRY ([CONFIDENTIAL – commercially sensitive information). In turn, this would decrease the profit generated by the sales of the Goods Concerned during the POI to approximately TRY ([CONFIDENTIAL – commercially sensitive information) (from approximately TRY ([CONFIDENTIAL – commercially sensitive information)), resulting in a benefit of approximately TRY ([CONFIDENTIAL – commercially sensitive information) instead of approximately TRY ([CONFIDENTIAL – commercially sensitive information), corresponding to a subsidy amount of 2.357% instead of 3.066%."

Original investigation

87. Following the publication of the SEF, the Applicant submitted there was an error in the calculations of the individual subsidy amount in relation to the omission of selling expenses including transport costs. The Applicant provided revised figures to be used and an accompanying explanation.

88. Extract from the NON-CONFIDENTIAL- Milenyum Metal Comments on PAD_SES

89. "6. .....Transport costs related to export sales to the UK during the POI (CIF, CPT, DDU delivery terms) can be calculated using the excel file "Confidential_AS0020 Questionnaire Annex II (Milenyum Metal)" Tab "B2_-_Sales_to_the_UK" provided to the TRA during the investigation, because 18 export sale transactions to the UK included transport costs. Total of transport costs (as the difference between the net invoice value and the CIF value in accounting currency) for these transactions was [151,000-171,000] TL.

90. 7. Portion of selling expenses during the POI for the goods concerned could be: [540,000-620,000] TL + [1,200,500-1,390,000] TL= [1,700,00-2,030,000] TL * [0,179- 0,195] = [335,000-388,000] TL We should add transport cost to the UK for sales terms other than FOB. Thus: [335,000-388,000] TL + [151,000-171,000] TL = [460,000-565,000] TL must be deducted by entering this amount to the cell M20 in the excel file "CAS199 IB - Intermediate Subsidy Calculations (NONC)" Tab "C1_-_Income_statement."

91. The original investigation updated the transport costs in line with the methodology described in paragraph 6 and 7, put forward in the Applicant's CONFIDENTIAL submission (26 May 2023) to the PAD/SEF. This is stated in paragraph 122 of the final determination. The calculation of the individual subsidy amount was based on the revised figures provided in paragraphs 6 and 7 by the Applicant in its CONFIDENTIAL submission of 26 May 2023 as part of their response to the SEF.

Reconsideration finding

92. As stated above in paragraph 91, the TRA took into account the Applicant's submission at the SEF stage regarding the transport costs for transactions under CPT, CIF and DDU terms, plus associated selling expenses related to UK sales.

93. However, the original investigation did not take into account the Applicant's submission to remove the freight revenue from the sales income. Paragraph 8 of the NON-CONFIDENTIAL- Milenyum Metal Comments on PAD_SES states –

> "8. Another adjustment error is that the TRA did not exclude the portion of transport (shipping) income (601.01.009 Navlun Gelirleri: [3,800,000-4,400,000] TL) (Provided to the TRA in the file, Appendix A6-5(4) Trial Balance 2021-Milenyum Metal_Tur) falling to goods concerned from Net Sales (cell M12). The amount of this adjustment (deduction from net sales) is [3,800,000-4,400,000] TL * [0,179-0,195] = [730,000-860,000] TL."

94. This shipping income is reimbursement from the UK buyers of the shipping costs and was included in the sales income when calculating profit to which the corporate tax exemption applied. However, the shipping costs themselves, the majority of which are under FOB terms, were not included in the costs included in the profit calculation. This failure to match relevant income to expenditure results in an overstated profit level.

95. The Final Determination does not refer to this shipping income. Examination of the calculations, by comparing the pre-SEF and Final calculations, confirmed that no adjustment for shipping income was completed. Technically, either removing this shipping income or including the matching costs would have corrected the profit figure.

96. The reconsideration finding is that the original investigation acted only on part of the Applicant's submission to the SEF. As stated above in paragraph 94, failure to remove the shipping income resulted in an incorrect level of profit. This led to an error in the calculation of the individual subsidy amount.

97. There are two options available to correct the profit level, either –

    1. Remove the shipping income from the revenue (as per the SEF submission), or

    2. Include the relevant costs (transport) associated with the relevant sales (shipping income) (as per the reconsideration application).

98. Examination of contracts between the Applicant and their buyers confirms transport and handling costs are borne by the UK customers, resulting in "freight revenue". The initial transport and handling costs are paid by the Applicant. These are passed onto the UK buyers. Examination of the calculations conclude that though the income of the transport and handling costs were included in the calculations of profit for the goods concerned, the costs were excluded.

99. The methodology proposed by the Applicant(option 2 above) to establish the costs for the transactions under FOB terms is a reasonable one, so this approach has been used as the basis to correct the error.

100. The calculation of the individual subsidy amount resulting from the corporate tax exemption was repeated using the method proposed by the Applicant. This calculation confirmed the figure of 2.3567% submitted by the Applicant. The overall effect is the countervailing amount reduces from 4.02% to 3.31%. Therefore the original decision should be varied accordingly.

4 Reconsidered decision

101. The reconsidered decision is to **vary** the TRA's original decision made in the final recommendation, as accepted by the Secretary of State in Trade Remedies Notice 2023/18: definitive countervailing duty on ironing boards originating from Türkiye.[7]

102. In summary -

103. Ground 1: The TRA should not have included subsidy amounts which were lower than 1% in its calculation if the individual subsidy amount.

I. The TRA's approach to the calculation of the Individual Subsidy Amount is not supported by the text of the relevant legislation.

II. The calculation of the Individual Subsidy Amount should be undertaken in a non-discriminatory manner.

104. The reconsidered decision is that the approach taken by the original investigation in calculating the Individual Subsidy Amount was in accordance with the legislation and was reasonable.

105. Ground 2: The calculation of the individual subsidy amount was flawed by errors in the calculation of the subsidy amount for the corporate tax exemptions.

I. The TRA should have determined the amount of benefit conferred on the basis of a consistent allocation of turnover.

II. The calculation of the Individual Subsidy Amount has been affected by an error in the determination of the subsidy amount for the cooperate tax exemptions.

106. The reconsidered decision is that the approach taken to allocate profit based on turnover was reasonable based on the information provided by the Applicant. However, though the approach was reasonable, the TRA did make an error in its calculation of the individual subsidy amount.

[7] Trade Remedies Notice 2023/18:definitive countervailing duty on ironing boards originating from Turkey – GOV.UK (www.gov.uk)

107. The original investigation omitted to take account of the shipping income (the transport and handling costs of goods concerned) when calculating the profit. This resulted in a too high a level of profit being used to attribute the subsidy to the goods concerned.

108. The TRA's reconsidered decision is that:

- the individual subsidy amount, recalculated using the method reported above, is 2.3567%, a decrease from 3.006%, and
- the countervailing amount is 3.31%, a decrease from 4.02%.

109. Recommended ad-valorem duty rates:

Country	Overseas exporter/producer	Countervailing measure
Türkiye	Milenyum Metal Dis Ticaret Ve Sanayi A.S.	3.31%
Türkiye	3M Plastik Ve Metal Dis Ticaret Ve Sanayi A.S.	3.31%
Türkiye	All other overseas exporters (residual amount)	3.31%

110. It is appropriate to recommend that as the definitive measure applied from the date on which the provisional measure came into force, and this is a reconsideration of that decision, the variation should apply from 26 May 2023.

4.1 Next steps

111. Following a decision from the Secretary of State for the Department of Business and Trade, our reconsidered decision will be published in a Notice and can be found in the public file, Trade Remedies Service TRA Investigation AS0020[8].

112. If any interested party disagrees with our reconsidered decision, it can lodge an appeal to the Upper Tribunal to appeal our reconsidered decision. Details on how to do this can be found at Appeal to the Upper Tribunal (Tax and Chancery): Overview - GOV.UK (www.gov.uk).[9]

[8] https://www.trade-remedies.service.gov.uk/public/case/AS0020/submission/adeb85e2-8a0d-48d4-8190-17607622326c/ Link to AS0020 Public File on the Trade Remedies Service

[9] https://www.gov.uk/tax-upper-tribunal Provides an overview of how to decision by the Secretary of State or Trade Remedies Authority.