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International Trade Administration
Washington, D.C. 20230

C-122-865
Investigation
POI: 01/1/2018 – 12/31/2018
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E&C/OII: Team

January 23, 2020

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Fabricated Structural Steel from Canada

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I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are not being provided to producers and exporters of certain fabricated structural steel (fabricated structural steel) from Canada, as provided in section 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties:

Comment 1: Whether There Was Sufficient Industry Support to Initiate this Investigation
Comment 2: Whether to Apply Adverse Facts Available (AFA) to the Respondents
Comment 3: Whether to Adjust the Respondents' Denominators
Comment 4: Whether the Additional Depreciation for Class 1 and 1B Assets Program is Specific and Provides a Countervailable Benefit
Comment 5: Whether the Hydro-Québec Industrial Systems (Energy Efficiency) Program is Specific and Provides a Countervailable Benefit
Comment 6: Whether the Québec Tax Credit for On-the-Job Training Program is Specific and Provides a Countervailable Benefit
Comment 7: Whether the Québec Additional Reduction in Tax Rate for Primary and Manufacturing Sectors Program is Specific and Provides a Countervailable Benefit
Comment 8: Whether the Énergir L.P. Efficiency Program is Specific and Provides a Countervailable Benefit
Comment 9: Whether the EcoPerformance Program is Specific and Provides a Countervailable Benefit
Comment 10: Whether the MEI Audit Industry 4.0 Program is Specific and Provides a Countervailable Benefit

Comment 11: Whether the Québec Scientific Research and Development Tax Credit is *de facto* Specific
Comment 12: Whether the Tax Credit for Industrial Establishment from Ville de Thetford is *de jure* Specific
Comment 13: Whether Énergir L.P. is an "Authority"
Comment 14: Whether Commerce Should Use Canatal's Consolidated Sales Value
Comment 15: Whether Taxes Should Be Included in the Benefit Amount for the Hydro-Québec Industrial Systems Program
Comment 16: Whether Commerce Double-Counted Benefit Amounts for Certain Programs Used by Canatal
Comment 17: Whether Commerce Correctly Determined that Three Hydro-Québec Programs Were Not Used in the POI

II. BACKGROUND

Case History

The mandatory respondents in this investigation are Beauce-Atlas[1] and Canatal.[2] On July 12, 2019, Commerce published the *Preliminary Determination* in this investigation and aligned this final countervailing duty (CVD) determination with the final antidumping duty determination, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4).[3]

In July 2019, we received supplemental questionnaire responses from the Government of Canada (GOC) and the Government of Québec (GOQ).[4] Also in July 2019 we conducted verifications of Beauce-Atlas and the GOQ, in accordance with section 782(i)(1) of the Act.[5] In September 2019, we also conducted verifications of Canatal, GOC, Caisse de dépôt et placement du Québec

[1] Les Constructions Beauce-Atlas, Inc, (LC Beauce-Atlas) and its cross-owned affiliates, Fabrication Beauce-Atlas, Inc., Gestion Beauce-Atlas, Inc., Investissements G.M.N. Inc., Les Dessins de Structures Steltec, Métal B.G.L., Inc., Structure Beauce-Atlas, Inc., Solide Internationale Inc. and 2643-3284 Québec Inc., (collectively referred to as Beauce-Atlas) is a mandatory respondent in this investigation. We preliminarily determined not to attribute subsidies received by Beauce-Atlas Installation Inc. (BAI) to Beauce-Atlas. We received no comments from parties on this issue so, for this final determination, we continue not to attribute subsidies received by BAI to Beauce-Atlas.
[2] Les Industries Canatal Inc. (LI Canatal) and its cross-owned affiliates, Groupe Canatal Inc. and 7247508 Canatal Inc., (collectively referred to as Canatal) is a mandatory respondent in this investigation. LI Canatal is also known as Canatal Industries, Inc.
[3] *See Certain Fabricated Structural Steel from Canada: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 33232 (July 12, 2019) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).
[4] *See* GOC July 22, 2019 Third Supplemental Questionnaire Response; *see also* GOQ August 1, 2019 Third Supplemental Questionnaire Response (GOQ August 1, 2019 SQR).
[5] *See* Memorandum, "Verification of Beauce-Atlas' Questionnaire Responses," dated October 2, 2019 (Beauce-Atlas Verification Report); *see also* Memorandum, "Verification of the Questionnaire Responses of the Government of Québec," dated October 10, 2019 (GOQ Verification Report)

(CDPQ), and Énergir, L.P.[6] On September 10, 2019, Commerce extended the deadline for the final determination of this investigation until January 23, 2020.[7]

We invited parties to comment on the *Preliminary Determination*. We received timely-filed case briefs from the American Institute of Steel Construction (AISC) Full Member Subgroup (the petitioner); the GOC; the GOQ; CDPQ; Beauce-Atlas; and Canatal.[8] We also received timely-filed rebuttal briefs from the petitioner; the GOC and GOQ; Beauce-Atlas; and Canatal.[9] On December 19, 2019, we held a public hearing.

Period of Investigation

The period of investigation (POI) is January 1, 2018 through December 31, 2018.

III. SCOPE COMMENTS

The product covered by this investigation is fabricated structural steel from Canada. For a complete description of the scope of this investigation, see Appendix I of the accompanying *Federal Register* notice.

IV. SCOPE COMMENTS

During the course of this investigation, and the concurrent AD and CVD investigations of fabricated structural steel from Canada, China, and Mexico, Commerce received scope comments from interested parties. Commerce issued Preliminary Scope Decision Memoranda to address these comments and establish a period of time for parties to address scope issues in scope case and rebuttal briefs.[10] We received comments from interested parties on the

[6] *See* Memoranda, "Verification of Canatal's Questionnaire Responses," dated November 8, 2019 (Canatal Verification Report); "Verification of the Questionnaire Responses of the Government of Canada," dated November 6, 2019 (GOC Verification Report); "Verification of the Questionnaire Responses of Caisse de dépôt et placement du Québec (CDPQ)," dated October 22, 2019 (CDPQ Verification Report); and "Verification of the Questionnaire Responses of Énergir, L.P.," dated November 12, 2019 (Énergir Verification Report).

[7] *See Certain Fabricated Structural Steel from Canada: Preliminary Negative Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 84 FR 47481 (September 10, 2019).

[8] *See* Petitioner's Letter, "Certain Fabricated Structural Steel from Canada: Case Brief," dated November 19, 2019 (Petitioner Case Brief); *see also* GOC's Letter, "Government of Canada's Case Brief," dated November 19, 2019 (GOC Case Brief); GOQ's Letter, "Fabricated Structural Steel from Canada: Government of Québec's Case Brief," dated November 19, 2019 (GOQ Case Brief); CDPQ's Letter, " Certain Fabricated Structural from Canada: Case Brief of Caisse de dépôt et placement du Québec," dated November 19, 2019 (CDPQ Case Brief); Beauce-Atlas' Letter, "Fabricated Structural Steel form Canada, Case No. C-122-865: LC Beauce-Atlas' Case Brief," dated November 19, 2019 (Beauce-Atlas Case Brief); and Canatal's Letter, "Fabricated Structural Steel from Canada: Industries Canatal Inc.'s Case Brief," dated November 19, 2019 (Canatal Case Brief).

[9] *See* Petitioner's Letter, "Certain Fabricated Structural Steel from Canada: Rebuttal Brief," dated November 25, 2019 (Petitioner Rebuttal Brief); *see also* GOC's and GOQ's Letter, "Government of Canada and Government of Québec's Joint Rebuttal Brief," dated November 25, 2019 (GOC & GOQ Rebuttal Brief); Beauce-Atlas' Letter, "Fabricated Structural Steel form Canada, Case No. C-122-865: LC Beauce-Atlas' Rebuttal Brief," dated November 25, 2019 (Beauce-Atlas Rebuttal Brief); and Canatal's Letter, "Fabricated Structural Steel from Canada: Industries Canatal Inc.'s Rebuttal Brief," dated November 25, 2019 (Canatal Rebuttal Brief).

[10] *See* Memorandum, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Preliminary Scope Decision Memorandum," dated July 5, 2019; *see also* Memorandum, "Fabricated Structural Steel

Preliminary Scope Decision Memoranda, which we addressed in the Final Scope Decision Memorandum.[11] As a result, for this final determination, we made certain changes to the scope of these investigations from that published in the *Preliminary Determination*.

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

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

B. Attribution of Subsides

Interested parties raised issues in their case briefs regarding the attribution of subsidies for the final determination. However, we have made no changes to the attribution of subsidies used from the *Preliminary Determination*. For a description of the methodologies used for this final determination, *see* the *Preliminary Determination*.[13] *See* Comments 3 and 14, where we address arguments raised with respect to attribution of subsidies.

C. Denominators

Interested parties raised issues in their case briefs regarding the denominators Commerce used in the *Preliminary Determination*.[14] Commerce has revised the denominators for both mandatory respondents. For further discussion of the revised denominators, *see* Comments 3 and 14.

D. Benchmarks

Commerce made no changes to, and interested parties raised no issues in, their case briefs regarding, the benchmarks used in the *Preliminary Determination*. For a description of the benchmarks used for this final determination, *see* the *Preliminary Determination.*[15]

from Canada, Mexico, and the People's Republic of China: Second Preliminary Scope Memorandum," dated September 3, 2019 (collectively, Preliminary Scope Decision Memoranda).

[11] *See* Memorandum, "Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Final Scope Decision Memorandum," dated concurrently with this memorandum (Final Scope Decision Memorandum).

[12] *See* PDM at 7-8.

[13] *Id.* at 8-10.

[14] *Id.* at 11.

[15] *Id.* at 11-12.

VI. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Additional Depreciation for Class 1 and 1b Assets

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. For this final determination, we are calculating the sales denominator based on the methodology discussed below and made revisions based on issues observed at verification. *See* Comment 3.

Beauce-Atlas: 0.01 percent *ad valorem*
Canatal: 0.03 percent *ad valorem*

2. Québec Scientific Research and Development Tax Credit

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. For this final determination, we are calculating the sales denominator based on the methodology discussed below. *See* Comments 3 and 11.

Canatal: 0.03 percent *ad valorem*

3. Québec Additional Reduction in Tax Rate for Primary and Manufacturing Sectors

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. For this final determination, we are calculating the sales denominator based on the methodology discussed below. *See* Comments 3 and 7.

Beauce-Atlas: 0.04 percent *ad valorem*

4. Québec Tax Credit for On-The-Job Training

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. For this final determination, we are calculating the sales denominator based on the methodology discussed below. *See* Comments 3 and 6.

Beauce-Atlas: 0.07 percent *ad valorem*
Canatal: 0.01 percent *ad valorem*[16]

[16] We note that we preliminarily found this program to be not measurable for Canatal. *See* PDM at 14-15.

5. *Tax Credit for Industrial Establishment from Ville de Thetford*

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. For this final determination, we are calculating the sales denominator based on the methodology discussed below. *See* Comments 3 and 12.

Canatal: 0.04 percent *ad valorem*

6. *Hydro-Québec Industrial Systems Program*

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. For this final determination, we are calculating the sales denominator based on the methodology discussed below. *See* Comments 3 and 5.

Beauce-Atlas: 0.08 percent *ad valorem*
Canatal: 0.02 percent *ad valorem*

7. *ÉcoPerformance MERN (TEQ)/ Energy Efficiency Conversion Projects*

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. For this final determination, we are calculating the sales denominator based on the methodology discussed below. *See* Comments 3 and 9.

Canatal: 0.08 percent *ad valorem*

8. *Ministry of Economy and Innovation (MEI) Audit Industry 4.0 Program*

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. For this final determination, we are calculating the sales denominator based on the methodology discussed below. *See* Comments 3 and 10.

Canatal: 0.01 percent *ad valorem*

9. *Fonds de Développement et de Reconnaissance des Compétences de la Main-d'œuvre – Volet Soutien Régionalisé (FDRCMO) Program and the Formation de la Main-d'œvre Volet Entreprises (MFOR)*

No parties submitted comments regarding this program. However, Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. For this

final determination, we are calculating the sales denominator based on the methodology discussed below. *See* Comment 3.

Beauce-Atlas: 0.02 percent *ad valorem*

10. Énergir, L.P. (formerly Gaz Métro Limited Partnership) Efficiency Program

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. For this final determination, we are calculating the sales denominator based on the methodology discussed below. *See* Comments 8 and 13.

Canatal: 0.09 percent *ad valorem*

11. Canada Economic Development for Québec (CEDQ) Regions – Québec Economic Development Program (QEDP)

No parties submitted comments regarding this program. However, Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. For this final determination, we are calculating the sales denominator based on the methodology discussed below. *See* Comment 3.

Canatal: 0.01 percent *ad valorem*

B. Programs Determined Not To Provide Measurable Benefits During the POI

Each respondent reported programs that did not provide measurable benefit during the POI on which Commerce initiated an investigation. For a list of the subsidy programs by each respondent, *see* Appendix attached to this memorandum.

C. Programs Determined Not to be Used

Each respondent reported non-use of programs on which Commerce initiated an investigation. For a list of the subsidy programs not used by each respondent, *see* Appendix attached to this memorandum. We received no comments from interested parties on these programs.

D. Programs Determined Not to Be Countervailable

Each respondent reported programs which Commerce preliminarily determined were not countervailable. For a list of these subsidy programs, *see* "Programs Preliminarily Found Not to Be Countervailable" in the *Preliminary Determination*. We received no comments from interested parties on these programs.

VII. ANALYSIS OF COMMENTS

Comment 1: Whether There Was Sufficient Industry Support to Initiate this Investigation

GOC's Case Brief

- The petitioner lacked standing to file a petition because less than a majority of its members produce, manufacture, or wholesale fabricated structural steel in the United States. The petitioner amended its petition to clarify that the petitioner was the AISC Full Member Subgroup only two days before the deadline to comment.[17] In providing this clarification, the petitioner admits that it did not have standing to file a petition as an interested party because the AISC Full Member Subgroup did not file the original petitions.
- Respondent interested parties were denied due process to comment on the adequacy of domestic industry support. Commerce allowed the petitioner to revise its identity just two days before its initiation deadline. Section 732(c)(1)(B) of the Act provides 20 days from the filing date of the petition for interested parties to debate industry support, based on evidence presented in the Petition.
- Commerce's affirmative industry support finding was not supported by substantial evidence. The conclusion that the petitioner had the authority to speak on behalf of the domestic industry is not based on any record evidence beyond the petitioner's claim.

Canatal's Case Brief

- Commerce erred in initiating this investigation, because the petitioner failed to establish that it represents the fabricated structural steel industry in the United States and/or that the Petition had sufficient industry support for initiation.
- On February 21, 2019, the petitioner amended its petition to be filed on behalf of the AISC Full Member Subgroup. The GOC and GOQ filed additional letters on February 22, 2019, challenging whether a proper petitioner had been identified and noting the lack of industry support identified by the petitioner. The petitioner did not disclose the identities of its members until a submission dated February 22, 2019, which was served by first class mail on the parties and which they did not receive until after Commerce initiated the investigation on February 25, 2019. Therefore, respondent interested parties were deprived of any review and comment on the member companies of the AISC Full Member Subgroup.
- Commerce unlawfully deviated from the plain language of the statute that defines an interested party in under section 771(9)(A) of the Act. Commerce interpreted this plain language to include a clause that a trade or business association can include a subgroup of such an association.

[17] *See* GOC Case Brief at 4-5 (citing Petitioner's Letter, "Certain Fabricated Structural Steel from Canada, Mexico, and the People's Republic of China: Amendment to Petition to Clarify Petitioner," dated February 21, 2019 (Amendment to Petition)).

- The GOQ submitted a declaration from a full member of the AISC, stating that he has "never seen a list of the Full Member Subgroup and ha{s} never heard that term used before by AISC."[18]

Beauce-Atlas adopted the position of the GOC.

Petitioner's Rebuttal Brief

- Commerce's determination regarding standing and industry support cannot be reconsidered after the initiation of an investigation.[19]
- Commerce properly decided to initiate this investigation. The AISC Full Member Subgroup is a domestic interested party within the meaning of section 771(9)(E) of the Act and 19 CFR 351.102(b)(17). The AISC Full Member Subgroup consists of the full members of AISC as defined in its bylaws (*i.e.*, entities that fabricate structural steel or iron, manufacture the steel mill products used in the fabrication of structural steel or iron, and warehouse and distribute materials for the fabrication of structural steel or iron).[20] A majority of the AISC Full Member Subgroup are manufacturers, producers or wholesalers of fabricated structural steel.
- There are other cases in which the petitioner has clarified the petitioning entities.[21] In this investigation, the petitioner did not change the identity of the petitioner. Respondent interested parties have submitted no information to refute Commerce's determination that the petitioner is an interested party under the statute.
- Commerce provided interested parties sufficient opportunity to consider the petitioner's standing and domestic industry before initiating this investigation and did not violate interested parties' due process rights. The AISC website provides a publicly available and searchable directory of AISC members, including all of its full members. As such, respondent parties were in no way limited in their ability to determine specific producers' position on the petitions. It is unclear how Commerce could have hindered respondent interested parties in their review of the domestic industry's support of the Petitions, given that no respondent party contested the petitioner's industry support calculations.
- Commerce already considered and rejected respondent interested parties' arguments in its initiation memorandum.[22] Commerce noted that the petitioner demonstrated that it qualifies as an interested party under section 771(9)(E) of the Act.[23]

Commerce's Position:

Section 732(c)(4)(E) of the Act directs Commerce as follows regarding the consideration of comments regarding industry support:

[18] *See* Canatal Case Brief at 32 (citing GOC's Letter, "Fabricated Structural Steel from Canada, (A-122-864 and C-122-865): Response to AISC Amendment to Petition," dated February 22, 2019).
[19] *See* Petitioner Rebuttal Brief at 41 (citing section 732(c)(4)(E) of the Act).
[20] *Id*. at 42 (citing Amendment to Petition at 2).
[21] *Id*. at 45 (citing *Notice of Initiation of Antidumping Duty Investigations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 67 FR 65947 (October 29, 2002)).
[22] *Id*. at 49 (citing Antidumping Duty Investigation Initiation Checklist: Certain Fabricated Structural Steel from Canada, dated February 25, 2019 (Initiation Checklist) at Attachment II).
[23] *See* Initiation Checklist at Attachment II, at 19.

> Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 771(9) if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.[24]

Therefore, Commerce is statutorily precluded from reconsidering its industry support determination at this stage of the investigation. As a result, we continue to rely on our determination of industry support provided in the Initiation Checklist.[25] Thus, we reiterate below our analysis from the Initiation Checklist.

We note that the legislative history explains that a subgroup of a trade association may qualify as an interested party under section 771(9)(E) of the Act. Importantly, the legislative history explains that, while the majority limitation of section 771(9)(E) of the Act is "believed to fairly delimit those groups with sufficient interest to always be considered interested parties," it further clarifies that "{a}n association representative of…business generally, would not be considered an interested party under this limitation, *although a sub-group of such an association may qualify*."[26] As noted above, the petitioner amended the Petitions to clarify that the Petitions are filed on behalf of the AISC Full Member Subgroup. Amending a petition is permissible under Commerce's regulations,[27] and other petitioners have amended petitions to clarify the petitioning entities in past cases.[28] Moreover, all amendments and supplements are considered part of the "Petitions" as a whole,[29] and as such, we consider the Petitions, as amended, to be filed by the AISC Full Member Subgroup. Accordingly, we find that the record information demonstrates that the petitioner is an interested party under the statute and, as such, had standing to file the Petitions. Furthermore, we note there is no basis to "reset the clock" for the 20-day initiation period from the amendment of the petition to clarify the identity of the petitioner.[30]

Comment 2: Whether to Apply Adverse Facts Available (AFA) to the Respondents

Petitioner's Case Brief

- Commerce should apply AFA to Canatal and Beauce-Atlas, because the respondents failed to act to the best of their abilities to provide accurate sales denominators.

[24] Emphasis added.
[25] *See* Initiation Checklist at Attachment II, at 13-14.
[26] *See* S. Rep. 96-249, Report of the Committee on Finance, Trade Agreements Act of 1979, at 90 (emphasis added).
[27] *See* 19 CFR 351.202(e).
[28] *See, e.g., Notice of Initiation of Antidumping Duty Investigations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, 67 FR 65947 (October 29, 2002).
[29] *See, generally*, sections 702(b)(1) and 732(b)(1) of the Act, "{t}he petition may be amended at such time, and upon such conditions, as {Commerce}…may permit;" *see also* Enforcement and Compliance Antidumping Manual, at Chapter 2, page 6, "Everything that is submitted during the initiation period by the petitioner is collectively considered 'the petition.'"
[30] *See, e.g., Initiation of Countervailing Duty Investigations; Welded Carbon Steel Pipe and Tube Products from Mexico*, 49 FR 46182 (November 23, 1984).

- To ensure that Commerce collects the correct amount of countervailing duties, Commerce's regulations and practice requires that the respondents' sales denominators correspond with the "entered value" declared to the United States Customs and Boarder Protection (CBP) for subject merchandise.[31] Specifically, the *CVD Preamble* references CBP's regulations regarding transactional value and is CBP's basis for determining assessment value.[32] CBP regulations requires the exclusion of post-importation activities regardless of whether the amount excluded is based on the "cost" of those activities or the "charges" for them.[33]
- In most cases, the f.o.b.-port value of merchandise is equivalent to the entered value. However, in cases where the values are not equivalent, Commerce has stated that the reported sales value for exported products should "correspond on the basis on which the Customs Service assessed duties."[34] Commerce has made adjustments to remove "other expenses in sales denominators.[35]
- The record shows there is a difference between the entered value that Beauce-Atlas and Canatal reported to the CBP and the value of their f.o.b. total sales that they reported to Commerce.[36] The difference is because Beauce-Atlas and Canatal have included post-importation expenses, like assembly and additional materials purchased in the United States.[37] None of the parties contest that such costs are excluded from the entered values declared by the respondents on the 7501 Entry Summaries.[38] Considering Commerce's regulations, practice, and precedent establish that sales denominators should correspond to entered value and not include activities outside the country of origin, Commerce should use the sales values reported by the respondents in their Quantity & Value (Q&V) questionnaire responses, plus any domestic or non-U.S. export sales.[39]
- Commerce asked the respondents multiple times to provide their sales denominators on an f.o.b. basis. Commerce's initial questionnaire states respondents must "report the sales value on an f.o.b. (port) basis with respect to export sales and/or on an f.o.b. (factory) basis for domestic sales."[40] In subsequent questionnaires, Commerce asked additional questions regarding the respondent's sales denominators. However, the

[31] *See* Petitioner Case Brief at 5-6 (citing 19 CFR 351.525(a); and *Countervailing Duties*, 63 FR 65348, 65399 (November 25, 1998) (*CVD Preamble*)).
[32] *Id.* at 6, n.13 (citing *CVD Preamble*; and 19 CFR 152.103).
[33] *Id.* at 12-13 (citing 19 CRF 152.103(i)).
[34] *Id.* at 7 (citing *Certain Uncoated Groundwood Paper from Canada: Final Affirmative Countervailing Duty Determination*, 83 FR 39414 (August 9, 2018) (*UGW Paper Canada*) and accompanying IDM at Comment 11).
[35] *Id*. at 8 (citing *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 76 FR 22868 (April 25, 2011) (*HRS Brazil*) and accompanying IDM at Comment 3).
[36] *Id.* at 8 (citing Beauce-Atlas' Letter, "Response to Quantity & Value questionnaire," dated March 18, 2019 (Beauce-Atlas Q&V Response); Beauce-Atlas Verification Exhibit 1; Canatal's Letter, "Fabricated Structural Steel from Canada; Response of Les Industries Canatal Inc. to the Department's Quantity & Value Questionnaire," March 21, 2019 (Canatal Q&V Response); and Canatal Verification Exhibit 1).
[37] *Id.* at 11-12 (citing Canatal June 19, 2019 Second Supplemental Questionnaire Response (Canatal June 19, 2019 SQR) at Exhibit CAN-SUPP3-GEN-35 and Beauce-Atlas June 21, 2019 SQR at 2 and Exhibit 51).
[38] *Id*. at 13 (citing Canatal's Letter, "Fabricated Structural Steel from Canada, (C-122-865): Comments on CBP Data/or US. Imports" dated March 7,2019 (Canatal CBP Data Comments) at Attachment 1; Canatal Verification Exhibit; and Beauce-Atlas Verification Exhibit).
[39] *Id.* at 13-14.
[40] *Id.* at 9 (citing Commerce's Letter, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Canada: Countervailing Duty Questionnaire," dated March 29, 2019 at Section III, page 5).

respondents failed to adjust their reported sales denominator to remove activities such as erection, construction, and assembly in the United States. While Commerce explicitly asked the respondents to remove such income from their denominators, the amounts reported by both respondents fail to reconcile with their Q&V questionnaire responses.[41]

- The Act requires Commerce to rely on facts otherwise available when the respondent withholds requested information, fails to provide timely information in the form requested, significantly impedes a proceeding, or provides information that cannot be verified. The Act allows Commerce to use an adverse inference if a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.[42]
- The "best of its ability standard" assumes that respondents are familiar with Commerce's rules and regulations. Commerce must only find that a reasonable respondent would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations and that the respondent has failed to keep those records or failed to put forth maximum efforts to investigation and obtain the requested information from its record.[43] Commerce, rather than the respondents, determine what information is relevant and necessary, and must be provided.[44]
- The Court of International Trade (CIT) had affirmed Commerce's application of AFA because the respondent revised its original reported billet costs in a supplemental questionnaire with notifying or explaining its methodology.[45] Commerce has applied AFA to respondents when they failed to report critical information normally requested at the outset of the investigation, which the CIT upheld.[46]
- The respondents failed to provide their total sales information on an f.o.b. basis consistent with entered value and failed to notify Commerce in their initial questionnaire response of the reason their reported sales values differ from their Q&V questionnaire responses.[47] Further, the GOC, GOQ, Beauce-Atlas, and Canatal waited until 11 days before the *Preliminary Determination* to acknowledge their reported sales values do not

[41] *Id*. at 9-10 (citing Canatal June 19, 2019 SQR at Exhibit CAN-SUPP3-GEN-35; and Beauce-Atlas June 21, 2019 SQR at 2 and Exhibit 51).
[42] *Id.* at 3-4 (citing Section 776 of the Act).
[43] *Id.* at 3-4 (citing *Essar Steel Ltd. v. United States*, 678 F.3d 1268, 1276 (Fed. Cir. 2012); Statement of Administrative Action (SAA), H.R. Doc. 103-316, vol 1 (1994) at 868; *Nippon Steel Corp.* v. *United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*); and *Peer Bearing Co.-Changshan* v. *United States*, 766 F.3d 1396, 1399-1400 (Fed. Cir. 2014) (*Peer Bearing*)).
[44] *Id.* at 5 (citing *Certain Oil Country Tubular Goods from the People's Republic of China*, 78 FR 49475 (August 14, 2013) (*OCTG from China Final*) and accompanying IDM at 40; and *Essar Steel Ltd.* v. *United States*, 34 CIT 1057, 1073, 721 F. Supp. 2d 1285, 1298-99 (2010)).
[45] *Id.* at 17 (citing *Deacero S.A.P.I. DE C.V. v. United States*, 353 F. Supp. 3d 1303, 1311-12 (CIT 2018)).
[46] *Id.* at 18-19 (citing *Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 19022 (April 25, 2017) (*Hardwood from China Prelim*) and accompanying PDM at 25-31; unchanged in *Countervailing Duty Investigation of Certain Hardwood Plywood Products from the People's Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 82 FR 53473 (November 16, 2017) (*Hardwood from China Final*); and *Shangdong Dongfang Bayley Wood Co. v. United States*, 375 F. Supp. 3d 1339, l346 (CIT 2019) (*Bayley Wood*)).
[47] *Id.* at 16.

correspond with the f.o.b. port value or entered value.[48] Their actions significantly impeded the proceeding, given that Commerce was precluded from fully analyzing the information on the record. Additionally, since verifications were scheduled immediately after the *Preliminary Determination*, Commerce made clear that there was no additional time to comment on, or collect, additional information regarding the issues. Since the record does not contain correct sales denominator information for any year of the AUL period, it is impossible for Commerce to calculate an accurate *ad valorem* subsidy rate for the respondents.

- By failing to either report correctly, f.o.b.-port based denominators in their full questionnaire responses or to, at minimum, notify Commerce of this issue in accordance with their obligation under section 231(c)(1) of the Uruguay Round Agreements Act, Canatal and Beauce-Atlas have failed to cooperate to the best of their abilities. Therefore, Commerce should apply AFA to the respondents.

GOC and GOQ Rebuttal Brief

- The petitioner's push for an adjustment to reported sales values is based on the erroneous conflation of proper subsidy attribution and the collection of the correct amount of countervailing duties after any subsidies are properly attributed. If Commerce accepted the petitioner's suggested practice, Commerce would discard sales to which subsides must be attributed under its attribution rules and practice, resulting in the over-collection of duties.[49]
- Commerce's regulations state that an *ad valorem* rate is calculated by dividing the amount of the subsidy benefit by the sales value of the product(s) to which the subsidy is attributed. Under 19 CFR 351.525(b)(3), "untied" domestic subsidies are attributed to total sales.[50] In this case, there is no evidence on the record that the respondents used or benefited from any tied subsidy, so 19 CFR 351.525(b)(3) is the only relevant statute to use.
- Neither the Act nor Commerce's regulations expressly define the terms "f.o.b. (port)" or "f.o.b. (factory)." The petitioner seeks to adopt a definition of these terms based on CBP practice, but CBP's definition bears no relationship to Commerce's subsidy obligations under the Act or regulations. CBP's regulations do not control here. Further, the petitioner's incomplete citation of section 402 of the Act and 19 CFR 152.103 is misdirection and does not support its case. When the full text of the regulation is considered along with the record in this proceeding, the distinct, but related, customs law and regulations confirm that Commerce used the correct denominator in the *Preliminary Determination*.[51]

[48] *Id*. at 14-15 (citing Canadian Parties' Letter, "Response to Petitioner's June 12, 2019 Comments Concerning Respondent's Reported Sales Values," dated June 19, 2019 (Canadian Parties June 19, 2019 Letter); Canatal June 19, 2019 SQR at Exhibit CAN-SUPP3-GEN-35; and Beauce-Atlas June 21, 2019 SQR at 2 and Exhibit 51).
[49] *See* GOC & GOQ Rebuttal Brief at 2-3.
[50] *Id*. at 3-4 (citing 19 CFR 351.525(a) and (b)(3); and *CVD Preamble*).
[51] *Id*. at 4-5 (citing *Certain Corrosion-Resistant Steel Products from the People's Republic of China: Affirmative Preliminary Determination of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders*, 82 FR 58170 (December 11, 2017) and accompanying IDM at 16-17).

- The definition of value for customs purposes in the statute and regulations states that "transaction value" does not include construction, erection, assembly, or maintenance of merchandise after importation "if identified separately from the price actually paid or payable."[52] The verified record in this investigation shows that there is no separate identification of erection, construction, or other charges for the transactions at issue in this investigation and, therefore, the sales denominators reflect this indivisible fabricated structural steel product. Therefore, Commerce's use of the respondents' total sales in the *Preliminary Determination* was consistent with CBP's enforcement of customs law.[53]
- Even if the petitioner had cited CBP's statute and regulations correctly, its argument is still beside the point, as the respondents' subject merchandise is not entered under "transactional value," but, rather, under one of the alternative bases for establishing value permitted by law. Determination of the correct sales denominator is not a value exercise related to customs law. To that end, Commerce has recognized that sales denominators can include revenue that are related to non-subject merchandise, as well as to services that are not subject to entry and valuation.[54]
- Commerce's regulations do not specify that sales denominators should or must correspond to entered value, as this would defeat the purpose of subsidy attribution. To the extent that the regulations refer to subsidy attribution, the *CVD Preamble* merely indicates that there is no compelling reason to attribute subsidies to expenses such as freight and other shipping costs that do not reflect sales revenue.[55]
- Commerce's findings in *UGW Paper Canada* and *HRS Brazil* do not advance the petitioner's case but, rather, confirm the arguments above. Unlike in the cases cited by the petitioner, the petitioner's argument for eliminating core sales revenue in the instant investigation would lead to mis-attribution and overcollection of duties. In *UGW Paper Canada*, we stated that 19 CFR 351.525(a) does not limit Commerce into always using one of the two options specified in the regulation. Rather, Commerce can accept other bases for reporting sales as long as those bases reflect the product and economic activities that benefit from alleged subsidies. In *HRS Brazil*, the issue of controlling freight and other expenses that were not part of entered value was bigger than the simplistic requirement that sales denominators "should" correspond to entered value.[56]
- Even the petitioner concedes that the fabricated structural steel industry is "unique in that significant post-importation activities occur in the United States." Those post-importation activities, which the petitioner erroneously calls "expenses," are as essential to the U.S. customer as the delivered fabricated structural steel materials. The petitioner concedes that sales associated with construction, erection, assembly, or maintenance of subject merchandise in Canada are relevant and any measured subsidy should be attributed to those sales. Fabricated structural steel does not lend itself to traditional notions of f.o.b. value, but that is not a basis to disqualify sales for subsidy attribution

[52] *Id*. at 5-6 (citing 19 U.S.C. § 1401a(b)(3) and 19 CFR 152.103(h)(1)(i)).
[53] *Id*.
[54] *Id*. at 6-7 (citing *Certain Steel Nails from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 80 FR 18958 (May 20, 2015) and accompanying IDM at 32-33; and *Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances*, 74 FR 64045 (December 7, 2009) and accompanying IDM at Comment 36).
[55] *Id*. at 7-8 (citing *CVD Preamble*, 63 FR at 65399).
[56] *Id*. at 8-10 (citing *UGW Paper Canada* and accompanying IDM at Comment 11; and *HRS Brazil* and accompanying IDM at Comment 3).

purposes. Commerce's normal practice is to use sales denominators that reconcile to sales revenue in a respondent's audited financial statements.[57]

- Further, there is no evidence that necessary information is missing from the record of this proceeding, that Commerce identified any deficiency, or that the respondents failed to reply to follow up questions issued by Commerce. Therefore, the petitioner's demand that Commerce apply AFA in this case must be rejected.[58]

Beauce-Atlas Rebuttal Brief

- Commerce's regulations, long-standing practice, and questionnaire instructions do not require that f.o.b. port values correspond to entered value nor require respondents to deduct erection, assembly, or construction costs incurred in reported f.o.b. port values. The petitioner's attempts to manufacture such a requirement is without foundation and even the petitioner cannot point to any language in 19 CFR 351.525(a) that requires sales denominators must correspond to entered value. The discussion in the *CVD Preamble* does not trump the plain language of the regulation, which says nothing about the f.o.b. port value corresponding with entered value, nor does it overturn the other provisions of the attribution regulation that require attribution of untied domestic subsidies to total sales.[59]
- The petitioner cannot cite to a primary source of authority other than an attempt to incorporate CBP regulations into Commerce's attribution rules. Other than selective quotes from two inapposite cases, there is no support for the petitioner's claim of a long-standing practice requiring respondents to report f.o.b. port value consistent with entered value.[60]
- The facts demonstrate that Beauce-Atlas fully cooperated to the best of its ability in reporting its f.o.b. sales amounts and that there is no gap in the record. Commerce's initial questionnaire does not define f.o.b. port or f.o.b. factory. Beauce-Atlas reported its sales denominators based on standard attribution practices and fully detailed how it derived the f.o.b. values reported in its response, including how those figures came from its and its affiliates' financial statements. In its May supplemental questionnaire,

[57] *Id.* at 10-12 (citing Petitioner's Letter, "Certain Fabricated Structural Steel from Canada: Comments on Respondents' Reported Sales Values," dated June 12, 2019 (Petitioner Comments on Sales Values) at 2; PDM at 12-15; 19 CFR 351.525(b)(3); *Countervailing Duty Investigation of Certain Amorphous Silica Fabric from the People's Republic of China: Preliminary Determination of the Countervailing Duty Investigation and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 43579 (July 5, 2016) and accompanying IDM at 21-25; *Certain Steel Threaded Rod from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 69938 (November 12, 2015) and accompanying IDM at 18-19; *Boltless Steel Shelving Units Prepackaged for Sale from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 80 FR 5,779 (August 26, 2015) and accompanying IDM at 8-9; Memorandum, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Canada: Preliminary Determination Calculation Memorandum for Les Constructions Beauce-Atlas," dated July 5, 2019 at Attachment 3; Memorandum, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Canada: Preliminary Determination Calculation Memorandum for Les Industries Canatal Inc.," dated July 5, 2019 at Attachment 3; Memorandum, "Verification of Beauce-Atlas' Questionnaire Responses," dated October 2, 2019 at 8-9; and Memorandum, "Verification of Canatal's Questionnaire Response," dated November 8, 2019 at 6-9).

[58] *Id.* at 12-13.

[59] Beauce-Atlas Rebuttal Brief at 5-7.

[60] *Id.* at 8.

Commerce did not request any revisions in the way Beauce-Atlas reported its f.o.b. sales denominators. Beauce-Atlas was fully responsive and took a conservative approach to reporting its f.o.b. sales denominators in the AUL period.[61]

- The petitioner filed comments on June 12, 2019, well in advance of the *Preliminary Determination*, claiming that Commerce should require the respondents to revise their sales denominators. Notably, the supplemental questionnaire Commerce issued following the petitioner's June 12, 2019 comments did not include a request that Beauce-Atlas report its sales figures based on entered value.[62]
- Commerce can make a determination based on AFA only when an interested party fails to cooperate by not acting to the best of its ability. Commerce's questionnaire, regulations, and practice do not require a respondent to report f.o.b. port value to correspond with entered value. Beauce-Atlas was responsive to all of Commerce's questions and Commerce verified that Beauce-Atlas reported f.o.b. sales values did not include merchandise produced outside of Canada.[63]
- The petitioner's reliance on *Hardwood from China Final* is misplaced. In that case, Commerce found that the respondent failed to disclose an affiliated company early enough in the investigation to permit Commerce to investigate it, despite clear instructions in the initial questionnaire. Here, there was no clear instruction to report f.o.b. port values in a manner that corresponds with entered value, nor has the petitioner pointed to such a specific instruction.[64]

Canatal Rebuttal Brief

- The petitioner identified no missing, untimely, or unverifiable information which would warrant Commerce relying on facts available under section 776(a) of the Act. The petitioner's claim of deficiency is grounded in a general misunderstanding of Commerce's regulations and general practice. Canatal has actively participated in this investigation and provided Commerce with explanations to assist it with its evaluation of factual submissions.[65]
- The petitioner has conflated its impediment argument under section 776(a)(2)(C) of the Act with the legal requirements that must be met by Commerce to apply AFA under section 776(b)(1). Commerce declined to apply AFA where the respondent timely responded to Commerce's questionnaires and participated in a verification of the

[61] *Id*. at 9-11 (citing Beauce-Atlas' May 13, 2019 Initial Questionnaire Response (Beauce-Atlas May 13, 2019 IQR) at 1-13 and Exhibit 21; and Beauce-Atlas' June 6, 2019 Second Supplemental Questionnaire Response (Beauce-Atlas June 6, 2019 SQR) at 7-8).
[62] *Id*. at 12-14 (citing Beauce-Atlas' Letter, "Fifth Supplemental Questionnaire Response," dated June 24, 2019 (Beauce-Atlas June 24, 2019 SQR) at 7-8).
[63] *Id*. at 14-17 (citing Section 776(a) and (b)(1) of the Act; *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003); and Beauce-Atlas Verification Report at 8-9).
[64] *Id*. at 17-18 (citing *Hardwood from China Final* and accompanying IDM at 24-28).
[65] Canatal Rebuttal Brief at 21-22 (citing Canatal June 7, 2019 First Supplemental Questionnaire Response (Canatal June 7, 2019 SQR); Canatal June 12, 2019 Second Supplemental Questionnaire Response (Canatal June 12, 2019 SQR); PDM at 11-22; and Section 776(a) of the Act).

information and where Commerce deemed the impact of missing information inconsequential.[66]

- Citing the differences between the reported f.o.b. sales figure and the Q&V questionnaire response is a red herring. As noted on the form 7501 included with Canatal's comments on the CBP data, Canatal flags its shipments of fabricated structural steel for "value reconciliation," which indicates the values reported on the form were not final. Commerce used the value on these submissions to make respondent selection. The sales values reported by Canatal were based on Canatal's books and records kept in the normal course of business and tied to audited financial statements.[67]

Commerce's Position:

We disagree with the petitioner that we should apply AFA to Beauce-Atlas and Canatal because the respondents failed to act to the best of their abilities to provide accurate sales denominators.

Section 776(a) of the Act provides that Commerce shall, subject to section 782(d) of the Act, select from among the "facts otherwise available" if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record.

The respondents have not withheld information, provided untimely information, significantly impeded the proceeding or provided information that could not be verified. As the petitioner concedes, the fabricated structural steel industry is unique.[68] Both respondents make sales based on contracts that cover all elements of a project (*i.e.*, drafting, raw materials, fabrication, freight and delivery, and installation on the customer's job site).[69] Both respondents explained the

[66] *Id.* at 23-24 (citing Section 776(b)(1) of the Act; *Certain Uncoated Paper from Australia: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances, In Part*, 81 FR 3108 (January 20, 2016) and accompanying IDM at 3-6; and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003)).

[67] *Id.* at 24-25 (citing Canatal's Letter, "Fabricated Structural Steel from Canada; Response of Les Industries Canatal Inc. to the Department's Quantity & Value Questionnaire," dated March 21, 2019 (Canatal Q&V Response); and Canam Buildings and Structures, Inc., Canatal, and Walters Inc.'s Letter, "Fabricated Structural from Canada, (C-122-865): Comments on CBP Data for U.S. Imports," dated March 7, 2019).

[68] *See* Petitioner Case Brief at 1.

[69] *See* Beauce-Atlas May 13, 2019 IQR at 13; and Canatal May 13, 2019 Initial Questionnaire Response (Canatal May 13, 2019 IQR) at 12.

above in their initial questionnaire responses when they reported their f.o.b. sales denominators.[70]

On June 12, 2019, the petitioner submitted comments on the respondents' responses and suggested Commerce issue supplemental questionnaires requesting that the respondents adjust their f.o.b. sales denominators.[71] Specifically, the petitioner suggested that Commerce request that the respondents report sales denominators using "the same methodology {used} to determine the amount(s) for these items that was/were used to report the Entered Value of the fabricated structural steel reported to CBP at the time of entry on Custom Forms 7501" and that Commerce request that the respondents reconcile their f.o.b. sales denominators to their Q&V questionnaire responses.[72]

Commerce issued supplemental questionnaires to Beauce-Atlas and Canatal after receiving the petitioner's June 12, 2019, comments.[73] In these supplemental questionnaires, Commerce requested that Beauce-Atlas and Canatal report the sales revenue associated with the construction, erection, assembly, or maintenance of fabricated structural steel in the United States and the value of any additional materials sourced in the United States and added during the erection process during the AUL period, in line with what the petitioner requested in its June 12, 2019, letter. Notably, Commerce did not request that the respondents report their f.o.b. sales denominators using the same methodology as they used to report entered value to CBP or reconcile their f.o.b. sales denominators to their Q&V questionnaire response.[74] Commerce cannot apply facts available, let alone AFA, to the respondents for failure to provide information Commerce did not request.

The methodology used to report the f.o.b. sales denominators is at issue here, not whether the respondents may have withheld or failed to provide information or provided information that cannot be verified. As all parties concede, the fabricated structural steel industry is unique and the methodology the respondents used to report their sales denominators was not patently unreasonable.[75] Further, as discussed in Comment 3, we have used the respondents' reported sales values, adjusted to remove U.S. assembly activity. Therefore, we do not find the fact that the respondents initially reported their sales denominators with U.S. activities revenue included to constitute withholding requested information or significantly impeding Commerce's investigation.

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[70] *Id.*

[71] *See* Petitioner Comments on Sales Values.

[72] *Id.*

[73] *See* Commerce's Letters, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Canada: Fifth Supplemental Questionnaire," dated June 14, 2019; and "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Canada: Third Supplemental Questionnaire," dated June 14, 2019. In fact, Commerce issued five supplemental questionnaires to Beauce-Atlas and three supplemental questionnaires to Canatal and did not request the respondents report their f.o.b. sales denominators using the same methodology as they did to report entered value to the CBP or reconcile their f.o.b. sales denominators to their Q&V questionnaire response in any of them.

[74] *Id.*

[75] While Commerce has used or discussed using a sales denominator that corresponds to the basis on which CBP assesses duties in cases cited by the petitioner, the products and industries at issue in those cases do not resemble the complexities of fabricated structural steel and the fabricated structural steel industry. *See UGW Paper Canada* and *HRS Brazil.* Therefore, we do not find them persuasive in the instant case.

While we acknowledge that the total sales reported by both respondents does not tie to their reported f.o.b. sales values, Commerce's questionnaire does not require that respondents report their sales denominators on an entered value basis. Moreover, Commerce did not request, in any of the eight questionnaires issued to Beauce-Atlas and Canatal, that either company change its sales reporting methodology or reconcile its reported f.o.b. sales denominator to its Q&V questionnaire response. Additionally, as Canatal noted in its rebuttal brief, there is evidence on the record indicating that the entered value reported to CBP is subject to revision and amendment. Therefore, the difference in the respondents' total sales values and the Q&V figures in the questionnaire responses does not warrant the application of AFA.

Finally, we do not find the cases cited by the petitioner to be persuasive on this issue. In *OCTG from China Final*, Commerce applied AFA when the Government of China failed to answer direct questions regarding the ultimate individual owners of subject merchandise producers. In *Hardwood from China Final*, a respondent failed to identify Company D, a company which should have been reported as an affiliate, in its questionnaire responses. In *Bayley Wood*, the respondent failed to cooperate by not acting to the best of its ability to comply with Commerce's requests for information by not disclosing the full extent of its affiliations, as required by the initial questionnaire. In *Nippon Steel*, the respondent failed to provide conversion factors for U.S. sales after Commerce requested them. In *Peer Bearing*, the respondents failed to maintain data needed to report export price sales. In each of these cases, the respondents failed to answer direct questions from Commerce or failed to maintain records throughout the course of the proceeding. In contrast, in the instant case, the respondents presented their total sales using a fully explained methodology and were responsive to Commerce's supplemental questions on their sales.

In the instant case, the respondents explained the methodology they used to report total sales and were responsive when Commerce requested additional sales information. The application of a unique reporting methodology is not a failure to keep or maintain required records or to fail to put forth maximum efforts to respond and obtain requested information from its records.[76]

It is Commerce, and not the respondents or the petitioner, that determines what is relevant, necessary and must be provided.[77] In this case, we find that the respondents provided the information requested and also provided sufficient explanation for their reporting methodology. Therefore, we find that it is not appropriate to apply AFA to the respondents in the instant investigation.

Comment 3: Whether to Adjust the Respondents' Denominators

Petitioner's Case Brief

- Commerce should remove post-importation expenses from the respondents' sales denominators.

[76] *See Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).
[77] *See Certain Oil Country Tubular Goods from the People's Republic of China*, 78 FR 49475 (August 14, 2013); and *Essar Steel Ltd.* v. *United States*, 34 CIT 1057, 1073, 721 F. Supp. 2d 1285, 1298-99 (2010).

- As discussed in Comment 2, Commerce's regulations, practice, and case law require Commerce to use sales denominators that corresponded with the entered value of the merchandise.[78]
- In addition, the multinational rule under 19 CFR 351.525(b)(7) makes clear that subsidies will be attributed only to the production activities in the country of the government that provided the subsidy, absent a definitive showing by respondents that the government that provided activities intended to subsidize productive activities in the United States.[79] Neither Canatal nor Beauce-Atlas have provided any information to meet the multinational rule burden.
- While the Canadian parties describe the respondents' sales of fabricated structural steel as an "indivisible package of physical components, design, engineering and erection services," in fact, the cost of each component can be backed out using the company's production and sales records. At the very least, the respondents should have identified and reported the value of fabricated structural steel based on its entered value (*i.e.*, what the respondents reported to CBP on their 7501 entry summaries).[80]
- In *Supercalendered Paper from Canada*, Commerce rejected a respondent's argument that it should use total corporate sales, including sales outside of Canada, because the respondent had not provided any support for finding that any of the countervailed subsidies were tied to more than domestic production.[81] Commerce has stated that the burden on the respondents who claim a subsidy may have benefited operations outside the territory of the subsidy-granting government is very high.[82] Further, Commerce has rejected the assertion that we should consider Canada and the United States as a single country for the purpose of 19 CFR 351.525(b)(7).[83]

- Commerce should not rely on Beauce-Atlas' or Canatal's reported adjustments to their total sales values, because they failed to reconcile these with the value of U.S. sales as reported on their Q&V questionnaire responses.
  - If Commerce does not apply AFA to the respondents, it should use the value of U.S. sales as reported in the respondents' Q&V questionnaire responses as the denominators. Even after adjusting Beauce-Atlas' and Canatal's total sales denominators for the cost of their U.S. productive activities, the figures do not reconcile with their reported values in their Q&V questionnaire responses.[84]

[78] *See* Petitioner Case Brief at 21.
[79] *Id.* at 21-22 (citing 19 CFR 351.525(b)(7); *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012) (*Washers from Korea*) and accompanying IDM at Comment 13; and *Final Affirmative Countervailing Duty Determination: Carbon and Certain Alloy Steel from Canada*, 67 FR 55813 (August 30, 2002) (*Alloy Steel from Canada*) and accompanying IDM at Comment 9).
[80] *Id.* at 21-22 (citing Canatal June 19, 2019 SQR and Beauce-Atlas June 21, 2019 SQR).
[81] *Id.* at 22-23 (citing *Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*Supercalendared Paper from Canada*) and accompanying IDM at Comment 19.
[82] *Id.* at 23 (citing *Washers from Korea* and accompanying IDM at Comment 13).
[83] *Id.* at 23-24 (citing *Alloy Steel from Canada* and accompanying IDM at Comment 9).
[84] *Id.* at 24-25.

    - Therefore, for the final determination, Commerce should rely on the respondents' reported value of U.S. sales in the Q&V questionnaire responses as the U.S. sales denominators (plus any domestic and non-U.S. sales).[85]
- Commerce should adjust the sales denominators to account for the respondent's tollers, for which Commerce has no subsidy reporting requirement.
    - Both Beauce-Atlas and Canatal failed to report any subsidies received by their respective unaffiliated tollers/subcontractors, although the activities performed by the tollers represent a portion of both respondents' sales values.[86]
    - The petitioner submitted multiple comments arguing that Beauce-Atlas and Canatal should be required to provide responses on behalf of their tollers and subcontractors.[87] Commerce ultimately required some reporting regarding the extent of the respondents' tolling and subcontracting activities in supplemental questionnaires.[88] However, the percentage of cost of contracts related to payments to tollers reported by the respondents does not match that in the respondents' audited financial statements.[89]
    - Commerce should subtract the amount reported in Beauce-Atlas' and Canatal's financial statements related to the costs of subcontractors and tollers.[90]

GOC and GOQ Rebuttal Brief

- The petitioner misinterprets the multinational company rule under 19 CFR 351.525(b)(7). The rule is intended to exclude sales originating from overseas "production facilities." In the instant case, there are no sales by overseas production facilities; the only sales at issue originate with the Canadian respondents in Canada. Thus, the multinational rule does not apply.[91]
- The petitioner's argument for use of the respondents' Q&V questionnaire response as a proxy for verified sales values is an AFA argument cloaked in an imaginary requirement that the respondents must reconcile their sales denominators to their Q&V questionnaire response. Commerce did not request such a reconciliation and no necessary data or information is missing from the record.[92]
- There is no basis for adjusting the respondents' sales denominators to account for missing subsidy information from unaffiliated tollers and processors. Commerce attributes subsidies to respondents when the subsidies were received by cross-owned affiliates. The

[85] *Id.* at 26.
[86] *Id.* at 26-27 (citing Canatal April 12, 2019 Affiliation Response (Canatal AFFR)).
[87] *Id.* at 27 (citing Petitioner's Letter, "Certain Fabricated Structural Steel form Canada: Comments on Affiliation Questionnaire Responses," dated April 26, 2019; and Petitioner's Letter, "Certain Fabricated Structural Steel from Canada: Additional Comments on Affiliation Questionnaire Responses," dated May 13, 2019).
[88] *Id.* at 27 (citing Beauce-Atlas June 12, 2019 Supplemental Questionnaire (Beauce-Atlas June 12, 2019 SQR); and Canatal June 12, 2019 SQR).
[89] *Id.* at 27-29 (citing Beauce-Atlas April 12, 2019 Affiliation Response (Beauce-Atlas AFFR); Canatal May 13, 2019 IQR at Exhibit 5; Canatal June 12, 2019 SQR at Exhibit GEN-32; Beauce-Atlas May 13, 2019 IQR at Exhibit 5; and Beauce-Atlas June 12, 2019 SQR at Exhibit 48)
[90] *Id.* at 29-30.
[91] *See* GOC & GOQ Rebuttal Brief at 13-14 (citing 19 CFR 351-525(b)(7)).
[92] *Id.* at 14.

petitioner makes no argument concerning cross-ownership of unaffiliated tollers and processers with the respondents.[93]

Beauce-Atlas Rebuttal Brief

- The multinational rule does not apply to Beauce-Atlas because it has no production facilities outside of Canada.[94]
- The cases cited by the petitioner are inapposite because they directly address situations where companies were arguing that Commerce should include the sales values of their production facilities in other countries as part of their sales denominator.[95]
- Even if the multinational rule applied, Beauce-Atlas received several tax subsidies for which Commerce calculated a benefit that is based on Beauce-Atlas's overall sales revenue, which includes activity in the United States. Therefore, the record shows that these programs are tied to more than "domestic production."[96]
- There is no basis for deducting tolling and subcontracting costs from the sales denominator. Beauce-Atlas was under no obligation to report subsidies that may have been received by any of its unaffiliated tollers, and Commerce never requested that information.[97]
- The petitioner conflates the cost for affiliated and unaffiliated tollers reported in its financial statement to the costs reported to Commerce without distinguishing the significant role of affiliated tollers, for which Beauce-Atlas has provided responses.[98]

Canatal Rebuttal Brief

- Canatal sells complete structures, not disassembled parts and *a la carte* services. Therefore, Commerce's calculations should be made on the same basis, using Canatal's verified total sales value.[99]
- Commerce's law and practice requires that subsidies be allocated to the economic activity to which subsidies apply. In the case of untied subsidies, Commerce's regulations and practice require that the benefit be allocated to Canatal's total sales of complete structures, not a partial estimate of those sales based on entered value of just the physical components.[100]

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[93] *Id.* at 14-15 (citing 19 CFR 351.525(b)(6) and (b)(6)(vi)).
[94] *See* Beauce-Atlas Rebuttal Brief (citing Beauce-Atlas AFFR; and Beauce-Atlas May 30, 2019 First Supplemental Questionnaire Response).
[95] *Id.* at 19 (citing Petitioner Case Brief at 22-23).
[96] *Id.* at 19-21 (citing Memorandum, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Canada: Preliminary Determination Calculation Memorandum for Beauce-Atlas," dated July 5, 2019 (Beauce-Atlas Preliminary Calculation Memorandum); Beauce-Atlas May 13, 2019 IQR at Exhibit 11; and 19 CFR 351.525(b)(7)).
[97] *Id.* at 21-23 (citing Beauce-Atlas May 13, 2019 IQR at 2-4; Petitioner's Letter, "Certain Fabricated Structural Steel from Canada: Comments on Canatal, Beauce-Atlas and the Government of Quebec Questionnaire Responses," dated May 28, 2019; and Beauce-Atlas June 12, 2019 SQR at 1-3 and Exhibit 48).
[98] *Id.* at 23-24 (citing Beauce-Atlas May 13, 2019 IQR at 29 and Exhibit 5 and Beauce-Atlas June 6, 2019 SQR).
[99] *See* Canatal Rebuttal Brief at 3-4 (citing Canatal June 19, 2019 SQR at 2-3 and Exhibit CAN-SUPP3-GEN-34 and Canatal Verification Exhibits at VE-4).
[100] *Id.* at 4-5 (Canatal June 19, 2019 SQR at 2-3 and Exhibit CAN-SUPP3-GEN-34; and Canatal Verification Exhibits at VE-4).

- The petitioner is conflating the collection of correct CVD duties and the attribution of the subsidy to the correct universe of sales. Commerce's regulation states that the *ad valorem* subsidy rate is calculated by dividing the amount of the benefit allocated to the POI by the sales value during the same period of the product or products to which the secretary attributes the subsidy. While "normally" Commerce will determine the sales value of a product on an f.o.b. factory or port basis, this is not a normal case. The *CVD Preamble* explains that Commerce's practice of requiring respondents to report export sales on an f.o.b. port basis is a matter of administrative convenience focused on eliminating revenue associated with expenses, such as freight and insurance.[101]
- The entered value for customs purposes bears no legal relationship or relevance to Commerce's allocation of benefit under 19 CFR 351.525(b)(3). The petitioner argues that there is clear intent to do so under 19 CFR 351.525(a) and the *CVD Preamble*. However, the purpose of using f.o.b. port value is to eliminate revenue associated with selling expenses.[102] Further, the record of this investigation establishes that there is no price paid or payable (*i.e.*, transactional value) for individual pieces of fabricated structural steel. The respondents' customers agree to a contract price for the entire project, not to pieces of fabricated structural steel.[103]
- The petitioner omits that, under CBP regulations, post-importation charges are only excluded from transactional value "if identified separately from the price actual paid or payable."[104] The same language is found in the statute.[105] As noted above, none of the post-importation services or activities are separately invoiced or paid.[106]
- Canatal's sale denominators were verified by Commerce, including tying them to the sales information in Canatal's accounting system, trial balance, audited financial statements, and general ledger.[107]
- Canatal reported its sales values in the form and manner requested by Commerce and has demonstrated that Canatal sells completed fabricated structural steel projects rather than fabricated structural steel and parts.[108]
- Commerce's attribution rule does not provide for any deductions from Canatal's reported sales values. Under 19 CFR 351.525(a) and the *CVD Preamble*, Commerce considers the basis for the respondents' receipt of benefits under each program. Where a program has been found to be countervailable as a domestic subsidy, Commerce uses the recipient's total sales as the denominator. Where the program has been found to be contingent upon export activities, Commerce uses the recipient's total export sales as the denominator.

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[101] *Id*. at 5-6 (citing Canadian Parties' Letter of June 19, 2019 at 2-4; 19 CFR 351.525(a) and (b)(3); and *CVD Preamble*, 63 FR at 65399).
[102] *Id.* at 7-8 (citing 19 CFR 152.103(h)(1)(i); *CVD Preamble*, 63 FR at 65399; and Canadian Parties' Letter of June 19, 2019 at 3-4).
[103] *Id*. at 8-9 (citing Trade Act of 1979, House Report No. 96-317 at 91; 19 CFR 152.103(a); 19 CFR 152.103(a); and Canatal CBP Data Comments at Exhibit 1).
[104] *Id.* at 9-10 (citing 19 CFR 152.103(h)(1)(i)
[105] *Id.* at 10 (citing Section 402(b)(3) of the Act).
[106] *Id.* at 11 (citing 19 CFR 152.103(h)(i) and 19 USC § 1401a(b)(3)).
[107] *Id.* at 11-12 (citing Canatal Verification Report at 7-8).
[108] *Id.* at 12-14 (citing Memorandum, "Countervailing Duty Investigation of Certain Fabricated Structural Steel from Canada: Preliminary Determination Calculation Memorandum for Les Industries Canatal Inc.," dated July 5, 2019 (Canatal Preliminary Calculation Memorandum); PDM at 11; Canatal Verification Report; Canadian Parties June 19, 2019 Letter at 2; and Canatal June 23, 2019 SQR at 1-3).

The *CVD Preamble* further indicates that paragraphs (b)(2) through (b)(7) should be applied consistently with each other.[109]

- Commerce considers all products sold, including other business income, in the sales denominator. Canatal has demonstrated that it sells fabricated structural steel products on a contract basis, which includes all subject merchandise, parts, and installation. Since there is no evidence of tied subsidies, Commerce should read the subparts of 19 CFR 351.525(b) consistently.[110] *HRS Brazil*, cited by the petitioner, simply applies Commerce's standard practice to adjust for freight and other expenses and does not require Commerce to adjust sales denominators for services performed by the respondent.[111]
- The petitioner's reliance on the multinational rule is misplaced. While Canatal has a sister company in the United States, its financial information is not consolidated with its U.S. sister company's information. Canatal has demonstrated that, while the projects may finish in the United States, the relevant transactions occur in Canada.[112]
- If deductions are made from the denominator, Commerce should make corresponding deductions for any subsidies tied to the sales that are being removed from the denominator. Since Canatal's entire business model is fabricated structural steel projects in the U.S. market, any financial aid from the Canadian federal and provincial governments is implicitly (if not explicitly) for Canatal's business activities which include activities in the United States.[113]
- Evidence on the record shows that the subcontractors and tollers are not affiliated or cross-owned with Canatal and, therefore, Cantal is not required to report any subsidies they may have received.[114]

Commerce's Position:

We agree that it is appropriate to remove the costs and profit associated with the respondents' U.S. activities (*i.e.*, assembly of fabricated structural steel and acquisition of additional

[109] *Id.* at 14-15 (citing 19 CFR 351.525(b); *CVD Preamble*, 63 FR at 65400; and *Wooden Cabinets and Vanities and Components Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 84 FR 39798 (August 5, 2019) and accompanying IDM).
[110] *Id.* at 15-16 (citing *Certain Steel Nails from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 2895 (May 20, 2015 (*Nails from Korea*) and accompanying IDM at Comment 8; *Certain Oil Country Tubular Goods from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Negative Critical Circumstances Determination*, 74 FR 64045 (December 7, 2009) (*OTG from China*) and accompanying IDM at Comment 36; 19 CFR 351.525(b); and Canatal June 23, 2019 SQR at Exhibit CAN-SUPP3-GEN-34).
[111] *Id.* at 16-17 (citing *HRS Brazil* and accompanying IDM at Comment 3).
[112] *Id.* at 17-18 (citing 19 CFR 351.525(b)(7); *CVD Preamble*, 63 FR at 65403; Canatal AFFR at 6; Canatal May 13, 2019 IQR at Exhibits CAN-GEN-4, 6, and 8; and Canatal June 23, 2019 SQR at 3).
[113] *Id.* at 3 n.3 and 18-19 (citing Canatal Preliminary Calculation Memorandum; Canatal Verification Report at 12-13; Canatal May 13, 2019 IQR at Exhibits CAN-GEN-4, 6, and 8; and Canatal June 23, 2019 SQR).
[114] *Id.* at 19-21 (citing Canatal AFFR; *CVD Preamble*, 63 FR at 65348 and 65402; 19 CRF 351.525(b)(6)(iv) and (v); *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 10, 2014) and accompanying IDM at 55-57; and *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 47479 (October 12, 2017) and accompanying IDM at 9-12).

materials) from the respondents' sales denominators, and have used the adjusted denominators for this final determination.

Section 701 of the Act directs Commerce to measure the countervailable subsidy provided to the subject merchandise. Specifically, the Act states that if Commerce "determines that the government of a country . . . is providing . . . a countervailable subsidy with respect to the manufacture, production, or export of a class or kind of merchandise imported or sold . . . for importation . . . then there shall be imposed upon such merchandise a countervailing duty . . . equal to the amount of the net countervailable subsidy."[115] Thus, the basic statutory requirement imposed by Congress is that Commerce must ensure that any methodology used to determine the amount of the net countervailable subsidy accurately measures the subsidies conferred upon the subject merchandise. Toward that end, Commerce implemented a set of attribution rules in 19 CFR 351.525(b). As explained in the *CVD Preamble*:

> Paragraphs (b)(2) through (b)(7) set forth general rules of attribution that the Secretary will apply to a given factual situation. We have taken this approach because depending on the facts, several of the different rules may come into play at the same time. If we tried to account for all the possible permutations in advance, the result would be an extremely lengthy set of rules that prove unduly rigid.
>
> On the other hand, we appreciate that there needs to be a certain degree of predictability as to how {Commerce} will attribute subsidies. We believe that the rules set forth in paragraph (b) are sufficiently precise that parties can predict with a reasonable degree of certainty how will attribute subsidies to particular products in a given factual scenario. In this regard, our intent is to apply these rules as harmoniously as possible, recognizing that unique and unforeseen factual situations may make complete harmony among these rules impossible.[116]

Thus, when applying attribution rules under 19 CFR 351.525(b), our aim, as laid out in the *CVD Preamble*, is to apply the rules as harmoniously as possible, while recognizing that 19 CFR 351.525(b) might not account for all the possible permutations in advance.

We normally attribute a domestic subsidy to all products sold by a firm, in accordance with 19 CFR 351.525(b)(6)(3). However, the *CVD Preamble* makes clear that our attribution rules do not account for all situations that may arise because, if Commerce tried to account for all possible permutations, the result would be an extremely lengthy set of rules that could prove unduly rigid. As noted by all parties, the Canadian fabricated structural steel industry is unique, in that Beauce-Atlas and Canatal sell fully assembled structures and a significant amount of activity occurs outside of Canada following importation into the United States. This is not a sales situation that we normally encounter in a CVD proceeding. The petitioner argues that Commerce should remove post-importation activity from the respondents' sales denominators. We agree.

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[115] *See* section 701(a) of the Act.
[116] *CVD Preamble*, 63 FR at 65399 – 65400.

Based on the unique facts presented in this investigation, we find it to be an inappropriate application of 19 CFR 351.525(b)(3) to include the respondents' post-importation activities in the United States in the sales denominator. Including these activities that occur outside the subsidizing country would be inconsistent with the intent of section 701 of the Act and the intended application of the attribution rules. The *CVD Preamble* articulated one key principle underlying our practice with respect to the attribution rules. According to the *CVD Preamble,* it is our continued position, based upon our past administrative experience, that:

> The government of a country normally provides subsidies for the general purpose of promoting the economic and social health of that country and its people, and for the specific purposes of supporting, assisting or encouraging domestic manufacturing or production and related activities (including, for example, social policy activities such as the employment of its people). . . . Moreover, a government normally will not provide subsidies to firms that refuse to use them as the government wants, and firms receiving subsidies will not use them in a way that would contravene the government's purposes, as they otherwise risk losing future subsidies.[117]

Although we agree that the multinational rule does not directly apply in this case, the text in the *CVD Preamble's* discussion of the multinational rule reflects Commerce's general practice of attributing subsidies to the domestic activities in the jurisdiction that provided those subsidies. As described above, our aim is to apply the attribution rules as harmoniously as possible in this unique situation. There is nothing on our record that indicates the governments of Canada and its provinces intended its subsidies to benefit more than the economic and social health of companies in its territories. Therefore, taking into account 19 CFR 351.525(b)(3), as well as the principle laid out in the *CVD Preamble*, we are relying only on fabricated structural steel production activities in Canada in the sales denominator, and have not included income from U.S. assembly activity.

We find the respondents' argument that the governments of Canada intended for the subsides to apply beyond its own borders, because respondents have activities beyond those borders, to be unpersuasive. An examination of the subsidy programs at issue in this case indicates that they are intended to benefit the facilities and workers of the respondents in Canada – *i.e.*, they are tax credits and grants specific to the respondents' facilities and employees in Canada. Because we cannot say that the governments that provided these subsidies intended to subsidize activities outside their territories, absent evidence on the record showing that they intended to do so, and that they did so, we find it necessary to remove the revenue associated with post-exportation activities from the sales denominators of the respondents.[118]

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[117] *CVD Preamble*, 63 FR at 65403.

[118] We asked Beauce-Atlas and Canatal to report the revenue associated with their U.S. activities. Both respondents responded that they did not keep the revenue of such activities in the ordinary course of business and instead reported the cost of their U.S. activities. *See* Beauce Atlas June 24, 2019 SQR at 2 and Canatal June 19, 2019 SQR at 3. We calculated profit for both respondents using their audited financial statements to attribute profit to the reported costs and removed both the cost and profit associated with U.S. activities from the respondents' reported total sales denominators. *See* Beauce-Atlas Final Calculation Memorandum and Canatal Final Calculation Memorandum, dated concurrently with this document.

Commerce's practice is to use sales denominators that can be reconciled to a company's audited financial statement.[119] Consistent with this practice, we have used both respondents verified f.o.b. sales denominators, which tie to their audited financial statements, and removed costs and profit associated with post-importation activities. We have used the same basis for denominators during the AUL period used to determine whether non-recurring subsidies provided a benefit amount allocated to the POI under 19 CFR 351.524(b)(2). This is consistent with what Commerce has done in *UGW Paper Canada*, *Washers from Korea*, and *Alloy Steel from Canada*, where Commerce either directly applied the multinational rule or used an f.o.b. basis which corresponded to the company's books and records.[120]

The petitioner argues for the use of the respondents' Q&V questionnaire responses for export sales as a proxy for entered values declared to CBP. However, this would be inconsistent with Commerce's practice, as described above. As Beauce-Atlas noted, the entered value reported to CBP is based on a simple calculation of a per-unit rate agreed upon by CBP.[121] These amounts are not final, nor can they be tied to the respondents' audited financial statements.[122] Thus, we have not relied on the respondents' Q&V questionnaire responses for the sales denominators.

We also disagree with the petitioner that we should remove costs associated with tollers and subcontractors in Canada. The respondents appropriately reported subsidies received by their cross-owned tollers and subcontractors.[123] There is no requirement for the respondents to report subsidies received by unaffiliated parties,[124] nor did we request such reporting in this investigation. Generally, under 19 CFR 351.525(b), to attribute subsidies received by a respondent to sales made by that respondent. Here, our mandatory respondents are the ones who made the sales. The fact that the respondents subsequently subcontract to an unaffiliated third party in Canada does not negate the fact that subsidies received by our mandatory respondents reduce costs associated with subcontracting incurred by the mandatory respondents for the mandatory respondents' sales. Thus, we disagree with the petitioner's reasoning that we should remove costs associated with unaffiliated tollers and subcontractors in Canada because the record lacks subsidy usage for these unaffiliated tollers.

Further, the petitioner's assertions with respect to the percentage of Beauce-Atlas' and Canatal's costs associated with subcontracts are incorrect.[125] With regard to Beauce-Atlas, its financial statement includes the subcontracting costs for affiliated and unaffiliated tollers, and Beauce-Atlas reported all subsidies received by its affiliated parties – which represent the majority of the tolling costs reflected in its financial statements and are already reflected in Beauce-Atlas'

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[119] *See, e.g., Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016*, 84 FR 36051 (July 26, 2019) and accompanying IDM at Comment 3 (Commerce applied AFA when a respondent failed to accurately report a denominator that tied to its audited financial statement).
[120] *See UGW Paper Canada* and accompanying IDM at Comment 11; *Washers from Korea* and accompanying IDM at Comment 13; and *Alloy Steel from Canada* and accompanying IDM at Comment 9.
[121] *See* Beauce-Atlas June 24, 2019 SQR at 5-6.
[122] *Id.; see also* Canatal Q&V Response.
[123] *See* Canatal June 12, 2019 SQR at Exhibit CAN-SUPP2-GEN-32 and Beauce-Atlas June 12, 2019 SQR at Exhibit 48.
[124] *See* 19 CFR 351.525(b), which does not list an attribution rule for subsidies received by unaffiliated parties.
[125] *See* Petitioner Case Brief at 28-29.

reporting.[126] With regard to Canatal, the figures in its financial statements are not reflective of what Canatal reported in its responses for its tollers, none of which were cross-owned affiliates.[127]

Comment 4: Whether the Additional Depreciation for Class 1 and 1B Assets Program is Specific and Provides a Countervailable Benefit

GOC's Case Brief

- Commerce concluded that the Additional Depreciation for Class 1 and 1B Assets program is *de jure* specific, because eligibility for the program is limited to certain industries due to the definition of manufacturing and processing in Canada's Income Tax Regulation.[128]
- The program is actually not *de jure* specific, because the criteria do not restrict the program to a specific industry. The program is used by tens of thousands of taxpayers across 300 different industry codes.[129] The limitation of the program refers to the type of activity associated with an asset rather than the industry of the taxpayer.[130] Therefore, Commerce cannot find the program *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.
- The program is also not *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act, because its use is not limited to fabricated structural steel users. Fabricated structural steel users of the program accounted for one percent of the total value and 1.5 percent of the total number of users of the program.[131]

GOQ's Case Brief

- Commerce preliminarily countervailed the Additional Depreciation for Class 1 and 1B Assets in the instant case, but listed it as a federal program, citing to the GOC responses.[132] In its verification report and preliminary calculation memorandum, however, Commerce also countervailed the benefit amount from the provincial program of the same name, but failed to explain how the provincial program is specific.[133]
- The Additional Depreciation for Class 1 and 1B Assets program is neither *de jure* nor *de facto* specific. First, the program is not *de jure* specific, because the criteria for the program are not restricted to any specific industry and the program is used by various

[126] *See* Beauce-Atlas May 13, 2019 IQR at 29 and Exhibit 5 and Beauce-Atlas June 6, 2019 SQR.
[127] *See* Canatal June 12, 2019 SQR at 11-12 and Exhibit CAN-SUPP2-GEN-32.
[128] *See* GOC Case Brief at 9 (citing *Preliminary Determination* and accompanying PDM at 12).
[129] *Id.* at 9-10 (citing GOC June 28, 2019 Second Supplemental Questionnaire Response (GOC June 28, 2019 SQR) at Exhibit GOC-SUPP2-CRA-CLASS1-4).
[130] *Id.* at 10 (citing GOC June 12, 2019 First Supplemental Questionnaire Response (GOC June 12, 2019 SQR) at Exhibit GOC-SUPP1-CRA-CLASS1-1; and GOC May 13, 2019 Initial Questionnaire Response (GOC May 13, 2019 IQR) at Exhibit GOC-CRA-ACCA-2 at Section 1104(9)).
[131] *Id.* at 11 (citing GOC June 28, 2019 SQR at Exhibit GOC-SUPP2-CRA-CLASS1-1 at 13 and Exhibit GOC-SUPP2-CRA-CLASS1-4).
[132] PDM at 11-12.
[133] *See* GOQ Case Brief at 44 (citing GOQ Verification Report at 15-17; *see also* Canatal Preliminary Calculation Memorandum; and Beauce-Atlas Preliminary Calculation Memorandum).

industries that manufacture and process assets.[134] Second, the program is not *de facto* specific, because the program was widely used across industries and is not limited to an industry or group.[135]

Beauce-Atlas and Canatal adopted the position of the GOC and GOQ.

Petitioner's Rebuttal Brief

- The GOC and GOQ argue that the Additional Depreciation for Class 1 and 1B Assets program is not specific within the meaning of section 771(5A)(D)(i) of the Act because the criteria do not limit the use of the program by industry, but by an activity associated with an asset. The petitioner argues that the GOC and GOQ provide no legal support for this interpretation of the Act and that Commerce should countervail the program at the federal and regional levels.[136]
- When providing a response for the Additional Depreciation for Class 1 and 1B Assets program, the GOC referred Commerce to the responses it had provided for the Accelerated Capital Cost Allowance (ACCA) for Class 29 Assets program. The GOC states that, similar to the ACCA for Class 29 Assets program, the deduction for the Additional Depreciation for Class 1 and 1B Assets program is also available to taxpayers pursuant to the Income Tax Act and that the same exclusions for using the program exist with respect to manufacturing or processing.[137]
- Therefore, Commerce should use the same specificity analysis for the Additional Depreciation for Class 1 and 1B Assets program as it used for the ACCA for Class 29 Assets program.
- In *UGW Paper Canada*, Commerce found that the ACCA for Class 29 Assets program is specific, because the tax laws excluded certain activities from the definition of manufacturing and processing.[138] In addition, the GOC's arguments in *UGW Paper Canada* are similar to ones made in *Softwood Lumber from Canada* and *Supercalendered Paper from Canada*, which were rejected by Commerce.[139] Commerce has also found programs, in non-Canadian cases, to be *de jure* specific when specific industries or activities were excluded from eligibility to receive benefits and addressed an argument similar to GOC's in *Magnesium from Israel*.[140]

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[134] *Id.* (citing GOQ June 12, 2019 First Supplemental Questionnaire (GOQ June 12, 2019 SQR) at Exhibit QC-CCAB-3).
[135] *See* GOQ Case Brief at 45 (citing GOQ June 12, 2019 SQR at Exhibit QC-CCAB-3).
[136] *See* Petitioner Rebuttal Brief at 21-22.
[137] *Id*. at 22 (citing GOQ First SQR at 13-14).
[138] *Id*. at 23 (citing *UGW Paper Canada* and accompanying IDM at Comment 52).
[139] *Id*. (citing *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017) (*Softwood Lumber from Canada)* and accompanying IDM at Comment 68; *see also SC Paper Expedited Review Final* and accompanying IDM at Comment 32).
[140] *See* Petitioner Rebuttal Brief at 23 (citing *Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Affirmative Countervailing Duty Determination*, 77 FR 64465 (October 22, 2012) and accompanying IDM at Comment 1; and *Magnesium from Israel: Final Affirmative Countervailing Duty Determination*, 84 FR 65785 (November 29, 2019) (*Magnesium from Israel*) and accompanying IDM at Comment 2).

Commerce's Position:

According to both the GOC and GOQ, both governments have capital cost allowance (CCA) rates under their respective tax systems.[141] The standard CCA rate for Class 1 is four percent.[142] Under Class 1, eligible non-residential buildings acquired after March 18, 2007, qualify for an additional allowance of six percent (for a total of ten percent) for machinery used in manufacturing and processing operations.[143] Under Class 1B, eligible non-residential buildings acquired after March 18, 2007, qualify for an additional allowance of two percent (for a total of six percent) for machinery used in manufacturing and processing operation.[144] Beauce-Atlas and Canatal reported that they used the accelerated depreciation under this program to reduce their taxable income during the POI.[145]

Section 771(5A)(D)(i) of the Act states "{w}here the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry, the subsidy is specific as a matter of law." We do not find the respondents' argument, that the program is not specific because it is limited to "activities" rather than "industries," to be persuasive. In *Magnesium from Israel*,[146] Commerce declined to make this distinction between activity and industry for purposes of determining specificity and we do not do so now. Further, as Commerce noted in *UGW Paper Canada*, *Softwood Lumber from Canada*, and *Supercalendered Paper from Canada*, we find programs to be *de jure* specific when "the applicable tax laws … explicitly exclude certain activities from the definition of manufacturing and processing; industries that are engaged exclusively in the excluded activities are not eligible for the … program."[147] Similarly, this program is limited to those companies engaging in manufacturing and processing activities, as defined by Canada's Income Tax Act and Québec's Taxation Act, which states:

> {M}anufacturing or processing does not include: (a) farming or fishing; (b) logging; (c) construction; (d) operating an oil or gas well or extracting petroleum or natural gas from a natural accumulation thereof; (e) extracting minerals from a mineral resource; (f) processing of (i) ore, other than iron ore or tar sands ore, from a mineral resource to any stage that is not beyond the prime metal stage or its equivalent, (ii) iron ore from a mineral resource to any stage that is not beyond the pellet stage or its equivalent, or (iii) tar sands ore from a mineral resource to any stage that is not beyond the crude oil stage or its equivalent; (g) producing industrial minerals; (h) producing or processing electrical energy or steam, for

[141] *See* GOC June 12, 2019 SQR at 13-15; *see also* GOQ May 13, 2019 Initial Questionnaire Response (GOQ May 13, 2019 IQR) at 107.
[142] *See* GOC June 27, 2019 SQR at Exhibit GOC-SUPP2-CRA-CLASS1-1; and GOQ May 13, 2019 IQR at Exhibit QC-RQ-6.
[143] *Id.*
[144] *Id.*
[145] *See* Beauce-Atlas May 13, 2019 IQR at 23-24; Beauce-Atlas June 6, 2019 SQR at 17; and Canatal May 13, 2019 IQR at Exhibit CAN-TAX-15.
[146] *See Magnesium from Israel* and accompanying IDM at Comment 2.
[147] *See UGW Paper Canada* and accompanying IDM at 184 (emphasis added); *see also Supercalendered Paper from Canada* and accompanying IDM at Comment 32; and *Softwood Lumber from Canada* and accompanying IDM at Comment 68.

> sale; (i) processing natural gas as part of the business of selling or distributing gas in the course of operating a public utility; (j) processing heavy crude oil recovered from a natural reservoir in Canada to a stage that is not beyond the crude oil stage or its equivalent; or (k) Canadian field processing.[148]

Therefore, we continue to find this program to be *de jure* specific pursuant to section 771(5A)(D)(i) of the Act because, as a matter of law, eligibility for this tax program is expressly limited to certain industries, *i.e.*, those industries not specifically excluded by Canada's Income Tax Regulation's definition of manufacturing and processing.[149] As a result of this finding, we need not address the arguments regarding *de facto* specificity.[150]

Further, we disagree with the GOQ that Commerce failed to explain why the provincial program is specific. The GOC and GOQ offer this program with the same eligibility criteria.[151] Moreover, the law and administration of this program are exactly the same at the federal and provincial levels.[152] Therefore, we do not consider the provincial program and the federal program as two separate and distinct programs. Thus, we do not need to make a separate specificity finding with respect to the provincial program, as we find that it is administered in the same manner as the federal program.

Comment 5: Whether the Hydro-Québec Industrial Systems (Energy Efficiency) Program is Specific and Provides a Countervailable Benefit

GOQ's Case Brief

- Commerce erred in finding that Hydro-Québec's Industrial Systems/Energy Efficiency (ISEE) program is *de facto* specific and provides a benefit equal to the grant amount. Rather, the program does not confer a benefit to a specific enterprise or industry, or group of enterprises or industries, and is, therefore, neither *de facto* nor *de jure* specific within the meaning of section 771(5A) of the Act.[153]
- Assistance under the ISEE program is available to "all companies with a North American Industry Classification System code located in Québec."[154] In fact, during the AUL period, 2,955 companies received assistance under the program, while the non-metallic mineral and metal industry received less than 7 and 18 percent of total assistance during the POI and AUL period, respectively.[155]

[148] *See* GOQ Verification Exhibit 5 and GOC May 13, 2019 IQR at Exhibit GOC-CRA-ACCA-2.
[149] *See* GOC June 12, 2019 SQR at Exhibit GOC-SUPP1-CRA-CLASS1-1; *see also* GOQ May 13, 2019 IQR at Exhibit QC-RQ-7.
[150] *See* SAA at 930 ("{T}he *de jure* prong of the specificity test recognizes that where a foreign government expressly limits access to a subsidy to a sufficiently small number of enterprises, industries or groups thereof, further inquiry into the actual use of the subsidy is unnecessary.").
[151] *See* GOC June 12, 2019 SQR at 13-15; GOC June 27, 2019 SQR at Exhibit GOC-SUPP2-CRA-CLASS1-1; and GOQ May 13, 2019 Initial Questionnaire Response (GOQ May 13, 2019 IQR) at 107 and Exhibit QC-RQ-6.
[152] See GOC Verification Report at 3-4 and GOQ Verification Report at 15-17; *see also* GOQ Verification Exhibit 5 and GOC May 13, 2019 IQR at Exhibit GOC-CRA-ACCA-2.
[153] *See* GOQ Case Brief at 29.
[154] *Id*. at 30.
[155] *Id*. at 32.

- Eligibility is automatic and based on pre-established criteria. Payments made under the ISEE program do not confer a benefit, because the amount paid directly correlates to the reduced electricity usage.[156]
- The ISEE program benefits Hydro-Québec. Under the provisions of the Hydro-Québec Act, to supply power and pursue energy conservation, the ISEE program purchases electricity use reduction.[157] Therefore, Hydro-Québec is purchasing energy efficiency (*i.e.*, a reduction in the use of energy), which is a service, not a good. The *CVD Preamble* recognizes that government purchases of services cannot give rise to a countervailable subsidy, stating that "if governmental purchases of services were intended to be treated similarly to the governmental purchase of goods, the statue and the 1994 World Trade Organization Agreement on Subsidies and Countervailing Measures (SCM Agreement) would specifically mention services as they do with the provision of goods and services."[158]

Beauce-Atlas and Canatal adopted the position of the GOQ.

Petitioner's Rebuttal Brief

- Commerce, in *UGW Paper Canada*, rejected the GOQ's nearly identical arguments. Because no new facts have been presented in the instant investigation regarding this program, Commerce should continue to find the program specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.[159]
- The GOQ's assertion that, because the ISEE program results in cost savings for Hydro-Québec, there is no benefit to the respondents, is misplaced. Previous Commerce findings show that, pursuant to section 771(5)(E) of the Act, a benefit is determined as a benefit to the recipient, rather than as the cost to the government.[160]
- Similarly, the SAA, in reference to section 771(5)(E) of the Act, states that subparagraph (E) reflects the "benefit-to the-recipient" standard which long has been a fundamental basis for identifying and measuring subsidies under U.S. CVD practice, and is expressly endorsed by Article 14 of the SCM Agreement.[161]
- The GOQ's claim that Hydro- Québec is profitable does not negate the fact that respondent companies received grants from Hydro- Québec during the AUL period and the POI.[162]

Commerce's Position:

In our *Preliminary Determination*, we found that a limited number of companies received grants from the program during the POI and the AUL period and, therefore, we preliminarily

[156] *Id*. at 33.
[157] *Id*. at 36.
[158] *Id*. at 36-37 (citing *CVD Preamble*, 63 FR at 65379 and the SCM Agreement, Article 1.1(a)(1)).
[159] *See* Petitioner Rebuttal Brief at 17 (citing *UGW Paper Canada* and accompanying IDM at Comment 71)..
[160] *Id*. at 19 (citing *Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination*, 63 FR 28186 (June 18, 2018); and *Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon Steel Plate from Italy*, 64 FR 73244 (December 29, 1999)).
[161] *Id*. at 19 (citing SAA at 927).
[162] *Id*. at 19-20.

determined that this program was *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act.[163] The GOQ argues that the program is not *de facto* specific, because the non-metallic mineral and metal industry is not a predominant user of the program, nor does it receive a disproportionally large amount of assistance under the program. Under section 771(5A)(D)(iii)(I) of the Act, we may find a subsidy program *de facto* specific if the actual recipients of a subsidy, whether on an enterprise or industry basis, are limited in number. Further, section 771(5A) of the Act states that "any reference to an enterprise or industry is a reference to a foreign enterprise or industry and includes a group of such enterprises or industries." The SAA states that "{t}he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy."[164] The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies provided to or used by discrete segments of an economy would escape the purview of the CVD law."[165] The fact that companies in different industries received assistance under the program does not negate the fact that, during the AUL period, only 2,955 companies received assistance under this program, which represents less than one percent of all companies in Québec.[166] The program is not widely used throughout the provincial economy on an enterprise basis and, therefore, we continue to find it *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act.

We disagree that this program does not confer a benefit on Beauce-Atlas and Canatal. As we stated in our *Preliminary Determination*, these respondents received grants under the ISEE and its predecessor program during the AUL period.[167] The GOQ's assertion that the project is profitable for Hydro-Québec does not negate the fact that respondent companies received grants from Hydro-Québec under the program during the AUL period and the POI. Consistent with *UGW Paper Canada*,[168] we continue to find that this program provides a benefit to those companies under section 771(5)(E) of the Act, and that the benefit exists in the amount of non-recurring reimbursement payments received by those companies, pursuant to 19 CFR 351.504(a).

Moreover, we disagree with the respondent parties that Hydro-Québec's ISEE program is not countervailable because the GOQ is purchasing the service of energy efficiency (*i.e.*, the reduction of electricity use). We do not agree that the reduction of electricity usage amounts to a performance of a service for which the government is paying. Record evidence indicates that the reimbursement payments are "incentives" to the company, provided in the manner of non-recurring grants.[169] Therefore, we continue to find that Hydro-Québec's ISEE program conferred a benefit to Beauce-Atlas and Canatal equal to the amount of the non-recurring grants received, pursuant to 19 CFR 351.504(a), consistent with *UGW Paper Canada*.[170]

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[163] *See* PDM at 16.
[164] *See* SAA at 929. The SAA "shall be regarded as an authoritative expression by the United States concerning the interpretation and application of the Uruguay Round Agreements and this Act…" 19 U.S.C. §1352(d).
[165] *Id.* at 930.
[166] *See* GOQ Case Brief at 32 (citing GOQ June 12, 2019 SQR at 19 and Exhibit QC-ISEE-6.).
[167] *Id*.
[168] *See UGW Paper Canada* and accompanying IDM at Comment 71.
[169] *See* GOQ May 13, 2019 IQR at 91-93 and Exhibits QC-ISEE-1 and -2; GOQ June 12, 2019 SQR at 20-25; and GOQ Verification Report at 5-7.
[170] *See UGW Paper Canada* and accompanying IDM at Comment 71.

Comment 6: Whether the Québec Tax Credit for On-the-Job Training Program is Specific and Provides a Countervailable Benefit

GOQ's Case Brief

- Commerce should amend its finding that the Québec tax credit is *de facto* specific because it is not limited in number, by enterprise or industry. Commerce used a general use test to determine that the actual recipients of the tax credit are limited in number on an enterprise basis when compared to the total number of corporate and individual tax filers.[171] This approach is incorrect, since Commerce is assuming that every tax filer claims, or could claim, the tax credit. Instead, Commerce should examine whether only a few companies or industries participated or received a predominant or disproportionate amount of the benefit.
- For tax years 2015 through 2018, a number of companies, covering nine economic sectors representing dozens of industries, were granted the tax credit.[172] The fabricated structural steel industry comprised a percentage of the total industries that received the tax credit.[173] Therefore, the statistics prove that the number of companies receiving the credit are not limited in number.

Beauce-Atlas adopted the position of the GOQ.

Petitioner's Rebuttal Brief

- Commerce should uphold its finding in the final determination that the Québec Tax Credit for On-the-Job Training program is specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because there are a limited number of enterprises that received the credit.[174] The respondents were a portion of the few recipients of the tax credit out of the total corporate tax filers for the 2017 tax year that was filed in 2018.[175] Commerce found the Québec Tax Credit for On-the-Job Training program countervailable in *UGW Paper Canada* and should not depart from its prior determination in this case.[176]

Commerce's Position:

Under section 771(5A)(D)(iii)(I) of the Act, we may find a subsidy program *de facto* specific if the actual recipients of a subsidy, whether on an enterprise or industry basis, are limited in

[171] *See* GOQ Case Brief at 42-43 (citing *Preliminary Determination* and accompanying PDM at 13-14).
[172] *See* GOQ Case Brief at 43 (citing GOQ June 28, 2019 Second Partial Second Supplemental Questionnaire Response (GOQ June 28, 2019 SSQR) at Exhibit QC-C09-17).
[173] *Id*.
[174] *See* Petitioner Rebuttal Brief at 20 (citing GOQ Case Brief at 42-44 citing *Preliminary Determination* and accompanying PDM at 13-14).
[175] *Id*. at 21 (citing GOQ June 28, 2019 SSQR at 4).
[176] *Id*. (citing *UGW Paper Canada* and accompanying PDM at I-7). Commerce notes that in the preliminary determination for *UGW Paper Canada*, we preliminarily determined that the GOQ Tax Credit for On-the-Job Training program did not provide measurable benefits to respondents during the POI.

number. Further, section 771(5A) of the Act states that "any reference to an enterprise or industry is a reference to a foreign enterprise or industry and includes a group of such enterprises or industries." The SAA states that "{t}he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy."[177] The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies provided to or used by discrete segments of an economy would escape the purview of the CVD law."[178]

The GOQ reported that the purpose of this tax credit is to encourage businesses and individuals in business throughout Québec to take on trainees and improve the professional skills of young workers.[179] The GOQ also reported the total number of companies that claimed the tax credit in 2015.[180] Given the nature of this tax program, it is reasonable to compare the actual number of companies that received the tax credit in 2018 to the total number of tax filers, inclusive of corporations and individuals in business, within Québec for 2018, to determine whether the program is limited in number and, therefore, *de facto* specific under section 771(5A(D)(iii)(I) of the Act.

Contrary to the GOQ's arguments, we did not ignore the evidence it submitted on the record (*i.e.*, Exhibit QC-C09-17, which contained information on the GOQ's disbursements under the program between 2015 and 2018). In fact, we relied on that program usage data to conduct our specificity analysis in the *Preliminary Determination*.[181] The figures, reported by the GOQ, indicate that the actual number of recipients that benefited from the tax credit during the POI relative to the total number of tax filers during the POI are limited in number on an enterprise basis.[182] Therefore, for this final determination, we continue to find the Tax Credit for On-the-Job Training Period to be *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act.

Comment 7: Whether the Québec Additional Reduction in Tax Rate for Primary and Manufacturing Sectors Program is Specific and Provides a Countervailable Benefit

GOQ's Case Brief

- Commerce's determination is incorrect that the Additional Reduction in Tax Rate for Primary and Manufacturing Sectors program is *de jure* specific. Commerce found *de jure* specificity because the recipients are limited to broad economic sectors.[183] According to section 701(a) of the Act, Commerce must make a *de jure* specificity finding for a specific good, because Commerce makes its determination with respect to

[177] *See* SAA at 929.
[178] *Id.* at 930.
[179] *See* GOQ June 28, 2019 SQR at Exhibit QC-C09-A.
[180] *Id.* at Exhibit QC-C09-17.
[181] *See* PDM at 14 n.78, where we identified the source documentation, *i.e.*, GOQ June 28, 2019 SQR at Exhibit QC-C09-17.
[182] *See* GOQ June 28, 2019 SQR at Exhibit QC-C09-17.
[183] *See* GOQ Case Brief at 45 (citing *Preliminary Determination* and accompanying PDM at 14).

specific merchandise and imposes countervailing duties on such merchandise.[184] Since all goods producing industries are covered, the program cannot be specific.

- The Federal Income Tax Regulations define eligible manufacturing and processing activities as those which determine manufacturing and processing profits, capital cost, and labor cost.[185] The program is available to all industries which produce goods since all goods production falls under primary and secondary manufacturing sectors. Therefore, the legislation does not limit the program to a single industry or group of industries or enterprises. A wide variety of industries across nine industry groupings used the program, proving that it is neither *de jure* nor *de facto* specific.[186]

Beauce-Atlas adopted the position of the GOQ.

Petitioner's Rebuttal Brief

- Commerce should reject the GOQ's argument that the Additional Reduction in Tax Rate for Primary and Manufacturing Sectors Program is not *de jure* specific within the meaning of section 771(5A)(D)(i).[187] If, by law, certain activities exclude industries from being eligible for a program, there is no statute or precedent requiring Commerce to determine whether the exclusions are broad or narrow.[188] Commerce rejected a similar argument made by the respondents in *Magnesium from Israel*.[189]

Commerce's Position:

Section 771(5A)(D)(i) of the Act states "{w}here the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry, the subsidy is specific as a matter of law." In the *Preliminary Determination*, Commerce found the tax rate reduction under this program to be *de jure* specific, in accordance with section 771(5A)(D)(i) of the Act. According to the GOQ, in order to be eligible for this program, a certain percentage of a company's activities must be in the primary and manufacturing sectors.[190] This list of activities that qualify for this program is found in Québec's Income Tax Regulations.[191] The GOQ specifically restricts the tax rate reduction benefits to companies that meet the definition of primary and manufacturing, while also excluding certain activities from eligibility. As noted in Comment 4, Commerce finds subsidy programs to be *de jure* specific when the program is limited to those companies engaging in specified activities, as defined by law, to the exclusion of other activities.[192] Therefore, we continue to find that the Québec Additional Reduction in Tax Rate for Primary and Manufacturing Sectors program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because, as a matter of law, eligibility for this tax program is expressly limited to

[184] *Id*. at 46 (citing Section 701(a) of the Act).
[185] *Id.* (citing GOQ June 12, 2019 SQR at 57 and Exhibit QC-MFC-3).
[186] *See* GOQ Case Brief at 46-47.
[187] *See* Petitioner Rebuttal Brief at 24-25 (citing GOQ Case Brief at 45-47).
[188] *Id*.
[189] *Id*. at 25 (citing *Magnesium from Israel* and accompanying IDM at Comment 2).
[190] *See* GOQ May 13, 2019 IQR at 107.
[191] *See* GOQ June 12, 2019 SQR at Exhibit QC-MFC-3.
[192] *See, e.g., UGW Paper Canada* and accompanying IDM at Comment 52.

certain industries, *i.e.*, those industries in the primary and manufacturing sectors, as defined by Québec's Income Tax Regulations.

Comment 8: Whether the Énergir L.P. Efficiency Program is Specific and Provides a Countervailable Benefit

Canatal's Case Brief:

- Should Commerce continue to find Énergir to be a public authority or a private entity entrusted or directed by a government to make a financial contribution, the Énergir Efficiency Program is not specific, because it had many recipients during the POI and is not limited to a specific sector, enterprise or industry."[193]
- The Énergir Efficiency Program is designed to improve energy efficiency in Québec by encouraging companies like Canatal to engage in energy efficiency projects to reduce natural gas usage.[194] Therefore, this program benefits Énergir.[195]
- Énergir is purchasing the service of reducing natural gas consumption. Pursuant to section 771(5)(E)(iv) of the Act, services are not countervailable.[196]

Petitioner's Rebuttal Brief:

- Commerce should continue to find this program specific, because its actual users are limited in number, within the meaning of section 771(5A)(D)(iii)(I) of the Act.[197]
- Canatal's assertions fail to address why Commerce's finding of *de facto* specificity was in error and does not point to evidence contradicting this finding.[198]

Commerce's Position:

In our *Preliminary Determination*, we found this program to be *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act, because the actual recipients are limited in number. For the final determination, we continue to find that this program is *de facto* specific.

Under section 771(5A)(D)(iii)(I) of the Act, we may find a subsidy program *de facto* specific if the actual recipients of a subsidy, whether on an enterprise or industry basis, are limited in number. Further, section 771(5A) of the Act states that "any reference to an enterprise or industry is a reference to a foreign enterprise or industry and includes a group of such enterprises or industries." The SAA states that "{t}he Administration intends to apply the specificity test in

[193] *See* Canatal Case Brief at 8 (citing Énergir Verification Report at 2; and section 771(5A)(D) of the Act, which states that a specific subsidy is a subsidy limited to an enterprise or industry).
[194] *Id*. at 8-9. Canatal notes that it received funds based on projections of natural gas savings due to using more efficient equipment. *See* Énergir Verification Report at 5.
[195] *See* Canatal Case Brief at 8-9.
[196] *Id*. at 9 (citing that the statute distinguishes between a government's provision of goods and services and a government's purchase of goods in its definition of "benefit conferred"). Similarly, Canatal points to the nature of Hydro Quebec's energy efficiency programs, which it regards as a government's purchase of services and are thus, not countervailable. *See* GOQ Case Brief at 29.
[197] *See* Petitioner Rebuttal Brief at 14-15.
[198] *Id*. at 14.

light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy."[199] The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies provided to or used by discrete segments of an economy would escape the purview of the CVD law."[200]

The disbursements at issue in this investigation relate to Énergir's reimbursements to enterprises for a portion of the cost of acquiring and installing high efficiency gas equipment. Although we found this program to be *de facto* specific on an industry basis in the *Preliminary Determination*, upon further review of the record in this investigation, for purposes of this final determination, we find this program to be *de facto* specific on an enterprise basis. Specifically, we examined the number of recipients of the Énergir efficiency programs and found that Énergir disbursed amounts to 549 companies during the POI.[201] On this basis, we find that the actual recipients of the grants are limited in number, on an enterprise basis and, therefore, the program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, because the actual recipients are limited in number.

In addition, we are unpersuaded by the Canatal's argument that this program is not countervailable because it constitutes the purchase of services by the government. We do not agree that the reduction of natural gas consumption amounts to a performance of a service for which the government is paying. Record evidence indicates that the payments are "incentives" to the company directly from the government, provided in the manner of non-recurring grants.[202] Therefore, we continue to find that the Énergir efficiency programs provide a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and we continue to find that the Énergir efficiency programs conferred a benefit to Canatal equal to the amount of the grants, pursuant to 19 CFR 351.504(a).

Comment 9: Whether the EcoPerformance Program is Specific and Provides a Countervailable Benefit

GOQ's Case Brief

- Commerce's preliminary determination that the EcoPerformance program is *de facto* specific is contrary to law. This program is neither *de facto* or *de jure* specific, because it does not confer a benefit to a specific enterprise or industry, or group of enterprises or industries. Moreover, because the GOQ is purchasing the service of greenhouse gas reduction and avoidance, a government's purchase of services is not countervailable under the statute.[203]
- Applicants' respective economic sectors had no bearing on program eligibility, as all sectors of the Québec economy were eligible to seek financial support in an effort to

[199] *See* SAA at 929.
[200] *Id.* at 930.
[201] *See* GOQ June 12, 2019 SQR at 77-78. We note this figure covers the years 2017-2018 and 2018-2019.
[202] *See* GOQ May 13, 2019 IQR at 34 and 36; and GOQ Verification Report at 8.
[203] *See* GOQ Case Brief at 21.

reduce their fossil fuel consumption.[204] If applicants meet the eligibility criteria of the program,[205] subject to an engineer's verification of the related study or implementation of the project, they will receive assistance.[206] This is contrary to the statute's definition of *de jure* and *de facto* specificity under sections 771(5A)(D)(ii) and (iii) of the Act, respectively.[207]

- The EcoPerformance program is not specific, because it did not confer a benefit on any particular sector, enterprise, or industry.[208] Moreover, the participation of the architectural and structural metals manufacturing industries represents less than one percent of the funds disbursed.[209]
- According to the statute, a financial contribution confers a benefit "where goods or services are provided, if such goods or services are provided for less than adequate remuneration, and in the case where goods are purchased, if such goods are purchased for more than adequate remuneration."[210] Because the statute excludes the purchase of services from the definition, a government's purchase of services cannot be equated to a countervailable subsidy. In fact, the *CVD Preamble* supports this, stating that "if governmental purchases of services were intended to be treated similarly to the governmental purchase of goods, the statute and the SCM Agreement would specifically mention services as they do with the provision of goods and services."[211]
- In the event Commerce finds EcoPerformance specific, it is not countervailable, because the amount paid by Québec is a purchase of service. Because the GOQ pays companies like Canatal for the amount of reduced and avoided greenhouse gases, Québec and its citizens are the beneficiaries of the environmental, economic, and social benefits that accompany the reduced emissions.[212]

Canatal adopted the position of the GOQ.

Petitioner's Rebuttal Brief

- Commerce, in *UGW Paper Canada*, rejected arguments similar to those made here by the GOQ and Canatal that, because all sectors of the economy were eligible to seek financial support, the EcoPerformance program is neither *de jure* nor *de facto* specific.[213]
- Commerce appropriately found this program *de facto* specific in *UGW Paper Canada*, "because the actual recipients of the subsidy on an enterprise basis are limited in

[204] *Id*. at 24-25.
[205] The GOQ enumerates six eligibility criteria: (1) located in Quebec; (2) consumes fossil fuel; (3) invest more than 25 percent of project dost in the project; (4) reduce greenhouse gas emissions; (5) meet energy rate of return requirements; and (6) respect ISO14064 for quantification of greenhouse gas emission reductions. *Id*. at 22.
[206] The GOQ notes that payment was conditional on the satisfaction of eligibility criteria and proven reduction of GHGs, as confirmed by engineers. *Id*. at 28.
[207] *Id*. at 24.
[208] *Id* at 26.
[209] *Id*.
[210] *Id*. at 27 (citing 19 USC 1677(5)(E)(iv)).
[211] *Id*. at 27-28 (citing *CVD Preamble*, 63 FR at 65379); and SCM Agreement, Article 1.1(a)(1)).
[212] *See* GOQ Case Brief at 28. Further, the GOQ points out that, the EcoPerformance program was implemented to contribute to Quebec's GHG reduction commitments under the GOQ's 2013-2020 Climate Change Action Plan.
[213] *See* Petitioner Rebuttal Brief at 15.

number."[214] In its analysis, Commerce pointed out that it disagreed that it was required to analyze only the percentage of program funds disbursed to a particular industry under section 771(5A)(D)(iii)(I) of the Act.[215] As part of its conclusion, Commerce stated that "the fact that many sectors of the Québec economy were eligible to seek financial support under this program does not negate the fact that the actual recipients are limited in number."[216]

- According to the SAA, the purpose of the specificity test is to disregard those foreign subsidies that are both broadly available and widely used through an economy. Indeed, Commerce has the ability to take into account the number of industries or enterprises in the economy in determining whether the number of users of a subsidy is large or small.[217] Here, because: (1) Commerce preliminarily found the number of recipient enterprises, rather than the number of recipient industries, to be limited in number; and (2) there is no factual distinction between the instant investigation and *UGW Paper Canada*, Commerce should continue to find that EcoPerformance grants are specific.

Commerce's Position:

In our *Preliminary Determination*, we found this program to be *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act, because the actual recipients are limited in number on an enterprise basis. We are not persuaded by the GOQ's arguments regarding the lack of specificity of this program. As we stated in *UGW Paper Canada* with respect to the same program, the fact that many sectors of the Québec economy were eligible to seek financial support under this program does not negate the fact that the actual recipients are limited in number.[218,219] As explicitly stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy.[220] The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies . . . used by discrete segments of an economy could escape the purview of the {countervailing duty} law."[221] The SAA also states that, in determining whether the number of industries using a subsidy is large or small, Commerce can take into account the number of industries in the economy in question.[222] Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise basis are limited in number, Commerce reasonably takes into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is actually large or small.[223] Thus, we have

[214] *Id*. at 16 (citing *UGW Paper Canada* and accompanying IDM at Comment 87).
[215] *Id*.
[216] *Id*. at 15 (citing *UGW Paper Canada* and accompanying IDM at Comment 87).
[217] *Id*. at 15-16 (citing SAA at 929). Further, the petitioner added that the specificity test is not "intended to function as a loophole through which narrowly {focused} subsidies … used by discrete segments of an economy could escape the purview of the {countervailing duty} law." *Id*. (citing SAA at 930).
[218] *See* GOQ May 13, 2019 IQR at 28-29 and Exhibit QC-ECO-11.
[219] *See UGW Paper Canada* and accompanying IDM at Comment 87.
[220] *See* SAA at 929.
[221] *Id*.
[222] *Id*. at 931.
[223] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 49943 (July 29, 2016) (*CRS from Korea)* and accompanying IDM at

followed the instructions of the SAA and our practice in determining whether this program is *de facto* specific, and we disagree that we were required to analyze only the percentage of program funds disbursed to a particular industry (*i.e.*, architectural and structural metals manufacturing industries) under section 771(5A)(D)(iii)(I) of the Act.

In this case, we considered whether the recipients were limited in number on an enterprise basis. As confirmed at verification, during the AUL period, a number of companies received assistance under this program.[224] This number represents less than one percent of the potential corporate tax filers in Québec.[225] Therefore, consistent with *UGW Paper Canada*,[226] we continue to find this program *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act, because the actual recipients are limited in number on an enterprise basis. Because of this finding, we need not address the parties' arguments regarding *de jure* specificity.[227]

We are also unpersuaded by the GOQ's argument that this program is not countervailable because it constitutes the purchase of services by the government. We do not agree that the reduction of greenhouse gas emissions amounts to a performance of a service for which the government is paying. Record evidence indicates that the payments are "incentives" to the company directly from the government, provided in the manner of non-recurring grants.[228] Therefore, we continue to find that the EcoPerformance program provided a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act, and we continue to find that the EcoPerformance program conferred a benefit to Canatal equal to the amount of the grants, pursuant to 19 CFR 351.504(a).

Comment 10: Whether the MEI Audit Industry 4.0 Program is Specific and Provides a Countervailable Benefit

GOQ's Case Brief

- The MEI Audit Industry 4.0 program does not confer a benefit to a specific enterprise or industry, or group of enterprises or industries, and is, therefore, neither *de jure* nor *de facto* specific under the Act.[229] A program is not *de jure* specific where eligibility for the program is automatic and not limited to a specific industry or group of industries, is administered in accordance with strictly followed eligibility criteria and those criteria are clearly set forth in the relevant statute, regulation, or other official document so as to be capable of verification.[230] The program is available to all "profit-oriented enterprises" engaged in manufacturing activities in Québec, including cooperatives, social economy

Comment 13; *Softwood Lumber from Canada* and accompanying IDM at Comment 62; and *UGW Paper Canada* and accompanying IDM at Comment 87.
[224] *See* GOQ Verification Report at 8.
[225] *See* GOQ June 28, 2019 SQR at Exhibit QC-TCD-14.
[226] *See UGW Paper Canada* and accompanying IDM at Comment 87.
[227] *See* SAA at 930 ("{T}he *de jure* prong of the specificity test recognizes that where a foreign government expressly limits access to a subsidy to a sufficiently small number of enterprises, industries or groups thereof, further inquiry into the actual use of the subsidy is unnecessary.").
[228] *See* GOQ May 13, 2019 IQR at 34 and 36; and GOQ Verification Report at 8.
[229] *See* GOQ Case Brief at 48.
[230] *Id*. at 50 (citing section 771(5A)(D)(ii) of the Act).

businesses, SMEs, startups, and prime contractors.[231] The applicant's specific economic sector is not an eligibility factor associated with this program.[232]

- A subsidy may be *de facto* specific where the program recipients are limited in number, an industry is a predominant user of the program or receives a disproportionately large amount under the program, or where the administering authority exercises its discretion to favor a particular enterprise or industry.[233] Thus, the program is neither *de jure* nor *de facto* specific.
- The MEI Audit Industry 4.0 program is not countervailable, because it does not provide a benefit to the respondents. The amount of payment directly correlates to the cost of a diagnostic audit and, if the company has not completed the program requirements and the audit, the funds will not be paid.[234]
- The Audit 4.0 program benefits the MEI, which is charged with formulating policies to foster development of industry, trade, and cooperation, including promoting digital excellence.[235]
- The GOQ is purchasing the service of diagnostic and strategic plan to promote the "digital excellence" of businesses in Québec and the government purchases of services are not countervailable under the Act.[236]

Petitioner's Rebuttal Brief

- The number of companies that received the benefit was sufficient to show that the program was *de facto* specific.[237] Further, the architectural and structural metals manufacturing industry was a disproportionate user of the program.[238]
- The GOQ's argument that the program does not confer a benefit is supported by no legal citation or support. The recipients of this program presumably receive the results of the diagnostic audit and strategic plan, while the GOQ pays the cost. The cost (or benefits) to the government is not relevant. Rather, Section 771(5)(E) of the Act states that a "benefit shall normally be treated as conferred where there is a benefit to the recipient…."[239]

Commerce's Position:

In our *Preliminary Determination*, we found this program to be *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act, because the actual recipients are limited in number on an enterprise basis. After consideration of the GOQ's arguments, we are not persuaded to change our specificity determination for this final determination. The fact that all "profit-oriented enterprises" engaged in manufacturing activities in Québec were eligible to apply for

[231] *Id*. at 50-51 (citing PDM at 18; and GOQ June 12, 2019 SQR at 37).
[232] *Id*. at 51 (citing GOQ May 13, 2019 IQR at Exhibit QC-MEI-1).
[233] *Id*. at 50 (citing section 771(5A)(D)(iii) of the Act).
[234] *Id.* at 52-53.
[235] *Id.* at 53.
[236] *Id*. at 53-55.
[237] *See* Petitioner Rebuttal Brief at 26 (citing GOQ May 13, 2019 IQR at Exhibit QC-MEI-12).
[238] *Id*.
[239] *Id.* at 26-27 (citing Section 771(5)(E) of the Act (emphasis added)).

these diagnostic audits during the POI does not negate the fact that the actual recipients of the subsidy are limited in number.

For the final determination, we continue to find that this program is *de facto* specific. Under section 771(5A)(D)(iii)(I) of the Act, we may find a subsidy program *de facto* specific if the actual recipients of a subsidy, whether on an enterprise or industry basis, are limited in number. Further, section 771(5A) of the Act states that "any reference to an enterprise or industry is a reference to a foreign enterprise or industry and includes a group of such enterprises or industries." The SAA states that "{t}he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy."[240] The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies provided to or used by discrete segments of an economy would escape the purview of the CVD law."[241]

The disbursements at issue in this investigation relate to MEI's purchasing and provision of a diagnostic and strategic plan, carried out by external consultants, the results of which enable Québec companies to improve certain processes, in an effort to promote "digital excellence." We examined the number of recipients of the MEI Audit Industry 4.0 program and found that the MEI disbursed amounts to 130 companies.[242] On this basis, we find that the actual recipients of the grants are limited in number, on an enterprise basis, and, therefore, the program is *de facto* specific within the meaning of section 771(5A)(D)(iii)(I) of the Act.

In addition, we are unpersuaded by the GOQ's argument that this program is not countervailable because it constitutes the purchase of services by the government. We do not agree that the benefit of "digital excellence" as a result of MEI's purchases of the diagnostic audit and strategic plans amounts to a performance of a service for which the government is paying. Record evidence indicates that the payments are "incentives" to the company directly from the government, provided in the manner of non-recurring grants.[243] Therefore, we continue to find that the MEI Audit Industry 4.0 program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and we continue to find that the MEI Audit Industry 4.0 program conferred a benefit to Canatal equal to the amount of the grants, pursuant to 19 CFR 351.504(a).

Comment 11: Whether the Québec Scientific Research and Development Tax Credit is *de facto* Specific

GOQ's Case Brief

- Commerce should base its *de facto* specificity determination on the relative percentage of benefit, rather than the absolute benefit, conferred to an industry or enterprise. Requiring

[240] *See* SAA at 929.
[241] *Id.* at 930.
[242] *See* GOQ June 12, 2019 SQR at 38 and Exhibit QC-MEI-12. We note that this figure covers the 2017-2018 and 2018-2019 periods.
[243] *See* GOQ May 13, 2019 IQR at 34 and 36; and GOQ Verification Report at 8.

a comparison of absolute benefits "could produce an untenable result, *i.e.*, that a benefit conferred on a large company might be disproportionate merely because of the size of the company."[244]

- *De facto* specificity analysis is not just an analysis of whether less than all of the companies in the province used the program. Rather, Commerce must consider whether: (1) benefits were limited to a few companies or industries, or went to many companies in a wide range of industries participated; (2) any industry or company received a predominant or disproportionate amount in the context of the business that the company is involved in; and (3) in the case of discounts given pursuant to a standard mechanism, whether any industry is afforded favorable treatment.[245] Commerce failed to apply the correct test to determine *de facto* specificity in its *Preliminary Determination*.
- Commerce's preliminary analysis for this program followed neither the statutory criteria nor established practice, but simply stated that the program was *de facto* specific and cited to exhibits contained in the GOQ's responses with no further explanation. This denied the GOQ a meaningful opportunity to comment on the decision.[246]
- Commerce did not explain in its *Preliminary Determination* with what it compared the actual recipients of the credit to determine that the actual recipients are limited in number.[247] A large number of companies were granted the tax credit across various industries, and nine economic sector groupings representing dozens of industries, from 2015 to 2018.[248]
- Commerce's preliminary finding that the recipients are limited in number is also not supported by the statistics on the records regarding the number of companies that applied for the credit and were granted the credit.[249] Commerce's determination that the tax credit is *de facto* specific simply because the number of business tax filers that receive this credit is less than the total amount of business tax filers is the incorrect test of universal use and ignores the evidence on the record.[250]

Petitioner's Rebuttal Brief

- Commerce should continue to find the tax credit program *de facto* specific, in accordance with previous cases.[251]

Commerce's Position:

We continue to find that this program is *de facto* specific, in accordance with section 771(5A)(D)(iii)(I) of the Act.[252] As stated in the SAA, the specificity test is an initial screening

[244] *See* GOQ Case Brief at 38-39 (citing *AK Steel Corp. v. United States*, 192 F3d 1367 (Fed. Cir. 1999).
[245] *Id.* at 39-40 (citing *Bethlehem Steel Corp. v. United States*, 140 F.Supp.2d 1354 (CIT 2001)).
[246] *Id.* at 40.
[247] *Id.* at 41 (citing PDM at 13-14).
[248] *Id.* at 41 (citing GOQ May 19, 2019 IQR at Exhibit QC-C02-19).
[249] *Id*. at 42 (citing GOQ May 19, 2019 IQR at Exhibit QC-C02-20).
[250] *Id*.
[251] *See* Petitioner Rebuttal Brief at 20 (citing *Softwood Lumber from Canada* and accompanying IDM at Comment 64; and *UGW Paper Canada* and accompanying IDM at Comment 61).
[252] *See, e.g., Softwood Lumber from Canada* and accompanying IDM at Comment 64; and *UGW Paper Canada* and accompanying IDM at Comment 61.

mechanism to winnow out only those foreign subsidies which are truly broadly available and widely used throughout an economy.[253] The specificity test is not, however, "intended to function as a loophole through which narrowly {focused} subsidies . . . used by discrete segments of an economy could escape the purview of the CVD law."[254] The SAA also states that in determining whether the number of industries using a subsidy is large or small, Commerce can take into account the number of industries in the economy in question.[255] Because, under section 771(5A)(D)(iii)(I) of the Act, a program is *de facto* specific if the actual recipients of the subsidy on an enterprise basis are limited in number, Commerce reasonably takes into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is actually large or small.[256] Thus, we have followed the instructions of the SAA and our practice in determining whether this program is *de facto* specific. We disagree that, under section 771(5A)(D)(iii)(I) of the Act, we were required to analyze only the number of companies that applied for the credit and those that were granted the credit.

In this case, Commerce considered whether the recipients were limited in number on an enterprise basis. The number of enterprises that received the Québec tax credit is miniscule when compared to the number of corporate tax filers.[257] Because the exact figures are business proprietary information (BPI), we have not stated them here. We note that it is reasonable to compare the number of recipients of a tax credit with the total number of corporate tax filers to determine specificity on an enterprise basis.[258] Further, this is not the same as a requirement of universal use; rather, our test is whether the number of enterprises receiving the tax credit is small in proportion to the total number of corporate tax filers.

We disagree with the GOQ that by referring to the BPI figures in its questionnaire response, we have not given interested parties a meaningful opportunity to comment. Interested parties with APO access are able to review the BPI figures at issue and to comment on them.[259] Further, as the holder of the data, if the GOQ wished to be transparent with respect to the number of users, it could make such figures public, which would allow all parties, including those without APO access, to consider openly the underlying use data.

We also disagree that the diversity or variety of users is relevant to our specificity analysis under section 771(5A)(D)(iii)(I) of the Act in this case.[260] Rather, the statute states that a "subsidy may be specific as a matter of fact" where "{t}he *actual recipients* of the subsidy, whether considered on an enterprise or industry basis, are limited in number" (emphasis added).[261] The fact that there is a diversity of users of this program, other than just fabricated structural steel manufacturers, does not negate the fact that the number of recipients under this program is miniscule, as discussed above.

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[253] *See* SAA at 930.
[254] *Id*.
[255] *Id.* at 931.
[256] *See CRS from Korea* and accompanying IDM at Comment 13; *Softwood Lumber from Canada* and accompanying IDM at Comment 64; and *UGW Paper Canada* and accompanying IDM at Comment 61.
[257] *See* GOQ May 13, 2019 IQR at Exhibit QC-C02-19; and GOQ June 12, 2019 SQR at 46.
[258] *See, e.g., UGW Paper Canada* and accompanying IDM at Comment 79.
[259] *See* 19 CFR 351.305.
[260] *See, e.g., Softwood Lumber from Canada* and accompanying IDM at Comment 50.
[261] *See* section 771(5A)(D)(iii)(I) of the Act.

The GOQ maintains that there was no predominant user of this tax credit and it was used by a variety of companies and industries.[262] However, predominant use is addressed by section 771(5A)(D)(iii)(II) of the Act, and is not the basis upon which Commerce reached its specificity determination with respect to this program.[263] Moreover, as set forth under 19 CFR 351.502(a), in determining whether a subsidy is *de facto* specific, Commerce will examine the factors contained in section 771(5A)(D)(iii) of the Act sequentially, in order of appearance. If a single factor warrants a finding of specificity, Commerce will not undertake further analysis. Therefore, because recipients of the subsidy were limited in number on an enterprise basis, under section 771(5A)(D)(iii)(I) of the Act, we find the program *de facto* specific, and have not conducted an analysis of specificity under sections 771(5A)(D)(iii)(II) through (IV).

Comment 12: Whether the Tax Credit for Industrial Establishment from Ville de Thetford is *de jure* Specific

GOQ's Case Brief

- Commerce erred in its *Preliminary Determination* in finding that the tax credit for industrial establishment from the Ville de Thetford is *de jure* specific. The tax credit is a credit applied to property taxes for buildings in which one of the following activities is conducted: manufacturing; communication; and research, development and testing services. However, the program does not limit the tax credit to specific industries, as opposed to limiting the tax credit to enumerated activities.[264] Manufacturing, communication, research, development, and testing services are general categories of activity that are performed by companies in nearly every industry.[265] Therefore, the tax credit is not *de jure* specific.

Canatal adopted the position of the GOQ.

Petitioner's Rebuttal Brief

- Commerce has expressly rejected the same argument made by the GOQ as summarized in *Magnesium from Israel*.[266] Commerce should follow its substantial precedent and continue to find this tax credit *de jure* specific under section 771(5A)(D)(i) of the Act.[267]

Commerce's Position:

We disagree with the GOQ and Canatal and continue to find that the tax credit for industrial establishment from the Ville de Thetford is *de jure* specific under section 771(5A)(D)(i) of the Act.

[262] *See* GOQ Case Brief at 40-41.
[263] *See* section 771(5A)(D)(iii) of the Act (providing that a program is *de facto* specific if "one or more" of the enumerated factors exist).
[264] *See* GOQ Case Brief at 47 (citing PDM at 15; and Canatal May 13, 2019 IQR at Exhibit CAN-TAX-8).
[265] *Id*.
[266] *See* Petitioner Rebuttal Brief at 25 (citing *Magnesium from Israel* and accompanying IDM at Comment 2).
[267] *Id*.

Section 771(5A)(D)(i) of the Act provides that a domestic subsidy is *de jure* specific "{w}here the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry, the subsidy is specific as a matter of law." The SAA explains that the specificity test "is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy."[268] It also explains that "the *de jure* prong of the specificity test recognizes that where a foreign government expressly limits access to a subsidy to a sufficiently small number of enterprises, industries or groups thereof, further inquiry into the actual use of the subsidy is unnecessary."[269] However, the statute "does not attempt to provide a precise mathematical formula for determining when the number of enterprises or industries eligible for a subsidy is sufficiently small so as to properly be considered {*de jure*} specific." *Id*. Rather, "Commerce can only make this determination on a case-by-case basis." *Id*.

The GOQ argues that given that the program limits the bestowal of subsidies based on certain defined activities that are performed by "nearly every industry," the subsidy provided cannot be *de jure* specific under the Act. However, Commerce has found activity-based restrictions can establish *de jure* specificity in prior cases.[270] In *Magnesium from Israel*,[271] Commerce declined to make the distinction between activity and industry for purposes of determining specificity and we do not do so now. Thus, we continue to find that the program is *de jure* specific, because it is expressly limited to companies that own or occupy a building classified as used for manufacturing; communications; or research, development, and testing services.[272]

Comment 13: Whether Énergir L.P. is an "Authority"

CDPQ's Case Brief

- CDPQ does not control Énergir L.P.[273] CDPQ owns, indirectly, less than 30 percent of the shares of Énergir L.P.[274] CDPQ does not appoint a majority of Énergir Inc's board of directors.[275] Thus, even if CDPQ is an authority under the Act, Énergir L.P. cannot be found to be an authority.
- Even if Commerce were to find that CDPQ controls Énergir L.P., CDPQ itself is not an authority pursuant to section 771(5)(B) of the Act.[276] Commerce applies a two-part test to determine if an entity is a public body under section 771(5)(B) of the Act: (1) does the entity fulfill a goal that is governmental in nature; and (2) does the government control

[268] SAA at 929.
[269] *Id* at 930.
[270] *Id.*; *see also CWP from Oman* and accompanying IDM at 5-6 and Comment 1; and *Certain Steel Nails from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 80 FR 28958 (May 20, 2015) (*Nails from Oman*) and accompanying IDM at 6-7 and Comment 1.
[271] *See Magnesium from Israel* and accompanying IDM at Comment 2.
[272] *See* Canatal May 13, 2019 IQR at Exhibit CAN-TAX-8.
[273] *See* CDPQ Case Brief at 2-6.
[274] *Id*. at 3-4 (citing CDPQ August 1, 2019 First Supplemental Questionnaire Response (CDPQ August 1, 2019 SQR) at 6).
[275] *Id*. at 4-5 (citing Énergir L.P. Verification Report at 3 and 4).
[276] *Id*. at 6-17.

the entity in question.[277] CDPQ does not fulfill a goal that is governmental in nature nor is it controlled by the GOQ.[278] Thus, CDPQ is not an authority under the Act.

- CDPQ's mandate is the optimization of its depositors' returns. This mandate is an inherently private function. CDPQ does not fulfill goals that are governmental in nature, such as upholding the socialist market economy, as in the *OCTG from China 2012 Review*. While the CDPQ's mandate also includes contributing to Québec's economic development, CDPQ never sacrifices the pursuit of optimal returns on its investments in consideration of that goal.[279] Thus, CDPQ is not an authority under the Act.
- CDPQ's mandate to contribute to Québec's economic development is subordinate to its mandate to maximize returns, as demonstrated by the expert opinion submitted by CDPQ.[280] CDPQ's focus on maximizing depositors' returns is in contrast to the New York State Common Retirement Fund, which is guided by the New York State Comptroller to invest in New York-based business ventures, companies, and other programs that spur economic growth and create and regain jobs.[281]
- To find CDPQ an authority would also be inconsistent with provisions covering independent pension funds that were explicitly negotiated in the United States-Mexico-Canada Agreement (USMCA) Chapter on state owned enterprises (SOEs).[282]

GOQ's Case Brief

- Record evidence received by Commerce after the *Preliminary Determination* conclusively demonstrates that Énergir is not an authority under the Act. Énergir Efficiency Programs predate the GOQ's energy goals and were developed, implemented, and are administered by Énergir without relation to any government policy or initiative.[283]
- Énergir independently developed, implemented, and funded the programs as a company driven initiative long before Québec announced or passed legislation to implement its 2030 Energy Policy.[284] Further, neither the 2030 Energy Policy, nor the implementing legislation, contains binding requirements that would direct Énergir to implement energy efficiency programs.[285]
- Énergir was not established pursuant to statute; its mission is to earn profit and serve its customers; Énergir's board of directors is independent of the GOQ; and Énergir interacts

[277] *Id*. at 7 (citing *Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) (*OCTG from China 2012 Review*) and accompanying IDM at Comment 6; and *Georgetown Steel Corp. v. United States*, 801 F2d 1308 (Fed. Cir. 1986) (*Georgetown Steel*)).
[278] *Id*. at 7.
[279] *Id*. at 8 (citing section 4 of the *Act Respecting the Caisse de dépôt et Placement du Québec*, CDPQ August 1, 2019 SQR at Exhibit 1; and Memorandum, 100- to 150-Seat Large Civil Aircraft from Canada: Verification of the Questionnaire Responses of Caisse de dépôt et placement du Québec (CDPQ, or Caisse), dated October 17, 2017 at 3, CDPQ August 1, 2019 SQR at Exhibit 8).
[280] *Id*. at 9 (citing CDPQ August 1, 2019 SQR at Exhibit 11).
[281] *Id*. at 9 (citing CDPQ August 1, 2019 SQR at Exhibit 23).
[282] *Id*. at 12-13 (citing CDPQ August 1, 2019 SQR at Exhibit 12).
[283] *See* GOQ Case Brief at 5 (citing Énergir Verification Report at 4).
[284] *Id*. at 12 (citing GOQ June 12, 2019 SQR at 66 and Exhibit QC-ENER-13).
[285] *Id.*

with its public utility regulator, the Régie de l'énergie (Régie), for approval of Énergir's annual rate case and other regulated activities as required under the regulations respecting the conditions and cases where authorization is required from the Régie.[286]

- Nothing on the record demonstrates that Énergir, or any of its shareholders, is a public authority; nor does the record demonstrate that Énergir was entrusted or directed to make a financial contribution through its EEPs on behalf of the GOQ.[287]
- To be countervailable, there must be a financial contribution granted by either a public authority or by a private entity that was entrusted or directed by a government to make a financial contribution.[288] Énergir is not a public authority, and Énergir was not entrusted and directed by the GOQ to make a financial contribution through its Energy Efficiency Programs.
- Commerce treats a private entity as a public authority only if there is substantial evidence of government ownership and control.[289] Commerce applies a five-factor test: (1) government ownership; (2) the government's presence on the entity's board of directors; (3) government's control over the entity's activities; (4) the entity's pursuit of governmental policies or interests; and (5) whether the entity is created by statute.[290] Énergir does not pass this test and is, thus, not an authority under the Act.
- Commerce analyzes whether a government has a policy in existence and the government acts upon that policy, as established by a pattern or practice, to determine whether a government has entrusted or directed a private entity to provide a financial contribution.[291]
- Commerce requires an evidentiary record demonstrating that a public authority has provided a financial contribution and rejects conjecture to establish government ownership or control.[292] CDPQ is not a public authority, because the GOQ does not exercise control over CDPQ's investment decisions and CDPQ does not possess, exercise, or is otherwise vested with, government authority.

Canatal's Case Brief

- Record evidence received by Commerce after the *Preliminary Determination* conclusively invalidates Commerce's determination that Énergir is a public authority.[293]
- In the alternative, the Énergir energy efficiency program is not *de facto* specific.[294] The evidence on the record shows that the program had many recipients other than Canatal in

[286] *Id*. at 5 (citing Énergir Verification Report; and the GOQ August 1, 2019 SQR at 6-7 and Exhibit QC-ENER-21).
[287] *Id*. at 6.
[288] *Id*. at 6 (citing section 771(5)(B) of the Act).
[289] *Id*. at 6 (citing *Nails from Oman* and accompanying IDM at Comment 3).
[290] *Id*. at 6 (citing *Nails from Oman* and accompanying IDM at Comment 3; and *Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination*, 80 FR 63535 (October 20, 2015) (*Supercalendered Paper from Canada*) and accompanying IDM at Comment 10).
[291] *Id*. at 7 (citing *Supercalendered Paper from Canada* and accompanying IDM at Comment 11; and *Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003) and accompanying IDM at Comment 1).
[292] *Id*. at 8 (citing *Polyethylene Retail Carrier Bags from the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination*, 75 FR 16428 (April 1, 2010) and accompanying IDM at Comment 8).
[293] *See* Canatal Case Brief at 7-8.
[294] *Id*. at 8.

2018 and is not limited to a specific sector, enterprise, or industry.[295] Furthermore, the program does not constitute a countervailable subsidy.[296] Thus, Commerce should not calculate a benefit for the program.[297]

Petitioner's Rebuttal Brief

- Commerce correctly found, at the *Preliminary Determination*, that CDPQ was an authority, pursuant to section 771(5)(B) of the Act. Further, evidence collected a verification further confirms that CDPQ is an authority.[298]
- Commerce should continue to find that Énergir is an authority, as well. The GOQ controls CDPQ, which, in turn,controls each of Énergir's parent companies and, thus, Énergir itself.[299] Commerce has found that "enterprises with minority government ownership can be government authorities if the government exercises meaningful control over them."[300]
- Commerce's determination that CDPQ was an authority in the *Preliminary Determination* was consistent with Commerce's approach in other cases.[301] Commerce examined the authorizing legislation and then considered various factors, including: (1) the entity was a "mandatary of the State"; (2) the entity's mission is to contribute to the economic development of Québec; (3) the government appoints the chair of the board of directors; and (4) that a mandate is given by the authorizing legislation or the government.
- CDPQ's argument that Commerce should depart from its typical analysis and, instead, focus on CDPQ's "mission" as "inherently private" and "maximiz{ing} its depositors returns," is misplaced.[302] This standard could lead to the result that a creditor nation, operating with opaque laws in an inherently private manner, is not an authority under the statute. Further, as Commerce has repeatedly found, maximizing returns does not necessarily indicate that a company is independent from the government.[303]

[295] *Id*. (citing Memorandum, "Verification of the Questionnaire Responses of Énergir L.P.," dated November 12, 2019 (Énergir Verification Report), at 2).
[296] *Id*.
[297] *Id*.
[298] *See* Petitioner Rebuttal Brief at 11-12.
[299] *Id*. at 12-13.
[300] *Id*. at 13 (citing *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Taiwan: Final Negative Countervailing Duty Determination*, 81 FR 35299 (June 2, 2016) and accompanying IDM at Comment 1).
[301] *Id*. at 7-8 (citing *Certain Uncoated Groundwood Paper from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 83 FR 2133 (January 16, 2018) and accompanying PDM at 71, unchanged in *UGW Paper Canada*; and *100- to 150-Seat Large Civil Aircraft from Canada: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 45807 (October 2, 2017) and accompanying IDM at 31-32, issue not further addressed in final determination because issue found to be moot).
[302] *Id*. at 9 (citing CDPQ Case Brief).
[303] *Id*. at 9 (citing *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 78788 (December 31, 2014) (*Aluminum Extrusions 2012 Administrative Review*) and accompanying IDM at Comment 6).

- Commerce should reject CDPQ's arguments based on the draft USMCA because it is unratified and thus has no legal force.[304]

Commerce's Position:

For this final determination, we find that CDPQ is an authority within the meaning of section 771(5)(B) of the Act. The totality of the record evidence demonstrates that the GOQ has meaningful control of CDPQ and that CDPQ pursues government policy objectives through CDPQ's business and operations; thus, CDPQ possesses, exercises, and is vested with, governmental authority.

CDPQ is a mandatary of the state created by the *Act Respecting the Caisse De Depot Et Placement Du Quebec* (*CDPQ Act*).[305] The GOQ controls the composition and the remuneration of CDPQ's board of directors and executive leadership.[306] The government must also approve the appointment of CDPQ's President/Chief Executive Officer (CEO).[307] According to the *CDPQ Act*, with the exception of certain regulations, the board of directors shall make the regulations of the CDPQ and submit the regulations to the government for approval.[308] The *CDPQ Act* states that "{t}he board of the directors shall hear the Auditor General at the latter's request."[309] The *CDPQ Act* also states that CDPQ "shall furnish the Minister of Finance with any information that the Minister may require on its operations and activities and those of its wholly-own subsidiaries."[310] The *CDPQ Act* also mandates CDPQ to submit an annual report to the Minister of Finance on CDPQ's operations for the previous year.[311]

We note that, by CDPQ's own admission in its annual report, CDPQ implements government policy. According to the *CDPQ Act*, CDPQ's mission includes contributing to Québec's economic development.[312] CDPQ's annual report shows CDPQ's implementation of this government mandate.[313] For example, CDPQ's annual report indicates the following as "{a} concrete contribution to Québec's economic growth":[314]

- "To maximize our impact in Québec, la Caisse has focused its investment strategy around three major pillars: implementing growth creating projects, growth and global expansion of Québec companies and innovation and the next generation. We therefore design and develop major infrastructure and real estate projects."[315]

[304] *Id*. (citing CDPQ Case Brief at 12).
[305] *See* CDPQ August 1, 2019 SQR at Exhibit 1 (*CDPQ Act*, sections 1 and 4).
[306] *See* CDPQ August 1, 2019 SQR at Exhibit 1 (*CDPQ Act*, "Division II Administration).
[307] *Id*. (*CDPQ Act*, section 5.3).
[308] *Id*. (*CDPQ Act*, section 13).
[309] *Id*. (*CDPQ Act*, section 13.2).
[310] *Id*. (*CDPQ Act*, section 49).
[311] *Id*. (*CDPQ Act*, sections 44 and 46).
[312] *Id*. (*CDPQ Act*, section 4.1).
[313] *See* CDPQ August 1, 2019 SQR at Exhibit 22.
[314] *Id*. at 66 of the *CDPQ 2018 Annual Report*.
[315] *Id*.

- "We actively work with Québec companies to foster their expansion projects at home and internationally."[316]
- "We support SMEs that will stand out in the new economy, and contribute to entrepreneurial vitality through a series of initiatives to promote entrepreneurship."[317]
- "As stipulated in its Policy on Contracts for the Acquisition or Leasing of Goods and Services, la Caisse favours Québec suppliers, provided they satisfy its cost and quality criteria."[318]

CDPQ's and the GOQ's arguments that center on the CDPQ's maximization of return for its depositors are not persuasive. Whether or not CDPQ acts to maximize returns for its depositors is not a litmus test for whether or not CDPQ is an authority under the Act.[319] Government authorities may work to maximize profit or returns when it serves the aims and needs of the government. For example, a government authority may serve the government's policy and fiscal objectives by maximizing returns on investment to support the retirement benefits of government employees.

We also stated the following in response to a similar line of argument in *Kitchen Racks from China*: why a firm's commercial behavior is not dispositive in determining whether that firm is a government "authority" within the meaning of the Act:

> It has been argued that government-owned firms may act in a commercial manner. We do not dispute this. Indeed, the Department's own regulations recognize this in the case of government-owned banks by stating that loans from government-owned banks may serve as benchmarks in determining whether loans given under government programs confer a benefit. However, this line of argument conflates the issues of the 'financial contribution' being provided by an authority and 'benefit.' If firms with majority government ownership provide loans or goods or services at commercial prices, *i.e.*, act in a commercial manner, then the borrower or purchaser of the good or service receives no benefit. Nonetheless, the loans or goods or service is still being provided by an authority and, thus, constitutes a financial contribution within the meaning of the Act.[320]

Thus, as we explained in *Kitchen Racks from China* with regard to similar arguments made in that proceeding, the respondents' arguments here, as noted above, are not relevant to whether CDPQ is a public body, and hence a government "authority."

CDPQ cites to *OCTG from China 2012 Review* and *Georgetown Steel* to support its argument that CDPQ is not an authority under section 771(5)(B) of the Act.[321] CDPQ states that CDPQ

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[316] *Id.*
[317] *Id.*
[318] *Id.* at 74 of the *CDPQ 2018 Annual Report*.
[319] *See, e.g., Aluminum Extrusions 2012 Administrative Review* and accompanying IDM at Comment 6.
[320] *See Certain Kitchen Shelving and Racks from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 37012 (July 27, 2009) (*Kitchen Racks from China*) and accompanying IDM at Comment 4.
[321] *See CDPQ Case Brief* at 6-17 (citing *OCTG from China 2012 Review* and accompanying IDM at Comment 6; and *Georgetown Steel*).

does not pass the two-part test used to determine that an entity is a public body because: (1) CDPQ does not fulfill a goal that is governmental in nature, and (2) the government does not control CDPQ.[322] We disagree that the GOQ does not exercise meaningful control over CDPQ. Similar to the SOE's in *OCTG from China 2012 Review* that Commerce found to be authorities under the Act, we find that that CDPQ possesses, exercises, or is vested with government authority based on the following facts. In addition to the facts described above, CDPQ is a mandatary of the state, whose property, by law, "shall be the property of the State."[323] CDPQ also has sovereign immunity.[324] *Georgetown Steel* dealt with whether a prior version of the CVD laws applied to subsidies granted by non-market economy countries and, thus, is not applicable to the issue of whether or not CDPQ is an authority. Based on the totality of the facts on the record in this case, we conclude that CDPQ is an authority under section 771(5)(B) of the Act.

Also, consistent with our *Preliminary Determination*, we further find Énergir L.P. to be an authority within the meaning of section 771(5)(B) of the Act. The totality of record evidence shows that the government's involvement in CDPQ extends to Énergir L.P. The record evidence shows that each of the entities in the corporate ladder between CDPQ and Énergir L.P. is controlled by CDPQ (either by owning a majority interest, controlling the general partner, and/or controlling a plurality or simple majority of seats to the board of directors), thereby ensuring that CDPQ is able to direct and control Énergir L.P. by virtue of its control of each entity in the chain between itself and Énergir L.P.[325]

Additionally, Énergir Inc. is the general partner of Énergir L.P. and Énergir Inc.'s board of directors controls Énergir L.P.[326] CDPQ has the right to appoint five of the 12 seats of Énergir Inc.'s board of directors, which is more than any other party.[327] Thus, CDPQ controls a clear plurality of the seats on Énergir Inc.'s board.

In addition, Énergir L.P. must apply annually to the Régie for approval of Énergir L.P.'s annual rate case and other regulated activities as required under regulations providing that authorization is required from the Régie.[328] The Régie is Québec's energy regulator.[329] As part of its annual approval of Énergir L.P.'s rate for the provision of natural gas in the province, the Régie approves any program related to energy efficiency for that year.[330] Further, amounts granted under the program are offset against grants from other energy distributors or government organizations for the same project.[331] Moreover, the 2030 Energy Policy provides for further integration of the activities of Énergir L.P. with GOQ energy policy objectives.[332] The GOQ argues that 2030 Energy Policy was implemented post-POI. However, we disagree that the fact

[322] *Id*. at 7.
[323] *See* CDPQ August 1, 2019 SQR at Exhibit 1 (*CDPQ Act*, section 4).
[324] *Id*.
[325] *See* GOQ June 12, 2019 SQR at Exhibit QC-ENER-2.
[326] *See* CDPQ Verification Report at 4.
[327] *See* Hearing Transcript at 128.
[328] *See* GOQ August 1, 2019 SQR at 6-7 and Exhibit QC-ENER-21; and Énergir Verification Report at 2-3.
[329] *See* GOQ May 13, 2019 IQR at 3.
[330] *See* Énergir Verification Report at 2-4.
[331] *See* GOQ June 12, 2019 SQR at Exhibit QC-ENER-7.
[332] *Id.* at Exhibits QC-ISEE-8, QC-ENER-2, and QC-BIO-76.

that the 2030 Energy Policy was implemented post-POI is relevant with respect to our analysis of whether Énergir is an authority. What is relevant to our analysis is the fact that Énergir implements governmental policies, which is additional evidence showing the government's involvement in Énergir. We determine that the preceding facts, taken in totality, demonstrate that the GOQ has meaningful control of Énergir L.P. through CDPQ and that Énergir L.P. pursues government policy objectives; thus, Énergir L.P. possesses, exercises, and is vested with governmental authority. Énergir is an authority within the meaning of 771(5)(B) of the Act.

CDPQ argues that it does not control Énergir L.P., because it owns less than a majority of the shares of Énergir L.P. We disagree. CDPQ is not only one of the ultimate owners of Énergir L.P., but it also owns a controlling share of each intermediate company in the corporate ladder between CDPQ and Énergir L.P. Specifically, CDPQ is the majority stakeholder in Trencap, which is the majority stakeholder (through Noverco and Énergir Inc.) of Énergir L.P.[333] Further, CDPQ states that it owns 30 percent of the shares of Énergir L.P., but applies a flawed methodology to determine CDPQ's stake in Énergir L.P. based on CDPQ's stake in Trencap L.P.[334] In order to calculate CDPQ's ownership stake in Énergir L.P., CDPQ took the ownership stake in Trencap L.P. times Trencap L.P.'s ownership stake in Noverco Inc. and so forth up to Énergir L.P.[335] We disagree with CDPQ's characterization of CDPQ's stake in Énergir L.P. because, if a legal entity has control in a corporate entity that has control in another corporate entity, the percentage of shares or partnership units held may not necessarily reflect the actual decision-making power the shareholder or partner has. For example, CDPQ admits that, through its wholly owned subsidiary Capital d'Amérique CDPQ Inc., it holds a majority of Trencap L.P.'s partnership units (64.74 percent) and is the general partner.[336] Further, as the general partner, CDPQ is solely responsible for the management and administration of the Trencap L.P.[337]

Similarly, the argument that CDPQ does not have the right to appoint a majority of the seats on the board of Énergir Inc. and, thus, cannot be said to control Énergir L.P., applies the wrong test. The relevant question in determining whether an entity is an "authority" within the meaning of section 771(5)(B) of the Act is whether the entity possesses, exercises, or is vested with government authority. As explained above, the evidence on the record, taken in totality, demonstrates that the GOQ has meaningful control of Énergir L.P. through CDPQ and that Énergir L.P. pursues government policy objectives; thus, Énergir L.P. possesses, exercises, and is vested with governmental authority. This finding is supported, in part, by record evidence showing that CDPQ has the right to appoint five of the 12 seats of Énergir Inc.'s board of directors. CDPQ may not have the right to appoint a majority of the seats on the board of Énergir Inc. however, as noted above, CDPQ controls a clear plurality of Énergir Inc.'s board.[338] CDPQ's argument does not address the significant presence that CDPQ has on Énergir Inc.'s board.

[333] *See* CDPQ August 1, 2019 SQR at 5-6.
[334] *See* CDPQ Case Brief at 4.
[335] *Id*.
[336] *See* CDPQ August 1, 2019 SQR at 5.
[337] *Id*.
[338] *See* Hearing Transcript at 128.

The GOQ also argues that Commerce applies a five-part test, as was done in *Nails from Oman* and *Supercalendered Paper from Canada*, to determine whether an entity is an "authority" within the meaning of the Act. Although Commerce has found the five-factor test instructive in some proceedings, we do not agree that Commerce is compelled to apply the five-factor test in this instance.[339] In fact, in recent proceedings, we have analyzed whether an entity possesses, exercises, or is vested with government authority in order to determine whether it is an "authority" under section 771(5)(B) of the Act.[340] The relevant question in determining whether an entity is an "'authority' is examining the totality of evidence on the record, whether there is government control and whether the entity possesses, exercises, or is vested with government authority."[341]

In regard to Canatal's arguments as to whether the Énergir L.P. Efficiency Program is *de facto* specific or provides a countervailable benefit, *see* Comment 8. We do not address CDPQ's arguments related to the USMCA, because the agreement has not been ratified by all parties and is, thus, not yet effective.

Comment 14: Whether Commerce Should Use Canatal's Consolidated Sales Values

Canatal's Case Brief

- Commerce determined that LI Canatal, Groupe Canatal Inc., and 7247508 Canada Inc. are cross-owned entities. Thus, Commerce should use the consolidated sales figures of the three companies to calculate any subsidy rates.
- Commerce may attribute any benefits from a subsidy to the sales of another corporation with cross-ownership if the corporation receiving the subsidy transfers it to the company producing the subject merchandise.[342]
- If there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to production of the downstream product, Commerce will attribute subsidies received by the input producer to the combined sales of the input and downstream products produced by both corporations (excluding sales between the corporations).[343]

[339] *See, e.g., Certain Oil Country Tubular Goods from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2012*, 79 FR 52301 (September 3, 2014) and accompanying IDM at Comment 6; *see also Nails from Oman* and accompanying IDM at Comment 3.
[340] *See, e.g., Certain Uncoated Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 81 FR 3110 (January 20, 2016) and accompanying IDM at Comment 1.
[341] *See Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review; 2013*, 80 FR 77318 (December 14, 2015) and accompanying IDM at Comment 3.
[342] *See* Canatal Case Brief at 5 (citing *CVD Preamble*, 63 FR at 65402; and 19 CFR 351.525(b)(6)(v)).
[343] *Id*. at 5-6 (citing 19 CFR 351.525(b)(6)(iv); *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2014) and accompanying IDM at Comment 10; *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2015*, 82 FR 47479 (October 12, 2017) and accompanying IDM at Comment 1).

- The three Canatal entities are affiliated and cross-owned.[344] The Canatal entities transfer benefits between entities, as verified.[345] The entities also apply for benefits in the names of more than one company.[346]
- Among the measurable programs for which Commerce needs to use the consolidated sales value are ÉcoPerformance, Ville de Thetford-Tax Credit for Industrial Establishment, Québec Scientific Research and Development Credit, MEI Audit 4.0, and QEDP-DECTIC Economic Diversification Loan Program.[347]

Petitioner's Rebuttal Brief

- Commerce should reject Canatal's argument to use consolidated sales revenue as the denominator for all of its subsidy programs.[348]

Commerce's Position:

For this *Final Determination*, we continue to find LI Canatal, Groupe Canatal, and 7247508 to be cross-owned. We also continue to follow our normal practice, using: (1) LI Canatal's sales as the denominator when the subsidies were *received* by Canatal (19 CFR 351.525(b)(6)(i)); (2) the parent's consolidated sales as the denominator when the subsidies were *received* by the parent, Groupe Canatal (19 CFR 351.525(b)(6)(iii)); and (3) using the combined sales of 7247508 and Canatal less any intercompany sales as the denominator when subsidies were *received* by the input supplier, *i.e.*, 7247508 (19 CFR 351.525(b)(6)(iv).

We disagree with Canatal that we need to attribute subsidies *received* by LI Canatal to the consolidated sales. We are following section 19 CFR 351.525(b)(6)(i), which states that we "normally will attribute a subsidy to the products produced by the corporation that received the subsidy." Sections 19 CFR 351.525 (b)(6)(ii)-(b)(6)(v) provide four exceptions to this general rule. These exceptions are not applicable in this situation. As an initial matter, 19 CFR 351.525(b)(6)(ii) is not applicable, as Groupe Canatal and 7247508 are not producers of subject merchandise. The attribution regulation at 19 CFR 351.525(b)(6)(iii) is used to attribute subsidies received by a holding or parent company – not to attribute subsidies received by a subsidiary that are passed to the holding or parent company. Similarly, the attribution regulation at 19 CFR 351.525(b)(6)(iv) is used to attribute subsidies received by an input supplier – not subsidies received by a cross-owned affiliate that are passed to the input supplier.

At verification, we observed the funds from several of the programs mentioned above transferred from LI Canatal, the producer of subject merchandise, to Groupe Canatal, the corporate parent, and 7247508, a holding company for land used by LI Canatal.[349] With respect to Canatal's argument that 19 CFR 351.525(b)(6)(v) is applicable, we find that, based on the plain language

[344] *Id*. at 6 (citing Canatal's Exhibits from Verification at Exhibit VE-3, dated September 27, 2019, at 2; and Section 771(D) of the Act).
[345] *Id*. (citing Canatal Verification Report, at 6, 10, and 11).
[346] *Id*. at 7 (citing Canatal Verification Report at 13 n. 8).
[347] *Id*. at 7 (citing Canatal Preliminary Calculation Memorandum at Attachment 2).
[348] *See* Petitioner Rebuttal Brief at 27-28 (citing 19 CFR 351. 525(b)(6)(iii)); the remainder of the petitioner's rebuttal arguments were bracketed and unable to be summarized publicly.
[349] *See* Canatal Verification Report, *passim*.

of 19 CFR 351.525(b)(6)(v), this regulation does not apply to this case, because the subsidies in question were received by LI Canatal, a producer of subject merchandise, rather than by a producer of non-subject merchandise. Further, we note 19 CFR 351.525(b)(6)(v) is applicable only in situations in which (b)(6)(i) through (b)(6)(iv) do not apply. We find that 19 CFR 351.525(b)(6)(i) applies and, therefore, we are attributing subsidies received by LI Canatal to LI Canatal's sales.

Lastly, in the *CVD Preamble*, we state the general rule that "we will not trace the use of subsidies through a firm's books and records."[350] Therefore, we decline to allocate over the consolidated group sales subsidies which were received by the producer of subject merchandise, LI Canatal.

Comment 15: Whether Taxes Should Be Included in the Benefit Amount for the Hydro-Québec Industrial Systems Program

Canatal's Case Brief

- Commerce calculated the rate for the Hydro-Québec Industrial Systems Program inclusive of taxes. Taxes are remitted to the government and should have been excluded from the benefit amount. Commerce should recalculate the rate exclusive of taxes.[351]

No other party commented on this issue.

Commerce's Position:

Canatal reported receiving payments from Hydro-Québec under the Industrial Systems Program, but also owing taxes on such benefit amounts.[352] Commerce's regulations, at 19 CFR 351.503(e) explicitly state that "{i}n calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit." Thus, under Commerce's regulations, there is no reason to contemplate whether Canatal owes taxes on the benefit received or to pursue a possible "net benefit" after tax consequences are taken into account.

Further, the Act defines the "net countervailable subsidy" as the gross amount of the subsidy less three statutorily prescribed offsets: (1) the deduction of application fees, deposits or similar payments necessary to qualify for or receive a subsidy; (2) accounting for losses due to deferred receipt of the subsidy; and (3) the subtraction of export taxes, duties or other charges intended to offset the countervailable subsidy.[353] Both Congress and the courts have confirmed that these are the only offsets Commerce is permitted to make under the statute.[354] Offsetting the benefit

[350] *See CVD Preamble*, 63 FR at 65403.
[351] *See* Canatal Case Brief at 4 and 10 (citing Canatal Preliminary Calculation Memorandum at Attachment 8).
[352] *See* Canatal May 13, 2019 IQR at 68 and Exhibit CAN-TABLE-1; Canatal June 12, 2019 SQR at 33 and Exhibit CAN-SUPP2-TABLE-2; and Canatal Verification Report at 12 and Exhibit 9.
[353] *See* section 771(6) of the Act; *see also Notice of Final Results of Countervailing Duty Administrative Review: Certain Softwood Lumber Products from Canada*, 70 FR 73448 (December 12, 2005) and accompanying IDM at Comment 43.
[354] *See* Trade Agreements Act of 1979, Senate Report Number 96-249 (1979), reprinted in 1979 U.S.C.C.A.N. 381, 472 at 186 ("{t}he list is narrowly drawn and is all inclusive."); *see also Kajaria Iron Castings Pvt. Ltd. v. United*

calculated with a "negative" benefit for taxes owed on the government payment is not among the specifically enumerated permissible offsets.

Consequently, we have made no changes with respect to our calculation of this program for the final determination, and we have not offset Canatal's benefit amount under this program by the amount it owed back to the government in taxes on the benefit received.

Comment 16: Whether Commerce Double-Counted Benefit Amounts for Certain Programs Used by Canatal

Canatal's Case Brief

- An Énergir amount was double counted as both a 2015 grant to Groupe Canatal and a 2015 grant to LI Canatal.[355]
- An MFOR/FICEP amount was double counted as both an Emploi Québec-MFOR 2009 grant and a FICEP-Training 2009 grant.[356]
- A training amount was double counted as both part of the Emploi Québec 2010 grant amount and a separate Angle Line Training 2010 grant.[357]

No other party commented on this issue.

Commerce's Position:

We agree with Canatal that we double counted certain grants in our preliminary calculations. We have removed the duplicative grants from our calculations for the final determination.[358]

Comment 17: Whether Commerce Correctly Determined that Three Hydro-Quebec Programs Were Not Used in the POI

GOQ's Case Brief

- Commerce should continue to find that the Hydro-Québec Interruptible Electricity Option Program, Electricity Discount Program for Capital Investments, and Electricity Program for Industrial Users were not used during the POI.[359] Although Commerce did not examine non-use of these programs during verification, Commerce did verify non-use of other subsidy programs during its verification of the respondents.[360] Commerce also

States, 156 F.3d 1163, 1174 (Fed. Cir. 1998) ("we agree that 19 U.S.C. § 1677(6) provides the exclusive list of permissible offsets …."); and *Geneva Steel v. United States*, 914 F. Supp. 563 (CIT 1996) (explaining that section 771(6) of the Act contains "an exclusive list of offsets that may be deducted from the amount of a gross subsidy").
[355] *See* Canatal Case Brief at 4 and 10 (citing Canatal Preliminary Calculation Memorandum at Attachment 12).
[356] *Id*.
[357] *Id*.; *see also* Canatal June 12, 2019 SQR at Exhibit CAN-SUPP2-TABLE-2.
[358] *See* Canatal Final Calculation Memorandum.
[359] *See* GOQ Case Brief at 56-58.
[360] *Id*. (citing Beauce-Atlas Verification Report at 12; and Canatal Verification Report at 14-15).

verified Hydro-Québec's SAP and SIEBEL systems and found the GOQ's responses to be accurate and complete regarding the measures examined.[361]

No other party commented on this issue.

Commerce's Position:

In the *Preliminary Determination* we found that the Hydro-Québec Interruptible Electricity Option Program, Electricity Discount Program for Capital Investments, and Electricity Program for Industrial Users were not used by the mandatory respondents during the POI.[362] We found nothing at verification to contradict our initial non-use findings with respect to these programs. Thus, we agree with the GOQ and continue to find that these programs were not used by the mandatory respondents during the POI.

VIII. RECOMMENDATION

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

☒	☐
Agree	Disagree

1/23/2020

X

Signed by: JEFFREY KESSLER

APPENDIX

NOT-USED AND NOT-MEASURABLE PROGRAMS, BY COMPANY

Beauce-Atlas

Programs Determined Not To Provide Measurable Benefits to Beauce-Atlas During the POI

Count	Title
	Government of Canada Programs
1	Federal & Québec Accelerated Capital Cost Allowances for Class 29 Assets & Class 53 Assets
2	CEDQ Community Adjustment Fund Loan
3	Export Development Canada (EDC) Surety Bond Insurance-Reinsurance
	Province of Québec Programs
4	Ministry of Health and Safety workers compensation reimbursement
5	Québec Additional Deduction for Transportation Costs for Manufacturing SMEs
6	Québec Deduction for Depreciation of Goods Used in Manufacturing, Processing or Computer-Related Activities
7	Investissement Québec Non-Repayable Contributions (Immigrant Investor Program)
8	Emploi Québec Grants for English Lessons
9	School Tax Exemptions
10	Investissement Québec Project Financing Loan
11	CEDQ QEDP Loan
12	ESSOR Program - Investment Projects Support Component Loans
13	Gaz Metro/ Énergir Grants
14	Grants from Ministere de l'Economie et de l'Innovation (MEI)
15	Le Programme d'aide a l'integration des Immigrants et des Mino1ites Visibles en Emploi (PRIIME)
	Miscellaneous Government Assistance
16	Government Assistance Provided in AUL from Unknown Sources

Programs Determined Not To Be Used by Beauce-Atlas During the POI

Count	Title
	Government of Canada Programs
1	Foreign Affairs and International Trade Canada CanExport Program
2	Export Guarantee Program
3	Export Development Canada Export Financing for Steel Loans
4	Export Development Canada Export Financing for Steel Loan Guarantees
5	Western Economic Diversification Canada's Western Innovation Initiative
6	Federal Atlantic Innovation Fund
7	Business Development Program
8	Federal Scientific Research and Experimental Development Tax Credit
9	Atlantic Investment Tax Credit
10	Export Development Canada Export Financing for Steel Export Insurance
11	Federal Apprenticeship Job Creation Tax Credit
	Province of Alberta Programs
12	Alberta Export Support Fund
13	Canada-Alberta Job Grant
14	Alberta Scientific Research and Experimental Development Tax Credit
	Province of British Columbia Programs
15	BC Hydro Power Smart: Industrial Energy Managers Program
16	BC Hydro Power Smart: Load Curtailment
17	BC Hydro Power Smart: Incentives
18	Canada-BC Job Grant
19	BC Scientific Research and Experimental Development Tax Credit
	Province of Manitoba Programs
20	Canada-Manitoba Job Grant
	Province of New Brunswick Programs
21	New Brunswick Workforce Expansion: One Job Pledge
22	New Brunswick Financial Assistance to Industry Payroll Rebate Program
23	New Brunswick Financial Assistance to Industry Loan Program
24	New Brunswick Research and Development Tax Credit
25	New Brunswick’s Large Industrial Renewable Energy Purchases Program (LIREPP)
	Province of Nova Scotia Programs
26	Canada-Nova Scotia Job Grant
27	Workplace Innovation and Productivity Skills Incentive (WIPSI) Program
	Province of Ontario Programs
28	Canada-Ontario Job Grant
29	Independent Electricity System Operator (IESO) Demand Response

	Province of Prince Edward Island Programs
30	Canada-Prince Edward Island Job Grant
	Province of Québec Programs
31	Hydro Québec Interruptible Electricity Option Program
32	Hydro Québec Electricity Discount Program for Capital Investments
33	Hydro Québec Electricity Discount Program for Industrial Users
34	ESSOR Program - Investment Projects Support Component Grants
35	ÉcoPerformance - MERN (TEQ)/ Energy Efficiency Conversion Projects
36	ESSOR Program - Investment Projects Support Component Loan Guarantees
37	Québec Tax Holiday for Large Investment Projects
38	Tax Credit for the Acquisition of Manufacturing and Processing Equipment in Québec
39	Québec Capital Cost Allowance for Property Used in Manufacturing and Processing
40	Québec Scientific Research and Experimental Development Tax Credit
41	MEI Audit Industry 4.0 Program
	Province of Saskatchewan Programs
42	Canada-Saskatchewan Job Grant
	Local Government Programs
43	Tax Credit for Industrial Establishment from Ville de Thetford

Canatal

Programs Determined Not To Provide Measurable Benefits to Canatal During the POI

Count	Title
	Government of Canada Programs
1	Natural Resources Canada
	Province of Québec Programs
2	MEI Programme d'Aide aux Enterprises (PAE)
3	MEI Export Program (PEX)
4	Emploi Québec – FDRCMO
5	Emploi Québec – MFOR
6	Wage Assistance Program
7	Investissement Quebéc – UNIQ Loan Program
8	Cegep-Thetford
9	Club Recherche Emploi

Programs Determined Not To Be Used by Canatal During the POI

Count	Title
	Government of Canada Programs
1	Foreign Affairs and International Trade Canada CanExport Program
2	Export Guarantee Program
3	Export Development Canada Export Financing for Steel Loans
4	Export Development, Canada Export Financing for Steel Loan Guarantees
5	Western Economic Diversification Canada's Western Innovation Initiative
6	Federal Atlantic Innovation Fund
7	Business Development Program
8	Federal Accelerated Capital Cost allowances for Class 29 Assets
9	Federal Scientific Research and Experimental Development Tax Credit
10	Federal Apprenticeship Job Creation Tax Credit
11	Atlantic Investment Tax Credit
12	Export Development Canada Export Financing for Steel Export Insurance
	Province of Alberta
13	Alberta Export Support Fund
14	Canada-Alberta Job Grant
15	Alberta Scientific Research and Experimental Development Tax
	Province of British Columbia Programs
16	BC Hydro Power Smart: Industrial Energy Managers Program
17	BC Hydro Power Smart: Load Curtailment
18	BC Hydro Power Smart: Incentives
19	Canada-BC Job Grant
20	BC Scientific Research and Experimental Development Tax Credit
	Province of Manitoba Programs
21	Canada-Manitoba Job Grant
	Province of New Brunswick Programs
22	New Brunswick Workforce Expansion: One Job Pledge
23	New Brunswick Financial Assistance to Industry Payroll Rebate Program
24	New Brunswick Financial Assistance to Industry Loan Program
25	New Brunswick Research and Development Tax Credit
26	New Brunswick's LIREPP
	Province of Nova Scotia Programs
27	Canada-Nova Scotia Job Grant
28	WIPSI Program
	Province of Ontario Programs
29	Canada-Ontario Job Grant

30	IESO Demand Response
	Province of Prince Edward Island Programs
31	Canada-Prince Edward Island Job Grant
	Province of Québec Programs
32	Hydro Québec Interruptible Electricity Option Program
33	Hydro Québec Electricity Discount Program for Capital Investments
34	Hydro Québec Electricity Discount Program for Industrial Users
35	ESSOR Program - Investment Projects Support Component Grants
36	ESSOR Program – Investment Projects Support Component Loans
37	ESSOR Program - Investment Projects Support Component Loan Guarantees
38	Québec Tax Holiday for Large Investment Projects
39	Tax Credit for the Acquisition of Manufacturing and Processing Equipment in Québec
40	Québec Capital Cost Allowance for Property Used in Manufacturing and Processing
	Province of Saskatchewan Programs
41	Canada-Saskatchewan Job Grant