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June 29, 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 of the Countervailing Duty Investigation of Utility Scale Wind Towers from Canada

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I. SUMMARY

Commerce determines that countervailable subsidies are being provided to producers and exporters of wind towers from Canada, as provided in section 705 of the Act.[1] Below is the complete list of issues in this investigation for which we received comments from interested parties:

Comment 1: Whether Commerce Should Rely on Facts Available to Determine Non-Countervailability, Non-Use, and Benefits of the Programs Under Investigation in the Absence of the Government Verifications
Comment 2: Whether the Federal ACCA for Class 29 Assets Program is Specific
Comment 3: Whether the Additional Depreciation for Class 1 Assets Program is Specific and Provides a Countervailable Benefit
Comment 4: Whether the Ontario LCR Program Provided Countervailable Subsidies to Marmen during the POI
Comment 5: Whether the Quebec LCR Program Provided Countervailable Subsidies to Marmen during the POI
Comment 6: Whether Marmen's Total Sales Denominator Should Be Revised to Reflect Marmen's Total Sales as Expressed in Canadian Dollars
Comment 7: Whether Marmen's Other Wind - Time-Billed Activities, Repair Charges, Early Payment Discounts, Deferred Revenue, Inter-Company Revenues, and Other Non-Production Related Income Should Be Included in Marmen's Total Sales Denominator

[1] *See* Appendix 1 for the full cites and complete names for abbreviations.

Comment 8: Whether Additional Income Taxes Paid by Marmen during the POI on the Previous Year's GASPÉTC Should Be Deducted from Marmen's POI GASPÉTC Benefit
Comment 9: Tax credit for On-The-Job Training

II. BACKGROUND

Case History

The mandatory respondent in this investigation is Marmen.[2] On December 13, 2019, Commerce published the *Preliminary Determination* in this investigation and aligned this final 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]

On December 13, 2019, the petitioner submitted critical circumstances allegations.[4] On December 18, 2019, Marmen submitted a ministerial error allegation.[5] On December 23, 2019, we received a Q&V response from Marmen along with its response to the petitioner's critical circumstances allegation.[6] Also, on December 23, 2019, we received a response to the petitioner's critical circumstances allegation from the GOC and the petitioner's rebuttal comments regarding Marmen's ministerial error allegation.[7] On December 24, 2019, we received Marmen's rebuttal comments regarding the petitioner's rebuttal comments on Marmen's Ministerial error allegation.[8] On January 10, 2020, Commerce released its decision memorandum regarding the petitioner's NSAs concerning Marmen and issued the NSA questionnaire to the GOC, GOQ, and Marmen.[9] On January 21, 2020, and January 22, 2020, we received timely responses to the NSA questionnaire from the GOC, the GOQ and Marmen.[10] On January 31, 2020, we released a memorandum regarding Marmen's ministerial error allegation, determining that the alleged error by Marmen is methodological in nature and not a ministerial error within the meaning of 19 CFR 351.224(f) and section 705(e) of the Act.[11] On February 5, 2020, we received a response from Marmen to our NSA supplemental questionnaire.[12] On February 11, 2020, Commerce published the preliminary negative determination of critical

[2] Marmen Inc., and Marmen Énergie Inc. (*i.e.*, cross-owned subject merchandise producers), as well as Gestion Marmen Inc. (*i.e.*, a holding company parent of both aforementioned subject merchandise producers) (collectively referred to as Marmen). We preliminarily determined to attribute subsidies received by Marmen Inc., and Marmen Énergie Inc. as Gestion Marmen Inc. did not receive any forms of government assistance. We received no comments from parties on this issue. Thus, for this final determination, we continue to attribute subsidies received by Marmen Inc., and Marmen Énergie Inc.
[3] *See Preliminary Determination* PDM.
[4] *See* Petitioner Critical Circumstances Allegation.
[5] *See* Marmen Ministerial Error Allegation.
[6] *See* Marmen Q&V Response; *see also* Marmen Critical Circumstances Allegation Comment.
[7] *See* GOC Critical Circumstances Allegation Comment; *see also* Petitioner Ministerial Error Allegation Rebuttal Comments.
[8] *See* Marmen Ministerial Error Allegation Rebuttal Comments.
[9] *See* NSA Decision Memorandum; *see also* NSA Questionnaire – GOC; NSA Questionnaire – GOQ; and NSA Questionnaire - Marmen.
[10] *See* GOC NSA QR; GOQ NSA QR; and Marmen NSA QR.
[11] *See* Ministerial Error Memorandum.
[12] *See* Marmen Fifth SQR); *see also* Supplemental Questionnaire – Marmen V.

circumstances alleged by the petitioner.[13] On February 12, 2020, Commerce released the post-preliminary determination with regard to the alleged subsidy programs on which Commerce initiated an investigation, based on the petitioner's NSAs.[14]

From February 17, 2020, through February 20, 2020, we conducted verification of the information submitted by Marmen, in accordance with section 782(i)(1) of the Act.[15] On February 14, 2020, Commerce postponed the deadline for the final determination of this investigation until June 29, 2020.[16]

We invited parties to comment on the *Preliminary Determination*. On May 6, 2020, we received timely-filed case briefs from the petitioner, the GOC, the GOQ, and Marmen.[17] On May 13, 2020, we also received timely-filed rebuttal briefs from the petitioner, the GOO, the GOQ, and Marmen.[18] On May 27 and 28, 2020, we held *ex parte* meetings in lieu of a public hearing.[19]

Period of Investigation

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

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is wind towers 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 wind towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam, Commerce did not receive scope comments from interested parties. Accordingly, Commerce preliminarily did not modify the scope language as it appeared in the *Initiation Notice*.[20] Additionally, we received no scope comments from interested parties for this final determination. Accordingly, for this final determination, we made no changes to the scope of this investigation from that published in the *Preliminary Determination*.

V. USE OF FACTS OTHERWISE AVAILABLE

Following the *Preliminary Determination*, from February 17-20, 2020, Commerce personnel conducted verification of the information submitted by Marmen. However, subsequent to the Marmen verification, and as explained in a memorandum dated April 1, 2020, Commerce

[13] *See Preliminary Negative Critical Circumstances Determination*.
[14] *See* Post-Preliminary Determination Memorandum.
[15] *See* Marmen Verification Report.
[16] *See Postponement of Final Determination*.
[17] *See* Petitioner Case Brief; *see also* GOC Case Brief; GOQ Case Brief; and Marmen Case Brief.
[18] *See* Petitioner Rebuttal Brief; *see also* GOO Rebuttal Brief; GOQ Rebuttal Brief; and Marmen Rebuttal Brief.
[19] *See* Petitioner Ex Parte Memorandum; *see also* Respondents Ex Parte Memorandum.
[20] *See Postponement of Final Determination*, 85 FR at 8563.

determined not to conduct the verifications of information provided by the GOC, GOQ and GOO.[21] Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information cannot be verified, Commerce will use the facts otherwise available in reaching the applicable determination. Accordingly, and as further explained in Comment 1, because it was unable to proceed to verification of the GOQ, GOO, and GOC for reasons beyond its own control, Commerce has relied on partial facts available, as appropriate, in this final determination.

In addition, and as explained in Comment 6, Commerce has determined that the information provided by Marmen regarding Marmen's auditor's adjustment cannot be verified. Commerce performed checks of the calculation of the auditor's adjustment at verification and found multiple errors. Accordingly, pursuant to section 776(a)(2)(D) of the Act, we have relied on facts available with respect to Marmen's auditor's adjustment and have not included it.

VI. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Interested parties raised no issues in their case briefs regarding the allocation period or the allocation methodology used in the *Preliminary Determination*. Accordingly, Commerce made no changes to the allocation period or methodology from the *Preliminary Determination*. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination* PDM.[22]

B. Attribution of Subsides

Interested parties raised no issues in their case briefs regarding the allocation period or the attribution methodology used in the *Preliminary Determination*. Accordingly, Commerce made no changes to the attribution methodology from the *Preliminary Determination*. For a description of the attribution methodology used for this final determination, *see Preliminary Determination* and accompanying PDM.[23]

C. Denominators

Interested parties raised issues in their case briefs regarding the sales denominator Commerce used in the *Preliminary Determination*.[24] We have made certain changes to the denominator used from the *Preliminary Determination*.[25] For further discussion of the issues related to the sales denominator, *see* Comments 6 and 7.

D. Benchmarks

[21] *See* Early Conclusion of Verification Memorandum.
[22] *See* PDM at 5.
[23] *Id.* at 5-7.
[24] *Id.* at 7.l.
[25] *Id.* at 7.

Commerce made no changes to, and interested parties raised no issues in, their case briefs regarding the benchmarks used in the *Preliminary Determination*. Accordingly, Commerce made no changes to the benchmarks from the *Preliminary Determination*. For a description of the benchmarks used for this final determination, *see* the *Preliminary Determination.*[26]

VII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

Federal Programs

1. Federal Accelerated Capital Cost Allowance for Class 29 Assets

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below in Comment 2. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. Specifically, for this final determination, we made revisions based on issues observed at verification and are calculating the sales denominator based on the methodology discussed below in Comments 6 and 7.

Marmen: 0.11 percent *ad valorem*

2. Atlantic Investment Tax Credit

No parties submitted comments regarding this program. However, Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. Specifically, for this final determination, we made revisions based on issues observed at verification and are calculating the sales denominator based on the methodology discussed below in Comments 6 and 7.

Marmen: 0.02 percent *ad valorem*

3. Additional Depreciation for Class 1 Assets

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. *See* Comment 2. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. Specifically, for this final

[26] *Id.* at 7-8.

determination, we made revisions based on issues observed at verification and are calculating the sales denominator based on the methodology discussed below in Comments 6 and 7.

Marmen: 0.09 percent *ad valorem*

Québec Programs

4. Tax Credit for the Acquisition of Manufacturing and Processing Equipment in Québec

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. *See* Comment 3. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. Specifically, for this final determination, we made revisions based on issues observed at verification and are calculating the sales denominator based on the methodology discussed below in Comments 6 and 7.

Marmen: 0.01 percent *ad valorem*

5. Québec Capital Cost Allowance for Property Used in Manufacturing and Processing

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. *See* Comment 2. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. Specifically, for this final determination, we made revisions based on issues observed at verification and are calculating the sales denominator based on the methodology discussed below in Comments 6 and 7.

Marmen: 0.09 percent *ad valorem*

6. Revenue Québec – Additional Depreciation for Class 1a Assets/Additional Depreciation for Building (Class 1)

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. *See* Comment 3. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. Specifically, for this final determination, we made revisions based on issues observed at verification and are calculating the sales denominator based on the methodology discussed below in Comments 6 and 7.

Marmen: 0.07 percent *ad valorem*

7. Revenue 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. *See* Comment 9. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. Specifically, for this final

determination, we made revisions based on issues observed at verification and are calculating the sales denominator based on the methodology discussed below in Comments 6 and 7.

Marmen: 0.01 percent *ad valorem*

8. Revenue Québec – Tax Credit to Promote Employment in Gaspesie and Certain Maritime Regions of Québec (GASPÉTC)

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are addressed below. *See* Comments 8. Commerce has modified its calculation of the subsidy rate for this program from the *Preliminary Determination*. Specifically, for this final determination, we made revisions based on issues observed at verification and are calculating the sales denominator based on the methodology discussed below in Comments 6 and 7.

Marmen: 0.78 percent *ad valorem*

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

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

C. Programs Determined Not to be Used or Confer a Benefit During the POI

Marmen reported non-use of programs on which Commerce initiated an investigation. Marmen also reported programs which did not confer a benefit. For a list of the subsidy programs not used by Marmen or the subsidy programs that did not confer a benefit, *see* Appendix II attached to this memorandum. Interested parties submitted comments in their case and rebuttal briefs on these programs. *See* Comment 1.

D. Programs Determined Not to Be Countervailable

Marmen 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*.[27] Interested parties submitted comments in their case and rebuttal briefs on these programs. *See* Comment 1.

E. Programs Determined to Be Tied to Non-Subject Merchandise

Marmen reported programs which Commerce preliminarily determined were tied to non-subject merchandise. For a list of these subsidy programs, *see* "Programs Preliminarily Determined to Be Tied to Non-Subject Merchandise" in the *Preliminary Determination* and Post-Preliminary Determination Memorandum.[28] We received no comments from interested parties on these programs. Therefore, we find these programs not countervailable.

[27] *See* PDM at 16-17.
[28] *Id.* at 17-18; *see also* Post-Preliminary Determination Memorandum at 2.

VIII. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce Should Rely on Facts Available to Determine Non-Countervailability, Non-Use, and Benefits of the Programs Under Investigation in the Absence of the Government Verifications

Petitioner's Case Brief

- As Commerce had to cancel its verifications of the GOQ's and GOO's questionnaire responses due to the global COVID-19 pandemic, there is substantial unverified information currently on the record. Thus, Commerce should not rely on unverified information to make a finding of non-countervailability or non-use of the subsidy programs under investigation in this proceeding, or to otherwise conclude that Marmen did not obtain a benefit from such programs.[29]
- Any reliance on unverified information that may contribute to negative findings in this investigation would be unlawful and would substantially prejudice the petitioner.[30]

GOQ's Rebuttal Brief

- Under *Micron Tech*, courts "evaluate for reasonableness the way in which Commerce chose to interpret the verification requirement in conducting its investigation."[31]
- Commerce's verification of Marmen's questionnaire responses meets the verification requirement of the statute.[32]

GOO's Rebuttal Brief

- Commerce's decision not to travel to Canada due to the global COVID-19 pandemic should not affect Commerce's consideration of the record evidence submitted by the GOO because (1) the GOO was fully committed to participating in Commerce's verification, (2) there is no basis for Commerce to ignore the record evidence or to presume that it is inaccurate or incomplete, and (3) the accuracy of the GOO's submission is corroborated by Commerce's verification report and exhibits for Marmen.[33]

[29] *See* Petitioner Case Brief at 2, n. 7.
[30] *Id*. (citing section 782(i) of the Act; 19 CFR 353.36; and *Tiangin Machinery*, 806 F. Supp. 1008, 1015 (CIT 1992)).
[31] *See* GOQ Rebuttal Brief at 30 (citing *Micron Tech.*, 117 F.3d 1386, 1396-1397 (Fed. Cir. 1997)).
[32] *Id*. at 30.
[33] *See* GOO Rebuttal Brief at 1-2 (citing Marmen Verification Report).

Marmen's Rebuttal Brief

- The countervailing duty laws are remedial, not punitive. Marmen strongly objects to any suggestion by the petitioner that a global pandemic be used to justify punitive treatment of Marmen.[34]
- A domestic industry is entitled to relief only if countervailable subsidies and injury are determined.[35]
- Commerce's statutory duty is to determine subsidy rates "'as accurately as possible.'"[36]
- Marmen responded fully and accurately to the Department's questionnaires and ensured an open and productive verification.[37]

Commerce's Position:

We disagree with the petitioner.

Section 701(a)(1) of the Act provides that Commerce shall impose countervailing duties where Commerce determines that a foreign government is providing a countervailable subsidy. Section 782(i)(1) of the Act provides that Commerce shall verify all information relied upon in making a final determination in an investigation. Section 776(a) of the Act provides that Commerce may use the facts otherwise available in reaching the applicable determination, if: (1) necessary information is not available on the record; or if (2) an interested party or any other person (A) withholds information that has been requested; (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested; (C) significantly impedes the proceeding; or (D) provides such information which cannot be verified.

As explained above, subsequent to the verification of information submitted by Marmen, and as explained in a memorandum dated April 1, 2020, Commerce determined not to conduct the verifications of information provided by the GOC, GOQ and GOO. As explained above, a Level 3 Travel Advisory was imposed for all international travel, preventing Commerce personnel from traveling to Canada to conduct verification of the GOQ, GOO, and GOC. Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but the information cannot be verified, Commerce will use the facts otherwise available in reaching the applicable determination. Accordingly, because it was unable to proceed to verification of the GOQ, GOO, and GOC for reasons beyond its own control, Commerce has relied on partial facts available, as appropriate, in this final determination.

As described above, the GOC, GOQ, and GOO have responded to Commerce's request for information in a timely fashion, and have not otherwise failed to provide information as requested or severely impeded the investigation. Moreover, an adverse inference is only permitted under section 776(b) of the Act where an interested party has failed to cooperate by not

[34] *See* Marmen Rebuttal Brief at 3 (citing *NTN Bearing Corp. v. United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995) and *Chaparral Steel Co. v. United States*, 901 F.2d 1097, 1103-04 (Fed. Cir. 1990)
[35] *Id*. (citing Section 701(a) of the Act).
[36] *Id*. (citing *NTN Bearing Corp* and *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).
[37] *See* Marmen Rebuttal Brief at 3-4.

acting to the best of its ability to comply with a request for information from Commerce. With respect to the GOC, the GOQ, and the GOO, this is not the case. Additionally, Commerce has no reason to find the responses of the GOC, GOQ, or GOO to be incomplete or otherwise unreliable. Therefore, Commerce has relied on the responses of the GOQ, GOO, and GOC in reaching its specificity and financial contribution findings as partial facts available. Finally, with respect to the identification of subsidy programs used and subsidy benefits, Commerce did conduct verification of the information provided by Marmen. Such information corroborated the record information provided with respect to subsidies received and benefit by the GOQ, GOO, and GOC. Accordingly, Commerce has relied on facts available to find that the programs used by Marmen were specific, and that the government provided a financial contribution. However, we have relied on the verification of information provided by Marmen, in making this final determination.

Comment 2: Whether the Federal ACCA and Quebec ACCA for Class 29 Assets Programs are Specific

GOC's Case Brief

- In the *Preliminary Determination*, Commerce erred in finding that the federal ACCA for Class 29 and 53 assets program to be *de jure* specific within the meaning of section 771(5A)(D) of the Act as the ACCA is available to all industries that acquire machinery and equipment primarily for use for the manufacturing or processing of goods for sale or lease.[38]
- The ACCA does not restrict which industries or enterprises may use the program. Instead, it provides that certain activities will not constitute manufacturing or processing for purposes of eligibility to claim the ACCA. Activity-based restrictions do not render the ACCA *de jure* specific.[39]
- These excluded activities do not change the fact that eligibility for the ACCA deduction does not exclude any specific enterprises or industries; all enterprises and industries are in fact eligible to claim the deduction for the non-excluded activities they perform.[40]
- The statutory and regulatory context, as well as Commerce's practice, confirm that a program available to all producers is not rendered specific merely because some producers may not claim the benefit of the program for all of the activities that they undertake due to the program eligibility criteria.[41]
- The existence of criteria that must be met for a company to be eligible for a program does not make that program *de jure* specific; "something more" than eligibility requirements must be shown to demonstrate specificity. The requirement was not met in this proceeding.[42]
- Commerce's previously referenced cases (*i.e.*, *Nails from Oman Final Determination and CWP from UAE Final Determination*) in support of its position that activity-based

[38] *See* GOC Case Brief at 2, and 4-5.
[39] *Id.* at 4-7.
[40] *Id.* at 4, and 9.
[41] *Id*. at 4-6.
[42] *Id*. at 7-8 (citing *PPG Industries*, 978 F.2d 1232, 1240 (Feb. Cir. 1992); section 771(5A)(D)(ii) of the Act; and the SAA at 930).

exclusions can be a basis for finding *de jure* specificity are distinguishable. The referenced cases involved a tariff exemption on imported production inputs for industrial enterprises, where those engaged the extraction or refining of petroleum, natural gas, or minerals were not eligible for an industrial license. Thus, they could not claim the tariff exemption. Here, there is no enterprise exclusion. Rather, only certain non-manufacturing *activitie*s are ineligible for the ACCA.[43]

- Even if the excluded activities are treated as excluded industries, the scope of the "industry" exclusion is limited. In addition, the program remains widely available, and most industries are still eligible.[44]
- Commerce cannot equate the existence of limits on a program's availability to be *de jure* specificity. Court decisions, the SAA, Commerce's practice and the WTO jurisprudence confirm that a program is not *de jure* specific when it is widely available and not limited to a *sufficiently small* number or a *discrete segment* of enterprises or industries. Further, the wide availability does not mean or require universal availability.[45]
- During the POI, companies listed in the excluded "industries" claimed the ACCA for the manufacturing and processing activities that they performed. Consistent with previous cases where the industries that could use a program indicated that the program was widely available, Commerce should reach the same finding that the ACCA is not *de jure* specific or provide a reasoned analysis as to why the prior determinations are distinguishable.[46]

Marmen's Case Brief

- The ACCA for Class 29 and 53 assets are not *de jure* specific. Record evidence demonstrates that this program is widely available (available to all taxpayers in all industries and/or not limited to certain enterprises or industries by law), and the tax regulations which defines such assets do not exclude or limit particular industries or enterprises from eligibility.[47]
- The statutory requirements for finding that a program is not *de jure* specific are also met as (1) the criteria governing eligibility are objective and clearly set forth under the legal provisions and (2) any taxpayer that acquires the underlying asset automatically qualifies for the deduction so long as the taxpayer completes a relevant tax return form.[48]

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[43] *Id*. at 9 (citing *Nails from Oman Final Determination*, *CWP from UAE Final Determination*, and *CWP from Oman Final Determination*).
[44] *Id.* at 4, 10, and 16-17.
[45] *Id.* at 4 (citing *Allegheny*, 112 F. Supp. 2d 1141, 1152 n. 15 (CIT 2000)); and 10-16 (citing *Allegheny*, 112 F. Supp. 2d 1141, 1152 n. 15 (CIT 2000); the SAA at 656, 929, and 930; *US – Subsidies on Upland Cotton* at 1124 and 1142-1143; and *US – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* at 373 and 386).
[46] *Id.* at 7, and 16-21 (citing *Citric Acid and Certain Citrate Salts from China 2008-09 AR Final Results*; *Certain CTL from Korea Final Determination*; *NOES from Taiwan Final Determination*; *CRS from Russia Final Determination*; *LHF from Canada Preliminary Determination*, unchanged in *LHF from Canada Final Determination*; *Live Swine from Canada Final Determination*; and *Fresh Cut Flowers from the Netherlands Final Determination*).
[47] *See* Marmen Case Brief at 1, 15, and 17-19 (citing the SAA at 930; and *Carlisle Tire*, 564 F. Supp. 834, 836-839).
[48] *Id*. at 19 (citing section 771(5A)(D)(ii) of the Act).

- The ACCA for Class 29 and 53 assets are not *de facto* specific because recipients are not limited in number. There is no indication of predominant users or industries receiving disproportionately large amounts, and the authorities do not exercise discretions in reviewing the CCAs claimed on the tax returns.[49]

GOQ's Case Brief

- Eligibility for the CCA program, which provides an accelerated CCA rate of 50 percent, is based on the classification of property.[50] While the regulation lists eleven activities that are not eligible for the program, the accelerated CCA is used by many companies across various industries.[51]
- Commerce's determination is incorrect because, while the CCA program is limited to certain classes of equipment or machinery, that equipment or machinery is used in a diverse variety of industries. The CCA program is not *de jure* specific to an enterprise or industry.[52]
- When Commerce amends its *de jure* specificity decision, it should determine that this program is not *de facto* specific, as the same arguments presented above regarding the correct analysis for specific also apply here.[53]

Petitioner's Rebuttal Brief

- Commerce should continue to find that the federal ACCA program is *de jure* specific consistent with section 771(5A)(D)(i) of the Act and prior determinations as Commerce previously considered and rejected similar arguments. There is no new record evidence indicating that any element of the ACCA program or the related tax regulations has changed since prior determinations to warrant a reconsideration of Commerce's previous determinations.[54]
- The limitations that exist for use of the ACCA are meaningful and demonstrate that the program is specific.[55]
- Contrary to respondents' contention that there are no restrictions on the kind of industries that can use the ACCA, there are significant and numerous express restrictions in the tax regulations. The program thus meets the definition of *de jure* specificity. Moreover, the GOC's argument that the restrictions are activity-based, not industry-based, is a distinction without a difference.[56]

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[49] *Id*. at 1, 15, and 21-22.
[50] *See* GOQ Case Brief at 15 (citing GOQ IQR at Exhibit QC-CCA-A).
[51] *Id*. at 15.
[52] *Id*.
[53] *Id*.
[54] *See* Petitioner Rebuttal Brief at 2 (citing section 771(5A)(D)(i) of the Act), and 15-17 (citing e.*g., Certain Softwood Lumber Products from Canada 2017-18 AR Preliminary Results*, and accompanying PDM at 69; *Certain Softwood Lumber Products from Canada Certain Softwood Lumber Products from Canada 2015 Expedited Review Final*, and accompanying IDM at Comment 6; *Uncoated Groundwood Paper from Canada Final Determination*, and accompanying IDM at 52; *Lumber V from Canada Final Determination*, and accompanying IDM at Comment 68; and *SC Paper from Canada 2014 Expedited Review Final*, and accompanying IDM at Comment 32).
[55] *Id*. at 2.
[56] *Id*. at 17-18.

- The GOC argues that a number of the industries on this exclusion list used the program. However, the GOC failed to explain the disconnect between the exclusion list and the GOC's usage claim. Because excluded enterprises who may claim ACCA for non-excluded activities are primarily in the business of conducting excluded activities, the fact that they may have used the program for some of their non-primary activities does not mean that a significant limitation has not been placed on usage of the program based on the industry of the activity in question.[57]
- In the *Preliminary Determination* as well as in other prior cases, Commerce reasonably concluded that this broad list of excluded activities meets the *de jure* specificity standard within the meaning of section 771(5A)(D)(i) of the Act. Commerce should not be required to look beyond the plain text of a country's laws and regulations if the text of those documents establish a sufficient limitation for a *de jure* finding.[58]
- The GOC argues that where a program is available to all enterprises or industries but simply may not be claimed for all activities engaged in by those industries, Commerce cannot find *de jure* specificity. However, the GOC fails to recognize that the activities specified in the tax law are logically limited to those industries that perform those activities.[59]
- Moreover, even if the ACCA makes a meaningful distinction between industry-based restrictions and activity-based restrictions, the GOC's argument still fails as Commerce has previously found a program to be *de jure* specific based on a limitation of activities. The fact that the ACCA excludes certain activities by definition also excludes industries or enterprises conducting those activities.[60]
- The GOC's argument that the recipients of ACCA benefits are not sufficiently small fails because the statute does not ask Commerce to convert a *de jure* analysis to a *de facto* analysis. This is an improper interpretation of *de jure* analysis. Rather, the plain language of the statute only asks whether the GOC expressly limits access to the subsidy to an enterprise or industry. Moreover, even if Commerce were required to assess whether the number of recipients is sufficiently small for *de jure* specificity analysis, the ACCA is still specific because the number of recipients for the ACCA benefits is comparable to the number that Commerce previously found to be sufficiently small.[61]
- The GOC's reliance on *PPG Industries* is misplaced, as Commerce has long questioned the applicability of this pre-Uruguay Round Agreements Act case regarding Commerce's post-Uruguay Round Agreements Act specificity analysis. Even if diverse entities conducting manufacturing are recipients of the ACCA benefits, Commerce is not required to find that these users also share similar characteristics.[62]

[57] *Id*. at 18-19.
[58] *Id*. at 19.
[59] *Id*. at 19 (citing *Magnesium from Israel Final Determination* and accompanying IDM at Comment 2).
[60] *Id*. at 19-20 (citing *CWP from UAE Final Determination* and accompanying IDM at Comment 1).
[61] *Id*. at 20-21 (citing section 771(5A)(D)(i) of the Act; and *SC Paper from Canada 2014 Expedited Review Prelim*, and accompanying PDM at 34).
[62] *Id*. at 21-22 (citing *PPG Industries*, 978 F.2d 1232, 1240 (Feb. Cir. 1992); and *CVD Preamble* at 65357).

Commerce's Position:

Class 29 assets are machinery used in manufacturing or processing operations.[63] Pursuant to the CITA and the Class 29 of Schedule II to the ITR, machinery and equipment acquired by a taxpayer after March 18, 2007, and before 2016, and that are primarily used in Canada for the manufacturing or processing of goods for sale or lease, can be depreciated on an accelerated, three-year basis as a deduction from the federal income in calculating federal tax owed.[64] In Quebec, Class 29 assets are eligible for a Capital Cost Allowance rate of 50 percent, according to the straight-line depreciation method.[65] In addition, Class 53 covers property also covered by Class 29 but acquired after 2015, and before 2026, pursuant to the CITA and the Class 53 of Schedule II to the ITR.[66] In Quebec, Class 53 assets are eligible for an ACCA rate of 50 percent on a declining-balance basis.[67]

In Quebec, the capital cost allowance program is available for two classes of property: Class 29 and Class 53.[68] Class 29 covers machinery and equipment acquired after March 18, 2007, and before 2016.[69] Class 29 assets are eligible for a Capital Cost Allowance rate of 50 percent, according to the straight-line depreciation method.[70] Class 53 covers property also covered by Class 29 but acquired after December 31, 2015, and before January 1, 2026.[71] Class 53 assets are eligible for an ACCA rate of 50 percent on a declining-balance basis.[72] Certain manufacturing industries are explicitly excluded from benefitting from this deduction (*e.g.*, farming or fishing, logging, construction, mineral extraction, petroleum and natural gas extraction).[73]

Section 1104(9) of the ITR regulations provide that, for purposes of defining what constitutes manufacturing or processing in Class 29 Schedule II, "manufacturing or processing" does not include certain described categories of activities, as follows:

> {F}or the purpose of … Class 29 … 'manufacturing 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 sale; (i) processing natural gas as

[63] *See* GOC IQR at Exhibit GOC-CRA-CLASS29-1, Standard Questions Appendix, at 1 and 10.
[64] *Id*. at 1-3 and 10-11.
[65] *Id*.
[66] *Id.* at Exhibit GOC-CRA-CLASS29-1, Standard Questions Appendix, at 1 and Exhibit GOC-CLA-CLASS29-2.
[67] *Id*.
[68] *See* GOQ IQR at Exhibit QC-CCA-1, Standard Questions Appendix at 7.
[69] *Id*.
[70] *Id*.
[71] *Id*.
[72] *Id*.
[73] *See* GOQ IQR at Exhibit QC-CCA-3.

> 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.[74]

Therefore, the applicable tax laws for Class 29 and Class 53 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 Federal ACCA and Quebec Class 29 assets programs. In the *Preliminary Determination*, *Lumber V from Canada Final Determination*, *SC Paper from Canada 2014 Expedited Review Final*, *Uncoated Groundwood Paper from Canada Final Determination*, and *Certain Softwood Lumber Products from Canada 2015 Expedited Review Final*, we found the Federal ACCA for Class 29 assets program to be *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because eligibility for the program is expressly limited as a matter of law to certain industries.[75] The GOC, the GOQ, and Marmen argue that the Class 29 assets programs are not limited, but rather are available to all industries that purchased manufacturing equipment.[76] We disagree, because the programs exclude enterprises and industries that are engaged in numerous activities from eligibility for the tax deduction under the Federal ACCA and Quebec ACCA programs covering Class 29 assets.

The GOC similarly asserts that this program is available to all enterprises and is, thus, like a program that Commerce examined in *CRS from Russia Final Determination*, where Commerce found that a tax deduction program was not *de jure* specific because any company could claim a tax deduction if it performed certain activities.[77] However, in *CRS from Russia Final Determination*, and unlike here, we found that the program was not *de jure* specific because the applicable law's "articles do not stipulate the eligibility requirements or any limitation on eligibility."[78] Citing *NOES from Taiwan Final Determination*, where Commerce found a program to be not *de jure* specific where only companies with highly innovative research and development activities were eligible for a tax credit, the GOC asserts that any company that acquired machinery for manufacturing or processing as defined by the ITR can claim the ACCA deduction.[79] However, in *NOES from Taiwan Final Determination*, and unlike here, we found that the program was not *de jure* specific because the applicable law "indicates that benefits are not expressly limited to any industry … or other criteria, and thus not *de jure* specific under section 771(5A)(D)(i) of the Act."[80]

The GOC argues that the ITR excludes activities and not industries and, therefore, this program is not specific under section 771(5A)(D)(i) of the Act.[81] It also argues that the excluded

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[74] *Id.* at Exhibit GOC-CRA-CLASS29-1, Standard Questions Appendix, at 1 and Exhibit GOC-CLA-CLASS29-2.
[75] *See* PDM at 9; *see also Lumber V from Canada Final Determination* IDM at Comment 68; *SC Paper from Canada 2014 Expedited Review Final* IDM at Comment 32; *Uncoated Groundwood Paper from Canada Final Determination* IDM at 184; and *Certain Softwood Lumber Products from Canada 2015 Expedited Review Final* at Comment 6.
[76] *See* GOC Case Brief at 2, and 4-5; *see also* Marmen Case Brief at 18-19.
[77] *See* GOC Case Brief at 6; *see also CRS from Russia Final Determination* IDM at 117.
[78] *Id.*
[79] *See* GOC Case Brief at 6 (citing *NOES from Taiwan Final Determination* IDM at 21).
[80] *See NOES from Taiwan Final Determination* IDM at 21.
[81] *See* GOC Case Brief at 4-7.

activities do not change the fact that eligibility for this program does not exclude any specific enterprises or industries from eligibility for the program and that all enterprises and industries are eligible to claim the deduction for the non-excluded activities that they perform.[82] It further argues that a program available to all producers is not rendered specific merely because some producers may not claim the benefit for all of the activities that they undertake due to the program eligibility criteria.[83] Similarly, Marmen argues that the ITR defines the underlying assets and it does not exclude or limit particular industries.[84] However, as discussed above, the ITR explicitly excludes certain activities from the definition of manufacturing or processing. Enterprises and industries engaged in the excluded activities are not eligible for this program. Therefore, access to the subsidy is expressly limited to non-excluded enterprises and industries. Our reasoning is consistent with *Uncoated Groundwood Paper from Canada Final Determination*, *Lumber V from Canada Final Determination*, and *SC Paper from Canada 2014 Expedited Review Final*.[85] As such, we find unpersuasive the GOC's argument that the program is not specific because it is limited to "activities" rather than "industries." Further, in *Magnesium from Israel Final Determination*,[86] Commerce made no distinction between activity and industry for purposes of determining specificity and we do not do so now.

Referencing *CWP from UAE Final Determination and Nails from Oman Final Determination*, the GOC argues that these cases are distinguishable from this proceeding. We disagree. Contrary to the GOC's arguments, *CWP from UAE Final Determination and Nails from Oman Final Determination*, where Commerce found programs that excluded certain activities to be *de jure* specific, support Commerce's specificity finding here. In *CWP from UAE Final Determination*, Commerce found *de jure* specificity because the law excluded enterprises involved with the extraction or refining of petroleum, natural gas, or minerals from receiving the benefit of tariff exemptions.[87] Commerce explained that, where there is an explicit exclusion of certain industries in the law itself, such an exclusion is sufficient under section 771(5A)(D)(i) of the Act to support a finding that the law is expressly limited to a group of industries.[88] Commerce further explained that section 771(5A)(D)(i) of the Act directs Commerce to consider "limitations" of availability to the program.[89] Similarly, in *Nails from Oman Final Determination*, Commerce found that the government expressly limited access to the tariff exemption program to certain establishments and, therefore, the program was *de jure* specific because it excluded other enterprises or industries (*i.e.*, those engaged in the field of oil exploration and extraction and those engaged in the field of extraction of metal ores) from receiving benefits of the program.[90] Akin to those tariff exemption programs, access to the Federal ACCA for Class 29 assets program, which also covers Class 53 assets, is expressly restricted to non-excluded enterprises and industries.

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[82] *Id.* at 4, and 9.
[83] *Id.* at 4-6.
[84] *See* Marmen Case Brief at 1 and 17.
[85] *See Uncoated Groundwood Paper from Canada Final Determination* and accompanying IDM at 184; *see also SC Paper from Canada 2014 Expedited Review Final* and accompanying IDM at Comment 32; and *Lumber V from Canada Final Determination*, and accompanying IDM at Comment 68.
[86] *See Magnesium from Israel* and accompanying IDM at Comment 2.
[87] *See CWP from UAE Final Determination* IDM at Comment 1.
[88] *Id.* at 18.
[89] *Id.*
[90] *See Nails from Oman Final Determination* IDM at Comment 1.

The GOC argues that the scope of the activity exclusion is very limited, and that Commerce cannot equate the existence of limits on a program's availability to be *de jure* specific.[91] The GOC further argues that a program is not *de jure* specific when it is widely available, and that the wide availability does not mean or require universal availability.[92] Marmen also makes a similar argument that a program is not *de jure* specific when it is widely available and not limited to a sufficiently small number of enterprises or industries.[93] However, we disagree that the exclusion is very limited or that this program is widely available. Section 771(5A)(D)(i) of the Act states that a program is *de jure* specific if the governing authority "expressly limits access to the subsidy." Here, the ITR expressly limited access to the subsidy by excluding certain described categories, such as farming, fishing, and construction, from the definition of "manufacturing or processing." Although the GOC is correct that the specificity test is intended to winnow out broadly available assistance spread throughout an economy, it is not "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."[94]

The GOC also cites WTO case precedents in support of its arguments.[95] However, WTO case precedents do not govern our proceedings. Findings of WTO reports are without effect under U.S. law "unless and until such a {report} has been adopted pursuant to the specified statutory scheme" established in the URAA.[96] As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to trump automatically the exercise of Commerce's discretion in applying the statute.[97] It is the Act and Commerce's regulations that have direct legal effect under U.S. law, and not the WTO Agreements or WTO reports. In this regard, WTO reports "do not have any power to change U.S. law or to order such a change."[98] Commerce has conducted this investigation in accordance with the Act and Commerce's regulations, and our CVD laws are consistent with our WTO obligations.

The GOC also argues that during the POI, companies listed in the excluded "industries" claimed the ACCA for the manufacturing and processing activities that they performed.[99] We find this argument unpersuasive because companies in industries that are engaged *exclusively* in the excluded activities under Class 29 or Class 53 are not eligible for the federal ACCA Class 29 assets program, based on the applicable tax laws for Class 29 and Class 53, as discussed above.

In support of its arguments, the GOC references numerous cases, claiming that in each case Commerce found that programs were not *de jure* specific where a program was widely

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[91] *See* GOC Case Brief at 4, 10, 13, and 16-17.
[92] *Id.* at 10-16 (citing *Allegheny*, 112 F. Supp. 2d 1141, 1152 n. 15 (CIT 2000); the SAA at 656, 929, and 930; *US – Subsidies on Upland Cotton* at 1124 and 1142-1143; and *US – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* at 373 and 386)..
[93] *See* Marmen Case Brief at 17 ((citing the SAA at 930; and *Carlisle Tire*, 564 F. Supp. 834, 836-839).
[94] *See* SAA at 930.
[95] *Id.* at 14-16 (citing *US – Subsidies on Upland Cotton* at 1124 and 1142-1143; and *US – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China* at 373 and 386).
[96] *See Corus Staal BV*, 395 F. 3d 1343, 1347-1349 (Fed. Cir. 2005); *accord Corus Staal BV*, 502 F. 3d 1370, 1375 (Feb. Cir. 2007); and *NSK Ltd*., 510 F. 3d 1375, 1379-80 (Fed. Cir. 2007).
[97] *See* 19 USC 3538(b)(4) (implementation of WTO reports is discretionary).
[98] *See* SAA at 659.
[99] *See* GOC Case Brief at 7.

available.[100] We disagree that these cases support a different result here; we do not find that this program is widely available for the reasons discussed above, and the fact patterns in the cited cases are distinguishable from that of the Federal ACCA Class 29 assets program. In *LHF from Canada Preliminary Determination*, Commerce found the Decentralized Fund for Job Creation Program (DFJC) of the Société Quebecoise de Developpement de la Main-d'Oeuvre not to be *de jure* specific.[101] However, Commerce also found assistance under the DFJC program to be "distributed to many sectors representing virtually every industry and commercial section found in Quebec," as it excluded only retail businesses, nonprofits, and local and regional municipalities.[102] Here, the Federal ACCA for Class 29 assets program contains numerous additional eligibility restrictions. Similarly, in *Live Swine from Canada Final Determination*, Commerce found the Transitional Assistance/Risk Management Funding grant program not to be *de jure* specific because it was available to most of the agricultural sector with the exception of producers of processed agricultural products.[103] In addition to the fact that this investigation does not require that Commerce analyze specificity of an agricultural subsidy (which is governed by special rules, under 19 CFR 351.502(d)), again, the Federal ACCA for Class 29 assets program contains numerous additional eligibility restrictions. Additionally, in *Fresh Cut Flowers from the Netherlands Final Determination*, Commerce found that a program was not *de jure* specific because it excluded "one narrow type of agricultural activity."[104] This case predates the statutory amendments made under the URAA, and in any event, is not analogous to the numerous activities that are excluded under the Federal ACCA for Class 29 assets program.

Moreover, in *Citric Acid and Certain Citrate Salts from China 2008-09 AR Final Results*, Commerce stated that "there is no indication that {the provision of} steam coal is *de jure* specific under {section} 771(5A)(D)(i) of the Act" because (1) "users of steam coal range from producers of electricity, heal suppliers and manufacturers of processed food and nuclear fuel to office, hotels and caterers," and "{w}ithin the major industrial category of manufacturing along users include food processers, nuclear fuel processors, smelters and pressers of ferrous and non-ferrous metal, and manufacturers of textiles, medicine, chemicals, transport equipment, among many others."[105] However, here, the Federal ACCA for Class 29 assets program contains numerous additional eligibility restrictions, as the ITR expressly limits access to the subsidy by excluding certain described categories from the definition of "manufacturing or processing," as discussed above. Further, in *CRS from Russia Final Determination*, Commerce found that the extraction tax deduction program not to be *de jure* specific as "the law does not appear to limit access to an enterprise, industry, group of industries, or region."[106] Here, the Federal ACCA for Class 29 assets program contains numerous additional eligibility restrictions. Also, in *Certain CTL from Korea Final Determination*, Commerce found that the VCA program not to be *de jure* specific

[100] *Id.* at 17-20 (citing *Citric Acid and Certain Citrate Salts from China 2008-09 AR Final Results*; *Certain CTL from Korea Final Determination*; *NOES from Taiwan Final Determination*; *CRS from Russia Final Determination*; *LHF from Canada Preliminary Determination*, unchanged in *LHF from Canada Final Determination*; *Live Swine from Canada Final Determination*; and *Fresh Cut Flowers from the Netherlands Final Determination*).
[101] *See LHF from Canada Preliminary Determination*, 61 FR at 59084.
[102] *Id*.
[103] *See Live Swine from Canada Final Determination* IDM at 27.
[104] *See Fresh Cut Flowers from the Netherlands Final Determination*, 52 FR at 3301 and 3306.
[105] *See Citric Acid and Certain Citrate Salts from China 2008-09 AR Final Results* IDM at 50-51.
[106] *See CRS from Russia Final Determination* IDM at 114.

because "there were a large number of volunteers from across a wide range of industries."[107] In addition, in *Certain CTL from Korea Preliminary Determination*, Commerce found that the VCA program at issue not to be *de jure* specific under section 771(5A)(D)(i) of the Act because it "is available to numerous companies across all industries" and "the regulation does not explicitly limit eligibility of the program."[108] However, again, the Federal ACCA for Class 29 assets program contains numerous additional eligibility restrictions, as the ITR expressly limits access to the subsidy by excluding certain described categories from the definition of "manufacturing or processing," as discussed above. Lastly, in *Certain CTL from Korea Preliminary Determination*, Commerce found tax benefits under technology for manpower development expenses were not specific as the program was provided to all manufacturing and mining industries.[109] On the contrary, the ITR explicitly limits access to the subsidy by excluding certain activities from the definition of manufacturing or processing; enterprises and industries engaged in the excluded activities are not eligible for this program.

Finally, the GOC argues that more than the existence of eligibility requirements need to be demonstrated to find *de jure* specificity and Commerce's approach is inconsistent with section 771(5A)(D)(ii) of the Act.[110] Similarly, Marmen argues that the statutory requirements for finding that a program is not *de jure* specific are met under section 771(5A)(D)(ii) of the Act.[111] While we agree that the mere existence of eligibility criteria are not sufficient to find *de jure* specificity, the eligibility criteria do not satisfy the statutory requirement for "objective criteria," insofar as they "favor one enterprise or industry over another."[112] That is, the ITR favors enterprises or industries that are engaged in qualifying manufacturing and processing activities, over enterprises or industries that are not.[113]

We therefore continue to determine that the Federal ACCA and Quebec ACCA for Class 29 assets programs are *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 certain enterprises or industries. As a result of this finding, we need not address the respondents' arguments regarding *de facto* specificity.

Comment 3: Whether the Additional Depreciation for Class 1 Assets Program is Specific and Provides a Countervailable Benefit

GOC's Case Brief

- Commerce's *Preliminary Determination* that the Additional Depreciation for Class 1 Assets program is *de jure* specific, and provides a countervailable benefit, is in error and should be reversed in the final determination.[114]

[107] *See Certain CTL from Korea Final Determination*, 64 FR at 73193.
[108] *See Certain CTL from Korea Preliminary Determination*, 64 FR at 40456.
[109] *See Certain CTL from Korea Final Determination*, 64 FR at 73192.
[110] *See* GOC Case Brief at 7-8 (citing *PPG Industries*, 978 F.2d 1232, 1240 (Feb. Cir. 1992); section 771(5A)(D)(ii) of the Act; and the SAA at 930).
[111] *See* Marmen Case Brief at 19 (citing section 771(5A)(D)(ii) of the Act).
[112] *See* section 771(5A)(D)(ii) of the Act.
[113] *See* GOC IQR at Exhibit GOC-CLA-CLASS29-2.
[114] *See* GOC Case Brief at 21 (citing *Preliminary Determination* PDM at 11-12).

- Commerce concluded that the Additional Depreciation for Class 1 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 the CITR. For the same reason set out for Comment 2, Commerce's finding of *de jure* specificity for the ten percent CCA for Class 1 manufacturing buildings is in error.[115]
- Commerce has no basis from which to conclude that the ten percent depreciation rate provides any kind of benefit and is therefore countervailable.[116]
- The ten percent depreciation rate available for manufacturing buildings is not an accelerated rate above the normal rate for buildings. Instead, the ten percent depreciation rate is intended to reflect the actual shorter/faster useful life of such assets that are used for manufacturing purposes as buildings used for manufacturing wear out more quickly than buildings with non-manufacturing uses, as assessed by the GOC.[117]
- The ten percent depreciation rate does not provide benefits to purchasers of such assets.[118]
- The depreciation rate was implemented for the sole purpose of better reflecting the true useful economic life of these assets.[119]
- It is not unusual for different kinds of assets to be depreciated at different rates, reflecting their different expected useful economic lives. Moreover, there is nothing in the GOC's economic assessment of the ten percent depreciation rate to support Commerce's imposition of countervailing duties against Marmen for using such a rate.[120]
- Commerce has not countervailed a country's normal tax depreciation system in the absence of evidence that the system allows particular producers to accelerate their depreciation. The GOC has aligned the capital cost allowance with the useful life of assets to ensure the accurate allocation of the cost of capital assets over their useful lives, rather than accelerating the depreciation rate to provide a benefit to the manufacturing sector.[121]
- There is no evidence that the ten percent depreciation rate calculated by the GOC for buildings used for manufacturing is inadequate or unreliable. The normal rate of depreciation for buildings used for manufacturing is ten percent, which would not provide any benefit if used as a benchmark.[122]

Marmen's Case Brief

- This program is not *de jure* specific as record evidence demonstrates that this is widely available, and not limited by law to certain enterprises or industries.[123]

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[115] *Id.* at 23 (citing *Preliminary Determination* PDM at 11).
[116] *Id.* at 23, and 28.
[117] *Id.* at 24-26.
[118] *Id.* at 24-25.
[119] *Id.*
[120] *Id.* at 25-26.
[121] *Id.* at 26-27.
[122] *Id.* at 27-28 (citing *Al Tech*, 28 Ct. Int'l Trade 1468, 1475-1477 (2004)). The GOC argues that in *Al Tech*, the CIT affirmed Commerce's determination that an Italian province did not purchase respondent's industrial property for more than adequate remuneration because the CIT found no evidence that the government's appraisal overstated the value of the purchased property or was inaccurate in any way.
[123] *See* Marmen Case Brief at 1, 15, 17 (citing SAA at 930; and *Carlisle Tire*, 564 F. Supp. 834, 836-839), and 20.

- The statutory requirements for finding that a program is not *de jure* specific are also met as (1) the criteria governing eligibility are objective and clearly set forth under the legal provisions and (2) any taxpayer that acquires the underlying asset automatically qualifies for the deduction so long as the taxpayer completes a relevant tax return form.[124]
- This program is not *de facto* specific because (1) recipients are not limited in number; (2) there is no indication of predominant users or industries receiving disproportionately large amounts; and (3) the authorities do not exercise discretions in reviewing the CCAs claimed on the tax returns.[125]
- This program neither constitutes a financial contribution nor confers a benefit. By aligning the CCA with the useful life of buildings dedicated to manufacturing or processing, though administering a tax depreciation schedule that accurately reflects the shorter useful life of the underlying assets, the government does not forgo revenue or confer a benefit.[126]
- Contrary to Commerce's *Preliminary Determination* regarding financial contribution within the meaning of section 771(5)(D)(ii) of the Act, the governments did not forgo tax revenue otherwise due through the CCA. Moreover, the CCA does not accelerate depreciation or result in an increased tax deduction and/or any preferential treatment for these buildings; rather, it was created to avoid over-collecting tax revenue, not to forgo tax revenue.[127]

GOQ's Case Brief

- The Class 1 Buildings program is available to a wide variety of enterprises and industries, and Commerce's *de jure* analysis does not meet the requirement that the legislation affirmatively limit the program to a small number of industries.[128]
- In *LHF from Canada Final Determination*, Commerce recognized that even though certain industries may be excluded from a program, that does not result in a program that is *de jure* specific to a company or industry because many other companies and industries are still eligible to use the program. The data demonstrate that many industries are eligible for this program, and it is not expressly limited to an enterprise or industry, or group thereof.[129]
- When Commerce amends its *de jure* specificity decision, it should determine that this program is not *de facto* specific, as the same arguments presented above regarding the correct analysis for specific also apply here.[130]
- The GOQ does not forego any revenue when a company uses the 10 percent depreciation rate because the normal rate for a Class 1 building used for manufacturing or processing is 10 percent. Commerce should amend its preliminary determination and find that there is no financial contribution or benefit provided by this program because the program

[124] *Id*. at 20-21 (citing section 771(5A)(D)(ii) of the Act).
[125] *Id*. at 1, 15, and 21-22.
[126] *Id*. at 1, and 13-15.
[127] *Id.* at 14-15.
[128] *See* GOQ Case Brief at 13.
[129] *Id.* at 13-14 (citing *LHF from Canada Final Determination*, 62 FR at 5202).
[130] *See* GOQ Case Brief at 15.

allows companies to use a depreciation rate that is commensurate with the useful life of the building.[131]

Petitioner's Rebuttal Brief

- For the reasons addressed above with regard to the ACCA program in Comment 2, Commerce should reject respondents' arguments and continue to find that the CCA for Class 1 assets program is *de jure* specific.[132]
- The CCA for Class 1 assets program is *de jure* specific. In addition, the GOQ's argument that Commerce should find the program not specific based on a recent CIT ruling is unfounded as (1) that case is not final; (2) the *de jure* specificity finding in that case relates to an agricultural product which is different from Commerce's non-agricultural product specificity practice and analysis; and (3) Commerce continued to find specificity on remand.[133]
- Commerce found that its specificity finding regarding two programs in a prior case distinguishable from its *de jure* specificity finding regarding the ACCA program.[134]
- This program provides a benefit that is *de jure* specific because certain types of activities are excluded from eligibility. A benefit is conveyed because firms conducting non-excluded list activities are able to claim depreciation on certain buildings at the higher rate whereas the firms conducting excluded list activities must claim at the lower rate. The benefit is the difference between the allowed depreciation on non-excluded activities and the allowed depreciation on excluded activities.[135]
- Respondents did not explain why the buildings that are used for these excluded activities do not have an actual shorter useful life than residential structures, as do manufacturing activities that are not excluded.[136]

Commerce's Position:

According to the GOC and the GOQ, both governments have CCA rates under their respective tax systems.[137] The standard CCA rate for Class 1 is four percent.[138] 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) if at least 90 percent of the floor space of the eligible non-residential building is used for manufacturing and processing operations.[139] If the eligible non-residential building acquired after March 18, 2007, does not qualify for the additional allowance of six percent, it may qualify for an additional allowance of two percent (for a total of six percent) to the extent that the floor space of such a building is at least 90 percent used for a non-

[131] *Id*. at 18-19.
[132] *See* Petitioner Rebuttal Brief at 23.
[133] *Id*. at 2, and 23-24 (citing *Asociación de Exportadores*, Consol. Court. No. 18-00195, Slip Op. 20-8 (CIT 2020); *Asociacion de Exportadores April 2, 2020 Draft Remand Results*; and 19 CFR 351.502(d)).
[134] *Id.* at 24 (citing *LHF from Canada Preliminary Determination*; *LHF from Canada Final Determination*; and *Lumber V from Canada Final Determination* IDM at Comment 68).
[135] *Id.* at 2, and 24-25 (citing *FSS from Canada Final Determination*, and accompanying IDM at Comment 4).
[136] *Id.* at 25.
[137] *See* GOC First SQR Part 1 at 37-39; *see also* GOQ IQR at Exhibit QC-CCAB-A.
[138] *See* GOC First SQR Part 1 at 37 and Exhibit GOC-SUPP1-CRA-CLASS1-1; and Exhibit QC-CCAB-A.
[139] *See* GOC First SQR Part 1 at 37-38 and Exhibit GOC-SUPP1-CRA-CLASS1-1; and Exhibit QC-CCAB-A.

residential use.[140] Marmen reported that it used the accelerated depreciation under this program to reduce its taxable income during the POI.[141]

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." Similar to our finding in Comment 2 with regard to the specificity issue concerning to the Federal ACCA for Class 29 Assets Program, we find unpersuasive the respondents' argument, that the program is not specific because it is limited to "activities" rather than "industries." In *Magnesium from Israel Final Determination*,[142] 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 *Uncoated Groundwood Paper from Canada Final Determination*, *Lumber V from Canada Final Determination*, and *SC Paper from Canada 2014 Expedited Review Final*, 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."[143] Similarly, this program is limited to those companies engaging in manufacturing and processing activities, as defined by section 1104(9) of the ITR 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 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.[144]

Therefore, we continue to find this program to be *de jure* specific pursuant to section 771(5A)(D)(i) of the Act, because eligibility for this tax program is expressly limited as a matter of law to certain industries, *i.e.*, those industries not specifically excluded by the ITR's definition

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[140] *See* GOC First SQR Part 1 at 37-38 and Exhibit GOC-SUPP1-CRA-CLASS1-1; and Exhibit QC-CCAB-A.
[141] *See* Marmen IQR at Marmen Inc. Response at MARMEN-9, Exhibit CCA1-01, and Exhibit CCA1-04, CCA1-06; and Marmen Énergie Inc. Response at ÉNERGIE-9, Exhibit CCA1-01, Exhibit CCA-02, Exhibit CCA-03, Exhibit CCA1-05, and Exhibit CCA1-07.
[142] *See Magnesium from Israel* and accompanying IDM at Comment 2.
[143] *See Uncoated Groundwood Paper from Canada Final Determination* and accompanying IDM at 184 (emphasis added); *see also SC Paper from Canada 2014 Expedited Review Final*, and accompanying IDM at Comment 32; and *Lumber V from Canada Final Determination*, and accompanying IDM at Comment 68.
[144] *See* GOC First SQR Part 1 at Exhibits GOC-SUPP1-CRA-CLASS29-1; *see also* GOC IQR at 16-17 and Exhibit GOC-CRA-CLASS29-2; *see also* GOQ IQR at QC-CCAB-3.

of manufacturing and processing.[145] As a result of this finding, we need not address the arguments regarding *de facto* specificity.[146]

Next, with regard to whether the Additional Depreciation for Class 1 Assets program provides a countervailable benefit, we agree with the petitioner. We find that this program provides the benefit as a tax reduction in the amount of the difference between the tax the company paid and the tax the company would have paid absent the tax reduction, as provided in 19 CFR 351.509(a)(1). The GOC maintains CCA rates for different classes of property, including Class 1, under its tax system.[147] Pursuant to Section 1100(1)(a)(i) of the ITR, the standard CCA rate for Class 1 is four percent.[148] The GOC stated that "{c}lass 1 assets include most buildings acquired after 1987 (unless they specifically belong in another class …." and that "{p}ursuant to subparagraph 1100(1)(a)(i) of the ITR, buildings that are classified as assets under Class 1 … are normally depreciated at a CCA rate of 4% ({*i.e.*}, basic rate)."[149]

The GOC stated that "{i}n addition, an 'eligible non-residential building' as defined in subsection 1104(2) of the ITR may qualify for an *additional* CCA deduction" and that "a taxpayer can file an election in respect of each separate eligible non-residential building …." in order to receive an *additional* CCA (emphasis added).[150] Subsection 1100(a.1) of the ITR, which appears under the heading of "Class 1," indicates that among Class 1 assets, a separate class is prescribed by subsection 1101(5b.1).[151] Subsection 1101(5b.1) of the ITR states that for eligible non-residential buildings, "a separate class is prescribed for each eligible non-residential building … in respect to which the taxpayer has … elected that this subsection apply."[152] Pursuant to the ITR, an eligible non-residential building "means a taxpayer's building (other than a building that was used, or acquired for use, by any person or partnership before March 19, 2007) that is located in Canada, that is *included in Class 1* {(emphasis added)}… and that is acquired by the taxpayer on or after March 19, 2007 to be used by the taxpayer, or lessee of the taxpayer, for a non-residential use."[153]

As stated above, under Class 1, an eligible non-residential building acquired after March 18, 2007, qualifies for an additional allowance of six percent (for a total of ten percent) if at least 90 percent of the floor space of the eligible non-residential building is used for manufacturing and processing operations.[154] If the eligible non-residential building acquired after March 18, 2007, does not qualify for the additional allowance of six percent, it may qualify for an additional allowance of two percent (for a total of six percent) to the extent that the floor space of such a

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[145] *See* GOC IQR at 16-17 and Exhibit GOC-CRA-CLASS29-2; *see also* GOC First SQR Part 1 at Exhibits GOC-SUPP1-CRA-CLASS29-1 and GOC-SUPP1-CRA-CLASS1-1; *see also* GOQ IQR at QC-CCAB-3.
[146] *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.").
[147] *See* GOC First SQR Part 1 at 37-39, and Exhibit GOC-SUPP1-CRA-CLASS1-1.
[148] *Id*. at 37 and Exhibit GOC-SUPP1-CRA-CLASS1-1.
[149] *Id*.
[150] *Id*. at 37-38 and Exhibit GOC-SUPP1-CRA-CLASS1-1.
[151] *Id*. at Exhibit GOC-SUPP1-CRA-CLASS1-1.
[152] *Id*.
[153] *Id*.
[154] *Id.* at 37-38 and Exhibit GOC-SUPP1-CRA-CLASS1-1.

building is at least 90 percent used for a non-residential use.[155] The GOC stated that if at least 90 percent of an eligible building's floor space is used in "manufacturing or processing" a taxpayer may claim an additional CCA of six percent or alternatively two percent.[156] As also stated above, section 1104(9) of the ITR excludes certain industries from manufacturing or processing.[157]

Record evidence thus establishes that taxpayers qualify for the additional deduction for a certain Class 1 asset (*i.e.*, an "eligible non-residential building") that is: (1) included in Class 1 and used for manufacturing and processing operations within the meaning of the ITR or (2) included in Class 1 and used for non-residential use. Further, in order to receive an additional deduction, a taxpayer needs to file an election by using a Schedule 8 form with its income tax return.[158] Otherwise, they would not receive the additional six percent deduction and instead receive the basic four percent of the CCA. Section 351.509(a)(1) of Commerce's regulations states that "{i}n the case of a program that provides a full or partial exemption or remission of a direct tax (*e.g.*, an income tax), or reduction in the base used to calculate a direct tax, *a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program*."[159] Here, in the absence of the additional CCA for Class 1 assets, Marmen would have paid more as the basic rate applicable is four percent for Class 1 assets. Because Marmen was able to pay less than the tax it would have paid due to the additional CCA in place, the appropriate benefit for Commerce to measure is the tax savings of the difference between the deduction calculated using the basic rate of depreciation and the deduction calculated using the total depreciation rate, including the additional CCA rate, that Marmen used.

We disagree with respondents that the ten percent depreciation rate does not provide a benefit because it is not an accelerated rate but rather a normal depreciation rate that reflects the actual shorter useful life of the assets used for manufacturing purposes. The underlying assumption from respondents is that the whole universe of the taxpayers is only limited to the taxpayers who used the eligible assets in Class 1 for manufacturing. However, the record shows that among all taxpayers, only those that meet the eligibility for certain Class 1 assets, stipulated in the ITR, can file for, and subsequently receive, the additional CCA.[160] Otherwise, the normal rate for Class 1 assets is four percent in accordance with the Schedule II of the ITR.[161] Thus, we find that the proper universe of the taxpayers is not limited to the taxpayers who used the non-residential building within Class 1 assets for manufacturing but includes all taxpayers whose assets satisfy the scope of the entire Class 1 assets under the Schedule II of the ITR. Among all taxpayers whose assets are under the scope of Class 1 assets, only the ones that meet additional requirements under the ITR receive the additional depreciation. Thus, we determine that for the purposes of measuring the benefit, our approach in the *Preliminary Determination* to compare the tax savings of the difference between the deduction calculated using the basic rate of

[155] *Id.*; *see also* GOQ IQR at QC-CCA-5.
[156] *See* GOC First SQR Part 1 at 37-38 and Exhibit GOC-SUPP1-CRA-CLASS1-1; and GOQ IQR at QC-CCA-5.
[157] *See* GOC First SQR Part 1 at Exhibits GOC-SUPP1-CRA-CLASS29-1; *see also* GOC IQR at 16-17 and Exhibit GOC-CRA-CLASS29-2.
[158] *See* GOC First SQR Part 1 at 38 and Exhibit GOC-SUPP1-CRA-CLASS1-1.
[159] *See* 19 CFR 351.509(a)(1); *see also CVD Preamble* at 65375.
[160] *See* GOC First SQR Part 1 at Exhibits GOC-SUPP1-CRA-CLASS29-1.
[161] *Id.*

depreciation and the deduction calculated using the total depreciation rate, including the additional CCA rate, is appropriate. Further, because Marmen's tax savings from the aforementioned difference between the two calculated deductions represents the forgoing of revenue otherwise owed, we disagree with respondents that this program does not provide a financial contribution within the meaning of section 771(5)(D)(ii) of the Act.

Comment 4: Whether the Ontario LCR Program Provided Countervailable Subsidies to Marmen during the POI

Petitioner's Case Brief

- Commerce should revise its analysis for the final determination and find that the GOO's LCR program provided countervailable subsidies to Marmen during the POI.[162]
- The GOO knew this program was designed to benefit producers outside of Ontario, including Marmen.[163]
- It is illogical to conclude that the GOO was able to entrust and direct a company outside of its jurisdiction (*i.e.*, Marmen) to purchase steel from an Ontario steel producer at a subsidized price while somehow also preventing Marmen from receiving an indirect subsidy benefit when the wind turbine manufacturer purchases wind towers from Marmen built with Ontario steel. Moreover, Marmen failed to explain how the negotiations for steel establishes that the price Marmen charged for wind towers were not affected by this program.[164]
- As Commerce's *Preliminary Determination* parallels its regulation regarding attribution of subsidies for "multinational firms" under 19 CFR 351.525(b)(7), Commerce's standard practice when productive activities take place outside of the jurisdiction of the government is to assume that any subsides are tied to the productive activities in the jurisdiction of the government that provided the subsidies unless it is shown that government knew that such activities outside of its jurisdiction would receive a benefit from the subsidies at issue. The GOO knew and designed the FIT program in such a way that Marmen's productive activities outside of Ontario would receive a benefit as a form of indirect subsidies. However, Commerce failed to consider that the GOO designed a program which subsidized each entity in the production chain though indirect subsidies.[165]
- Similar to *RZBC* where the CIT upheld Commerce's authority to countervail an indirect subsidy, while the GOO's program targeted Ontario steel producers as beneficiaries, the GOO knew that these steel purchases would be made by intermediary parties such as wind tower producers like Marmen. The program thus benefited Marmen as the one of the middlemen.[166]
- The GOO designed the program to allow and provide indirect subsidies through multiple intermediary parties located outside of Ontario. The GOO envisioned that each of the

[162] *See* Petitioner Case Brief at 1-2.
[163] *Id*.
[164] *Id*. at 27-28, and 31.
[165] *Id*. at 28-30 (citing 19 CFR 351.525(b)(7)).
[166] *Id*. at 28-29 (citing *RZBC*, 100 F. Supp. 3d 1288, 1301-1303 (CIT 2015)), and 31.

middlemen regardless of their location would capture a portion of the indirect subsidies, consistent with what the CIT recognized in *RZBC*.[167]

- Record evidence establishes that the GOO knew and approved of Marmen's actual participation in the LCR wind energy project, which led to Marmen's POI sales to Ontario.[168]
- Commerce should determine that Marmen's sale price of the towers in question, minus the portion of that steel price attributable to Marmen's purchases of steel from the Ontario steel producers, is the amount of the benefit to Marmen under this program.[169]
- By designing an indirect subsidy scheme while ensuring that each middlemen between the Ontario steel producers and the wind farm operators received indirect subsidies, the GOO's LCR program provided a financial contribution to Marmen by entrusting and directing private entities to confer the benefits to Marmen within the meaning of sections 771(5)(B)(iii) and (D) of the Act.[170]
- Similar to the government actions from *RZBC* and *Uncoated Groundwood Paper from Canada Final Determination* which indirectly provided countervailable subsidies by intermediaries to the supported industries, Commerce should determine that the GOO provided a financial contribution in the form of purchase of wind towers for MTAR.[171]
- Moreover, as this program provides import substitution subsidies, it is also specific within the meaning of section 771(5A)(C) of the Act. Alternatively, Commerce should find that this program is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because the GOO limits these subsides to the wind energy industry in Ontario.[172]

GOO's Rebuttal Brief

- Commerce's verification and record evidence confirm that the factual predicates underpinning Commerce's *Preliminary Determination* were accurate and should be maintained for the final determination.[173]
- The petitioner has failed to provide any lawful basis for Commerce to find that Marmen received a financial contribution from the FIT program. Marmen is located in Québec and does not have manufacturing operations in Ontario. Thus, Marmen did not receive financial contribution from the GOO because its production of wind towers, which were sold to suppliers under the FIT program, could not meet the FIT program's LCR.[174]
- Marmen was expressly excluded from qualifying for the LCR as it was not a party to any FIT contracts under which the LCR were in effect with the IESO (*i.e.*, the agency that administers the FIT program) nor did its manufacturing activities qualify for LCR in contracts issued to participants in the FIT program.[175]

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[167] *Id*. at 29-31 (citing *RZBC*, 100 F. Supp. 3d 1288, 1301-1303 (CIT 2015)).
[168] *Id*. at 30-31.
[169] *Id*. at 31, n. 121.
[170] *Id*. at 2, and 31-36 (citing sections 771(5)(B)(iii) and 771(5)(D)(iii) of the Act; the SAA at 870 and 926; *Hynix*, 391 F. Supp. 2d 1337, 1342-1343, 1346 (CIT 2005) and *CVD Preamble* at 65350).
[171] *Id*. at 34-35 (citing *RZBC*, 100 F. Supp. 3d 1288, 1301-1303 (CIT 2015); and *Uncoated Groundwood Paper from Canada Final Determination* IDM at comment 26).
[172] *Id*. at 2, and 36-38 (citing sections 771(5A)(A), (C), and (D)(i) of the Act; and *CVD Preamble* at 65385-65386).
[173] *See* GOO Rebuttal Brief at 2.
[174] *Id*. at 3-5, and 8-9.
[175] *Id*. at 2-3, 5, and 8-9.

- The record provides no support that the GOO entrusted or directed Ontario wind farm developers, through turbine manufacturers, to purchase wind towers from Marmen for MTAR. The GOO's action did not meet Commerce's two factor test to demonstrate that the FIT program's LCR induced turbine OEMs to purchase wind towers from Marmen as purchasing Marmen's wind towers (manufactured in Québec) did not contribute to FIT suppliers' LCR.[176]
- Commerce's *Preliminary Determination* that Marmen, like all non-Ontario companies, did not receive a financial contribution from the FIT program during the POI is consistent with the position that the United States has taken at the WTO. The United States observed that the LCR in the FIT program benefited Ontario wind electricity producers at the expense of producers located elsewhere in Canada.[177]
- Marmen and all other non-Ontario wind tower manufacturers/electricity producers, including those in the U.S., could and did produce wind towers to satisfy the LCR only if they used steel plates made in Ontario; the petitioner's contention that Commerce should find benefit solely based on knowledge that an alleged financial contribution to a steel producer in the GOO's jurisdiction conceivably might confer an alleged benefit to entities outside of the GOO's jurisdiction amounts to a legally absurd assertion that any government program qualifies as a countervailable subsidy.[178]
- The petitioner has also failed to show that Marmen received a benefit from the FIT program; the petitioner offers no evidence to support its assertion that (1) Marmen received a subsidy indirectly as a "middleman" because Marmen is one party in the production chain for wind towers, and (2) Marmen captured a portion of the indirect subsidies under the FIT program because indirect subsidies are the prices charged by each intermediary in the production chain.[179]
- The petitioner's citation of *RZBC* is misplaced as the specific facts in *RZBC* concerning *Citric Acid and Certain Citrate Salts from China 2011 AR Final Results* are distinguishable. Marmen bears no resemblance to the middlemen in *RZBC* as (1) Marmen did not purchase inputs directly or indirectly from the GOO, (2) there is no record evidence establishing that any party in the production chain for wind towers sold by Marmen is an authority, (3) there is no record evidence supporting that Ontario steel qualifying for the LCR under the FIT program was purchased for MTAR, (4) Marmen only purchased Ontario steel when pricing was competitive or when customers requested Marmen to do so, and (5) there is no economic logic to extend Commerce's case precedent regarding pass-through of subsidies under LTAR to the alleged purchase of goods for MTAR.[180]

[176] *Id*. at 4-6 (citing *CVD Preamble* at 65350; and *Biodiesel from Indonesia Final Determination* IDM at Comment 5 (citing *DRAM from Korea Final Determination* IDM at 47)).
[177] *Id*. at 6-7 (citing *Canada-Certain Measures Affecting the Renewable Energy Generation Sector* at 9).
[178] *Id*. at 6-8.
[179] *Id*. at 3, and 9.
[180] *Id*. at 9-12 (citing *RZBC*, 100 F. Supp. 3d 1288, 1302-1303 (CIT 2015)).

Marmen's Rebuttal Brief

- The GOO did not provide a financial contribution to Marmen through LCR as the GOO did not entrust or direct wind turbine manufacturers to purchase wind towers manufactured by Marmen in Québec.[181]
- The petitioner assumes, without support, that through the FIT program the GOO entrusted or directed wind farm developers and turbine manufacturers to purchase wind towers from Marmen. The petitioner has not explained how the GOO entrusted or directed private wind farm developers or turbine manufacturers to purchase wind towers from manufacturers located outside of Ontario. Moreover, the petitioner failed to demonstrate that the GOO has a history of purchasing wind turbines or wind turbine components.[182]
- The FIT program was intended to induce wind farm developers to earn LCR credits by purchasing wind towers from Ontario manufactures, not wind tower manufacturers located outside of Ontario like Marmen. Accordingly, Commerce should continue to find that the GOO did not provide a financial contribution to Marmen through LCR.[183]
- The USTR also recognized that localizing production in Ontario came at the expense of manufacturers in the rest of Canada. The benefits under the FIT program were provided to Ontario wind electricity producers, including local wind tower manufactures, either through production of wind electricity equipment or the steel used in such equipment.[184]
- Marmen's sales are not indicative of the GOO's entrustment or direction of wind turbine manufacturers to purchase wind towers from Marmen. Turbine manufacturers could and did require other North American tower producers outside of Ontario, including U.S. producers, to source steel from Ontario to earn the LCR credit.[185]
- The GOO neither provided a benefit to Marmen through LCR nor entrusted/directed Marmen to purchase steel plate from Ontario mills. The petitioner's argument that the GOO entrusted or directed Marmen to purchase steel from Ontario steel producers for MTAR and that Marmen benefited as an intermediary despite generally having to pay higher prices for Ontario steel is untenable and not supported by the record evidence.[186]
- The petitioner's claim that the FIT program was designed to benefit certain producers outside of Ontario, including Marmen, is at odds with the USTR position that the FIT program came at the expense of manufacturers in the rest of Canada and the rest of the world.[187]
- The record evidence does not demonstrate that Marmen benefited from the FIT program by charging higher prices to its customer for its wind towers made in Ontario steel. Accordingly, it would be unreasonable to assume that Marmen charged MTAR prices to its customer based on its purchases or Ontario steel plate.[188]

[181] *See* Marmen Rebuttal Brief at 2, and 18-22.
[182] *Id*. at 2, 18-19, and 22.
[183] *Id*. at 19-21.
[184] *Id*. at 20 (citing Petitioner Comments – Pre-Prelim at 15; and PDM at 22-23).
[185] *Id*. at 21.
[186] *Id*. at 2, 18, and 22-24 (citing Marmen Verification Report at 20, and 48).
[187] *Id*. at 23-24 (citing Petitioner Comments – Pre-Prelim at 15; and PDM at 22-23).
[188] *Id*. at 24 (citing Marmen Verification Report at 48).

- The petitioner's reliance on Commerce's "multinational firm" provision is misplaced as the FIT program does not invoke any issue concerning production in multiple countries. Moreover, the facts presented in *RZBC*, which is cited by the petitioner, are not analogous to the facts of this proceeding.[189]
- The petitioner mistakenly characterized the GOO's LCR as import substitution subsidies; Marmen did not receive any financial assistance conditioned on Marmen's use of domestic over imported goods.[190]

Commerce's Position:

In the *Preliminary Determination*, we found insufficient evidence to demonstrate that under the Ontario LCR program, also known as the FIT program, the GOO entrusted or directed Ontario wind farm developers, through OEMs, to purchase wind towers manufactured by Marmen.[191] Moreover, we found that Marmen did not benefit under the program, as Marmen is neither a wind electricity producer located in Ontario nor a producer of wind electricity equipment in Ontario nor a producer of steel used in such equipment located in Ontario.[192] Therefore, we preliminarily determined that the program provided no financial contribution and conferred no benefit to Marmen.[193] No findings at verification point otherwise and we find the petitioner's arguments insufficient to warrant revising our analysis or our conclusions for the final determination.

We disagree with the petitioner's premise that Commerce preliminarily concluded that the GOO entrusted or directed Marmen to purchase steel from an Ontario steel producer, yet illogically found no indirect benefit to Marmen because it was located outside of Ontario.[194] This is a patently incorrect reading of our conclusions. Not only did we not find entrustment or direction of Marmen itself, indeed we found insufficient evidence that the GOO entrusted or directed Ontario wind farm developers and OEMs to purchase wind towers from Marmen, and determined that, while Marmen did supply wind towers with Ontario-milled steel (for which the OEMs could claim LCR-qualifying points), it received no countervailable indirect benefit from those sales.[195]

Our analysis of financial contribution through government entrustment or direction of private entities is based on the particular facts presented in each proceeding, in accordance with the standard stipulated in section 771(5)(B)(iii) of the Act, with guidance from relevant parts of the SAA and the *CVD Preamble*.[196] Under Commerce's practice in this regard, we apply a two-part test to determine entrusted or directed financial contribution by examining: (1) whether the government has in place during the relevant period a governmental policy to support the industry

[189] *Id*. at 24-25 (citing 19 CFR 351.525(b)(7) and *RZBC*, 100 F. Supp. 3d 1288, 1301-1303 (CIT 2015)).
[190] *Id*. at 17-18 (citing *Wire Decking from China Final Determination* and accompanying IDM at 27; *Citric Acid and Certain Citrate Salts from China 2011 AR Final Results*, and accompanying IDM at 19-20; and *Cold-Rolled Carbon Steel Flat Products from Brazil Final Determination*, and accompanying IDM at 19).
[191] *See* PDM at 22-23.
[192] *Id*. at 23.
[193] *Id*.
[194] *See* Petitioner Case Brief at 27 and 31.
[195] *Id.* at 22-23.
[196] *See* SAA at 926; and *CVD Preamble* at 65349-50.

or company, and (2) whether record evidence shows a pattern of governmental practices in pursuit of that policy, by which the government entrusts or directs private entities to provide a financial contribution that benefits the industry or company.[197]

Our review of the record confirms that the GOO did have policies to encourage and promote greater use of renewable energy sources, such as wind power, for electricity generating projects *in Ontario*, and to that end implemented the FIT program to support the development of a renewable energy industry *in Ontario*, with LCRs imposed on the Ontario wind farm developers qualifying to generate and supply the electricity under the program.[198] Specifically, pursuant to the FIT contracts, each wind farm developer was required to submit a "Domestic Content Plan," setting out how the project intended to achieve the minimum required local content level, and, subsequently, a "Domestic Content Report," detailing how the project achieved the minimum required local content level.[199] Under these contracts, Ontario wind farm developers could earn LCR credits either by installing (a) *wind towers manufactured in Ontario* (four percent credit) or (b) wind towers fabricated with *Ontario-milled steel plate* even if produced elsewhere (nine percent credit).[200] Thus, it is abundantly clear that in pursuing its renewable energy policies, the GOO targeted the FIT program toward supporting and benefiting Ontario wind tower manufacturers and Ontario steel mills. While non-Ontario wind tower producers such as Marmen may and did participate in the program if sourcing the steel from Ontario steel mills, we find no evidence that the entrusted or directed financial contribution extends to them, as their participation does not result automatically or inevitably from the mandates of the program. To the extent that Ontario wind farm developers and/or wind turbine OEMs were entrusted or directed to source locally under the FIT program, they were not entrusted or directed specifically to purchase from non-Ontario suppliers such as Marmen. Moreover, with regard to Marmen in particular, record evidence does not demonstrate that but for the program, Marmen could not have sold wind towers in Ontario.

In arguing that Marmen derived indirect benefit under the program, the petitioner invokes Commerce's attribution rule for "multinational firms" under 19 CFR 351.525(b)(7). However, this is misplaced. That rule defines how Commerce may attribute benefits to a company with multinational operations where the case record shows that the subsidy was not limited to the company's operations within the country of the subsidizing authority. It is, in the first instance, inapplicable to a company such as Marmen that operates across provinces within the same country. Moreover, application of this rule presupposes findings by Commerce that the subsidy provides a financial contribution that confers a benefit to the company at issue, which are the very findings we were unable to make in the *Preliminary Determination* and that we continue to be unable to make in this final determination.

The petitioner's reliance on the court's discussion in *RZBC* and Commerce's findings in *Uncoated Groundwood Paper from Canada Final Determination* is also misplaced.[201] These

[197] *See DRAMS from Korea Final Determination* IDM at 49.
[198] *See* GOO IQR at ON-27 and Exhibits ON-FIT-2, ON-FIT-4 and ON-FIT-5; *see also* GOO Third SQR at ON-1 and ON-3.
[199] *See* GOO IQR at ON-31; *see also* GOO Third SQR at ON-1.
[200] *See* GOO IQR at ON-32 – ON-34 and Exhibits ON-FIT-4 and ON-FIT-5.
[201] *See* Petitioner Case Brief at 34-35 (citing *RZBC*, 100 F. Supp. 3d 1288, 1301-1303 (CIT 2015); and *Uncoated Groundwood Paper from Canada Final Determination* IDM at comment 26).

cases merely articulated particular mechanisms by which benefit is conferred by entrusted/directed financial contribution. However, this presupposes a finding by Commerce that the test for finding entrusted/directed financial contribution with regard to the company at issue, in this case Marmen, has been met. We did not make such a finding in the *Preliminary Determination* and, as reiterated above, continue not to make in this final determination. Again, we found that the FIT program was intended to target, and thus to direct financial contribution to, Ontario wind tower manufacturers or Ontario steel mills that supply steel plate for wind tower production. To the extent that non-Ontario wind tower producers may derive collateral benefit, we do not consider it to be a benefit countervailable under the scheme of the FIT program, as the sale of wind towers from such producers were not automatic or inevitable under the program. Again, we see no record support for finding that but for the program, Marmen could not have sold wind towers in Ontario.

In any case, we also find that, in Marmen's particular case, the record supports no finding that Marmen realized a "middleman's cut" in the form of profit from its use of steel from the Ontario steel producer.[202] The petitioner provides no evidence to support its claim that the LCR mandates under the FIT program somehow resulted in a higher profit for Marmen's sales to the OEMs under the program compared to its sales outside the program. In particular, the details of Marmen's procurement of Ontario-milled steel, which Commerce examined at verification, provide no support to find that the steel cost affected Marmen's profit.[203]

For these reasons, we continue to find that this program did not provide a financial contribution within the meaning of section 771(5)(B)(iii) of the Act or confer a benefit on Marmen within the meaning of section 771(5)(E) of the Act. Accordingly, we need not address the issue of specificity.

Comment 5: Whether the Quebec LCR Program Provided Countervailable Subsidies to Marmen during the POI

Petitioner's Case Brief

- The GOQ actively supported the wind energy through the LCRs and related government policies, which indirectly provide countervailable subsidies to Marmen, consistent with section 771(5)(B)(iii) of the Act.[204]
- Marmen's manufacturing facility was built in 2005 in response to the GOQ's LCRs, which mandate production in Gaspesie-Iles-de-la-Madeleine. But for the GOQ's

[202] *See* Marmen Verification Report at 19-20 (due to the business proprietary nature of the information, *see* Marmen company official's statements on page 20 of Marmen Verification Report, which is located under the subheading titled "Ontario Local Content Program").
[203] *Id*.
[204] *See* Petitioner Case Brief at 4.

mandates, the wind energy industry would not have been entrusted or directed to purchase wind towers from Marmen.[205]

- Commerce failed to conduct the test required by 19 CFR 524(c)(2) to determine whether a benefit is recurring or non-recurring.[206] Import substitution and purchase of goods for MTAR subsidies do not appear on the illustrative lists found in 19 CFR 3551.524(c)(1) for either recurring or nonrecurring subsidies.[207]
- Substantial record evidence documents that the GOQ provides these subsidies in discrete tranches that are exceptional in nature, require government approval, and are tied to the capital structure and assets of the firm.[208] Specifically, the four calls-for-tender (CFTs) that the GOQ issued in 2003, 2005, 2009, and 2013 ultimately led to Marmen's sales of wind towers under the LCR from its Matane facility.[209] Consistent with 19 CFR 351.524(c)(2), Commerce should find that the Quebec LCR program provided nonrecurring benefits.
- Record evidence also demonstrates that the GOQ's express authorization was necessary for the LCR subsidies, and the authorization was by no means automatic. The GOQ was required to approve the bid process, the evaluation criteria, the tendering procedure, and the electricity supply contracts. Additionally, each of the CFTs provided significant compliance requirements with regard to the LCRs.[210]
- Assuming *arguendo* that Commerce correctly equated LTAR and MTAR subsidies, its preliminary analysis did not address the issue that for normally recurring subsidies, such as LTAR or value-added tax exemptions, there are exceptions under which these subsidies are treated as nonrecurring.[211] In prior cases where a government has subsidized the construction of manufacturing facilities, Commerce has determined the subsidies were nonrecurring.[212]
- The GOQ effectively mandated the wind energy industry to purchase wind towers from Marmen in order to meet LCRs necessary under each of the GOQ's CFTs. Marmen's agreements with the turbine manufacturers were directly tied to Marmen's ability to satisfy the GOQ mandates. The LCR program provided a financial contribution to Marmen by entrusting and directing private entities to confer the benefits to Marmen within the meaning of sections 771(5)(B)(iii) and (D) of the Act.[213]
- Similar to the government actions from *RZBC* and *Uncoated Groundwood Paper from Canada Final Determination*, which indirectly provided countervailable subsidies by

[205] *See* Petitioner Case Brief at 6-7, and 13-19.
[206] *Id*. at 19-20.
[207] *Id.* at 21.
[208] *Id*. at 4-13, citing GOQ policy statements including 1996 Energy Policy, 2000 Energy Policy, Quebec Energy Strategy 2006-2015, and 2030 Energy Policy (GOQ IQR at 31-32), as well as Quebec's four calls for tender (CFTs) for the purchase of energy blocks produced by wind farms (GOQ IQR at 32 and Exhibit QC-LC-6).
[209] *Id*.
[210] *Id*. at 23-25.
[211] *Id*. at 20-21 (citing *Preamble to Countervailing Duties*, 63 FR 65348, 65393).
[212] *See* Petitioner Case Brief at 20-21 (citing *Certain Cut-to-Length Carbon-Quality Steel Plate from Italy Amended Final Determination*, 64 FR at 73244, 73255-56 (December 29, 1999), final countervailing duty determination (*CTL Plate from Italy*); and *Certain Pasta from Italy Final Results*, 80 FR 11172 (March 2, 2015), and accompanying IDM at 19 (*Pasta from Italy*).
[213] *Id*. at 31-36.

intermediaries to the supported industries, Commerce should determine that the GOQ provided a financial contribution in the form of purchase of wind towers for MTAR.[214]
- Moreover, as this program provides import substitution subsidies, it is also specific within the meaning of section 771(5A)(C) of the Act.[215]

Marmen's Rebuttal Brief:

- Marmen did not receive any gift-like payments under Québec LCRs. Rather, until 2017, Marmen produced and sold wind towers to turbine manufacturers for Hydro-Québec local content projects. The only possible financial contribution is the purchase of goods (wind towers).[216]
- Under Section 771(5)(B)(iii) of the Act, an authority "entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments . . . ." There is no evidence that the GOQ or Hydro-Québec has a history of purchasing wind turbine components, or even wind turbines themselves. Hydro-Québec purchases wind power – not the wind farms used to generate energy or the components of wind turbines installed on wind farms to generate energy, nor has the petitioner attempted to argue that this requirement of the statutory "entrustment or direction" provision is satisfied. Consequently, the GOQ did not provide – either directly or indirectly – a financial contribution to Marmen through LCRs.[217]
- "{I}n the case where goods are purchased," section 771(5)(E)(iv) of the Act directs that the respondent receives a benefit "if such goods are purchased for MTAR. Further, Commerce treats any such benefits as "recurring" benefits, determining whether the government purchased goods from the respondent for MTAR during the POI.[218]
- The petitioner argues the "subsidies" were exceptional in nature because Hydro-Québec issued CFTs in only four years. The CFTs, however, are not the "subsidies" at issue. Rather, the alleged subsidies are private turbine OEMs' purchases from Marmen of wind towers covered by Québec LCRs, each of which is a unique financial contribution. Marmen's sales of wind towers subject to Québec LCRs were recurring because Marmen could expect to make such sales on an ongoing basis from year to year.[219]
- Neither the GOQ nor Hydro-Québec was involved in the agreements or sales between Marmen and the turbine OEMs. Consequently, Marmen's sales of wind towers covered by Québec LCRs did not require or receive "the government's express authorization or approval . . . ." The alleged subsidies were recurring in nature because Marmen's receipt

[214] *Id.*
[215] *Id*. at 36-38.
[216] *See* Marmen Rebuttal Brief at 4-5.
[217] *Id*. at 6.
[218] *Id*. at 6-7.
[219] *Id*. at 7-9.

of the alleged benefits – purchases for MTAR – was automatic upon issuance of each invoice.[220]

- The turbine OEMs purchased the output of Marmen's productive assets; they did not provide any assistance to benefit "the creation, expansion, and/or continued existence" of Marmen's capital assets themselves.
- In *CTL Plate from Italy*, Commerce examined a grant provided for investments in the construction, modernization, or expansion of plants, and "treated the grant as a non-recurring subsidy because receipt of the grant was a one-time, extraordinary event." Here, in contrast, the "subsidies" at issue are more than 2,000 purchases spanning an eleven-year period. In *Certain Pasta from Italy*, Commerce did not examine the financial contribution as a tax credit. Rather, due to the government's failure to provide requested information, the Department, "as facts available, {found} that {the} program constitute{d} a financial contribution under section 771(5)(D)(i) of the Act in the form of a direct transfer of funds."[221]
- In the absence of any evidence that the GOQ subsidized the construction of Marmen's Matane facility or entrusted or directed a private entity to do so, Marmen's private agreement with GE cannot reasonably be relied upon to convert recurring "subsidies" – purchases of wind towers – to nonrecurring "subsidies."[222]
- Studies conducted by an independent consulting firm, Merrimack Energy, confirmed that the C$/MWh contract prices obtained by Hydro-Québec through the calls for tender were consistent with competitive market prices. Absent evidence that Hydro-Québec paid MTAR for wind energy, there is no evidentiary basis for the petitioner's assumption that MTAR prices for wind energy passed from wind farm developers to wind turbine manufacturers, and then from turbine manufacturers to local suppliers of turbine components, such as Marmen.[223]
- Marmen was "not the only wind tower producer in Quebec." A wind turbine manufacturer, ENERCON, "built a facility in Matane at which it produced concrete wind towers with a steel top section.[224]
- The petitioner's argument that Marmen would not have built its Matane facility but for the LCR is wrong, as Marmen's Trois-Rivieres facility would have been a top choice for wind farm projects in Quebec even in the absence of LCRs.[225]

GOQ's Rebuttal Brief:

- Although local content requirements were incorporated into the calls for tender for wind power, Hydro-Québec did not purchase wind towers or wind farms. Because Hydro-Québec's contracts are with the wind power producers, for the purchase of wind power,

[220] *Id*. at 9-10.
[221] *Id*. at 11-12.
[222] *Id*. at 12-13.
[223] *Id*. at 15.
[224] *Id*.
[225] *Id.* at 15-17.

Commerce was correct that "Hydro-Québec does not purchase wind power from the mandatory respondents.[226]

- There is no record evidence demonstrating a causal nexus between the purchase of wind energy by Hydro-Québec and any benefit to Marmen.[227]
- "Establishing and maintaining" an industry pursuant to energy policies is not the same as entrusting or directing a financial contribution. The energy policies adopted by the Government of Québec cannot logically act to benefit only Marmen. Instead, the energy policies describe broad goals for the government to reduce its carbon emissions. Further, the LCRs may be satisfied in a number of ways and there is nothing in the language of the requirements targeting wind towers or the production of wind towers.[228]
- The petitioner has not alleged, and no evidence has been adduced, that Québec prevents entry into the wind tower market. If Québec's LCR were enabling Marmen to obtain high prices and profits, competition would enter the market to partake of those allegedly high MTAR prices.[229]
- Unrebutted record evidence establishes that the wind power contracts awarded by Hydro-Québec under each CFT were consistent with market principles; each was the result of a competitive public bidding process resulting in electricity prices confirmed to be consistent with prevailing prices for wind energy.[230]
- The purchase of electricity is a non-exceptional, does not require explicit authorization and is not tied to capital structure. Therefore, the alleged Purchase of Wind Towers for MTAR is a recurring program. There is no record evidence that purchases of electricity have any impact on pricing of the wind towers sold by Marmen to OEMs.[231]
- There is no basis on the record of this investigation to find that Hydro-Québec provided a benefit in the form of a grant.[232]
- An import substitution subsidy may "generally protect domestic input producers by imposing requirements or providing incentives for companies to use these inputs," however, petitioners have not demonstrated a connection between Hydro-Québec's purchase of energy and a purchase of or the price of wind towers.[233]

Commerce's Position: We continue to find that the Quebec LCR program provided recurring benefits and, thus, that this program was not used by Marmen during the POI. Because the alleged program is the purchase of wind towers for MTAR, Commerce is analyzing the sales between Marmen and its customers (*i.e.*, the OEMs). As stated in the *CVD Preamble*, when evaluating the adequacy of remuneration for MTAR cases, Commerce will follow the same basic principle as when it analyzes whether a government provided a good or service for LTAR.[234] Pursuant to section 351.524(c)(1) of Commerce's regulations, the provision of goods and services for LTAR is normally treated as a subsidy that provides recurring benefits. Based on

[226] *See* GOQ's Rebuttal Brief at 4 -6, 17-19.
[227] *Id*. at 7-10.
[228] *Id*. at 11-12.
[229] *Id*. at 12-15.
[230] *Id.* at 15-16.
[231] *Id*. at 16-25.
[232] *Id*. at 25-27.
[233] *Id*. at 27-28.
[234] *See CVD Preamble*, 63 FR at 65379.

the facts of this case, we find no reason to deviate from our practice of treating MTAR programs as providing recurring benefits.

In pointing to the *CVD Preamble* (63 FR 65348, 65393), the petitioner correctly claims that exceptions apply under which subsidies normally treated as recurring may be treated as non-recurring, but determining such exceptions is a function of the three-prong test at 19 CFR 351.524(c)(2). Under this regulation, Commerce will consider the following criteria in determining whether the benefits from the subsidy should be considered recurring or non-recurring:

(i) Whether the subsidy is exceptional in the sense that the recipient cannot expect to receive additional subsidies under the same program on an ongoing basis from year to year;
(ii) Whether the subsidy required or received the government's express authorization or approval (*i.e.*, receipt of benefits is not automatic), or
(iii) Whether the subsidy was provided for, or tied to, the capital structure or capital assets of the firm.

We find that Marmen's sales of wind towers under the Quebec LCR program do not meet these criteria. Marmen's regular, frequent sales of wind towers to its customers (*i.e.*, the OEMs) were not exceptional events. Although issued as four discrete tranches, the CFTs were for purchases of wind energy, *i.e.*, electricity, not wind towers. Marmen did not sell wind energy. Instead, it sold wind towers on a regular basis. Further, we do not find that the certification Marmen provided to HQD with its Quebec LCR sales constitute express authorization or approval by the GOQ. Marmen's certifications are product specification, not sales approval, documents.

Finally, there is no evidence that Marmen's Quebec LCR sales benefited Marmen's capital structure or assets any more than any sale normally benefits a company. The petitioner points to an old supply agreement between Marmen and GE. However, the agreement does not support finding that the GOQ entrusted or directed GE to subsidize the construction of Marmen's Matane facility or to provide any non-recurring subsidies during the AUL period. The petitioner additionally cites to *OTR Tires from China*, *Wire Decking from China*, *CTL Plate from Italy* and *Pasta from Italy* for decisions it claims support that Marmen's alleged MTAR subsidies from wind tower sales constitute benefits tied to Marmen's capital assets and thus are non-recurring within the meaning of 19 CFR 351.524(c)(iii).[235] However, these decisions provide no such support, as the subsidies at issue in those cases are not analogous to the purchase of goods for MTAR in this case. As such, the petitioner's reliance on these decisions is misplaced. In each of the cases cited, the subsidy involves a government financial contribution that directly and/or prospectively supports or contributes to a company's capital assets, *e.g.*, import duty exemptions for imported equipment destined for the company's facilities, or tax credits toward the construction of manufacturing facilities. In contrast, the MTAR benefits from wind tower sales can only be said to relate, retroactively, to Marmen's Matane facility in the sense that the wind

[235] *See* Petitioner Case Brief at 21 (citing *CTL Plate from Italy*; *Pasta from Italy*; *Certain New Pneumatic Off-the-Road Tires from China*, 73 FR 40480 (July 15, 2008), final countervailing duty determination at Comment G6; and *Wire Decking from China*, 75 FR 32902 (June 10, 2010), final countervailing duty determination at 27-29.

towers were produced in the facility or, as the petitioner suggests, to certain funds provided even earlier toward construction of the facility before the goods were even produced.[236]

To the extent that petitioner seeks to tie the MTAR benefits to Marmen's Matane capital assets by virtue of that earlier provision of funds, the tying is indirect and retroactive and not consistent with how we determine that a subsidy is tied to capital assets, as exemplified in the cited cases. Moreover, the provision of funds toward the facility is more properly treated as a separate event far removed in time from the subsequent wind tower sales. Indeed, it is that provision of funds toward the facility, and not the subsequent sales, that would be analogous to the subsidies found to be non-recurring in the cited cases. However, those funds are not themselves under investigation as a potential subsidy; the petitioner did not make the proper allegation as to the elements of a subsidy. In any case, it seems clear from the record evidence that those funds were provided prior to the AUL and thus, even if they could be considered as countervailable subsidies, they fall squarely outside the scope of our analysis.

Because Marmen made numerous sales of wind towers throughout the AUL period, its sales did not require approval from the GOQ, and there is no evidence that the sales were tied to Marmen's capital assets, Marmen's sales do not satisfy the conditions for non-recurring benefits as provided in section 351.524(c)(2) of Commerce's regulations. Thus, we see no basis for deviating from our established practice of treating sales for MTAR as providing recurring benefits. Marmen did not make sales during the POI under the Quebec LCR program and, thus, did not use or benefit from the program during the POI. Because we are finding no benefit to Marmen under this program during the POI, the petitioner's remaining arguments concerning financial contribution and specificity are moot.

Comment 6: Whether Marmen's Total Sales Denominators Should Be Revised to Reflect Marmen's Total Sales as Expressed in Canadian Dollars

Marmen's Case Brief

- At verification, Commerce officials examined Marmen's reported sales data and confirmed that the reported sales data tie to Marmen's financial statements.[237]
- Commerce officials verified the reasons why Marmen's independent auditor made amendments to Marmen's original 2018 audited financial statements.[238]
- Commerce officials verified that the sales figures provided in Marmen's Exhibit 3rd Supp-08, which were derived from the general ledger sales accounts, contained mixed currency values.[239]
- Commerce officials verified that Marmen's independent auditor made an adjustment to convert U.S. dollar (USD) sales values in the general ledger sales accounts to Canadian

[236] *See* Petitioner Case Brief at 14 (citing Exhibit LCQ-04 of Marmen's October 15, 2019, Supplemental Questionnaire Response). The details behind these funds are BPI in nature.
[237] *See* Marmen Case Brief at 2-4 (citing Marmen Verification Report at 23 and 29).
[238] *Id.* at 2 (citing Marmen Verification Report at 15-18).
[239] *Id*. at 3-4 (citing Marmen Verification Report at 2, 23-24, 26-27, and 29-30).

dollars (CAD) for presentation in the audited financial statements, and verified the adjustment amounts, as presented in Marmen Exhibits 3rd Supp-09 and 3rd Sup-10.[240]
- Commerce verified that the intercompany sales figures provided in Marmen's Exhibit 3rd Supp-08 also contained mixed currency values and verified the CAD value of Marmen's intercompany sales.[241]

Petitioner's Rebuttal Brief:

- In the *Preliminary Determination*, Commerce used Marmen's collapsed free-on-board (FOB) sales values (as submitted by Marmen) to calculate a 1.09% subsidy rate. Shortly thereafter, Marmen filed a ministerial error request, asking Commerce to increase its 2018 sales denominator by certain exchange gains and losses recorded on its financial statement. Marmen's proposed change would result in a *de minimis* subsidy rate. However, Commerce correctly found that the decision to use Marmen's reported sales values was not a ministerial error.[242]
- With the exception of several issues identified in the petitioner's Case Brief, Commerce should not revise the sales denominators, as advocated by Marmen.[243]
- Marmen's explanation regarding the alleged error in how its sales values were discovered and reported is not credible. Alternatively, if Marmen's explanation were true, the fact that Marmen and its outside auditor missed such a fundamental error in Marmen's audited financials casts doubt on the reliability of Marmen's entire accounting system. Moreover, critical supporting documentary evidence for the restatement of Marmen's financial statements is missing from the record. Finally, the methodology used by Marmen to restate its sales values is neither consistent with Canadian GAAP nor Commerce practice.[244]
- In the *Preliminary Determination*, Commerce used the FOB sales value provided by Marmen to calculate the subsidy rate. The sources of those sales values were Marmen's 2018 audited financial statements and detail from the general ledger sales accounts.[245]
- Nearly a year after the audited financial statements were completed, Marmen claims that questions from Commerce in the AD/CVD investigations caused it to review its currency conversion and exchange gains and losses, resulting in a significant error—the general ledger sales accounts aggregated sales in U.S. dollars and Canadian dollars as if they were the same currency.[246]
- Marmen claims that this error was not discovered because the relative values of the Canadian Dollar and the U.S. Dollar were almost the same. Thus, the reporting of balance sheet items was unaffected, and the reporting of net income figure was unaffected. However, the relative value of the Canadian Dollar and U.S. Dollar were

[240] *Id*. (citing Marmen Verification Report at 24, 26-27, 32, Exhibit VE-12 at 29-54 and Exhibit VE-13 at 8-12 and 78-79).
[241] *Id*. at 4 (citing Marmen Verification Report at 2-3, 33-34 and Exhibit VE-4 at 2 and 15).
[242] *See* Petitioner's Rebuttal Brief at 3 (citing PDM at 7, Preliminary Calculation Memorandum at 1, Marmen Ministerial Error Allegation at 3, and Ministerial Error Allegation Decision Memorandum at 2 and 4).
[243] *Id*. at 3.
[244] *Id*. at 3-4 and 10-13 and Petitioner's Case brief at 38-39.
[245] *Id*. at 4 (citing Preliminary Calculation Memorandum at 2, and Marmen Third SQR at Exhibits 3rd Supp-9 and 3rd Supp-10).
[246] *Id*. at 4-5 (citing Verification Report at 9, 12, 15, 17, and 23).

nowhere near parity during the POI. Also, Marmen and its auditors would have been aware of the differences in the values of the U.S. Dollar and the Canadian Dollar, as Marmen and its auditor are both large companies, Marmen had a large number of U.S. dollar sales, Marmen had intertwined operations with a U.S. affiliate, Marmen purchased form U.S. suppliers, and Marmen regularly engaged in currency hedging.[247]

- Much of the detail required to corroborate Marmen's account including the restated financial statements, the auditor notes, and the actual calculations and worksheets showing the adjustments, are not on the record.[248]
- Commerce cannot use Marmen's exchange gains or losses adjustment. Standard accounting practice calls for each sale to be converted at the time the sale is booked, and differences between the exchange value of the sale and the payment to be recorded as an exchange gain or loss (as other income or expenses), and for hedging contract gains and losses to be recorded separately. However, the adjustment appears to have been made on a monthly basis, using an annual average exchange rate, and is conflated with gains and losses on foreign currency hedging transactions which Commerce considers to be financial income or expenses. These financial income or expenses should not be included in the total FOB sales value.[249]
- Because Commerce officials could not tie Marmen's claimed sales-related exchange gains and losses adjustment to the total gains and losses presented in Marmen's audited financial statement, Commerce should not accept Marmen's adjustment.[250]

Commerce's Position:

We agree with the Marmen, in part, and with the petitioner, in part. On October 9, 2019, Marmen originally provided calculations of its total FOB sales, net of reported intercompany sales.[251] Marmen's total FOB net of intercompany sales figures are the sum of Marmen Inc.'s total sales net of reported intercompany sales to Marmen Énergie Inc.'s and Marmen Énergie Inc.'s total sales net of intercompany sales to Marmen Inc.[252] Marmen used these net-of-intercompany total sales figures to demonstrate the allocability and measurability (and non-allocability/non-measurability) of its non-recurring subsidies.[253]

In accordance with the instructions in Commerce's Initial Questionnaire, Marmen submitted Marmen Inc.'s and Marmen Énergie Inc.'s "Total Sales" figures for 2007-2018, along with a break-down of these figures into several sales categories.[254] The "Total Sales" figures and

[247] *See* Petitioner's Rebuttal Brief at 5-7 (citing Verification Report at 2, 10, 16-17, and Verification Exhibits at VE-12 at 2-4).
[248] *See* Petitioner's Rebuttal Brief at 7-8 (citing Verification Report at 16-18).
[249] *Id*. at 8-9 (citing Verification Report at 17, Deloitte's website (www.IAS plus.com.en-ca/standards/part-i-ifrs/international-accounting-standards/ias21); *Certain Concrete Reinforcing Bars from Turkey 2001-2002 Review Final Results* and accompanying IDM at Comment 12 at Footnote 9, and Comment 14; *Mannesmann-Sumerbank Boru*).
[250] *Id*. at 9-10 (citing Verification Exhibits at VE-12 at 2 and 136 and Marmen Third SQR at Exhibit 3rd Supp-09 (ACCESS submission 906345 at PDF page 143).
[251] *See* Marmen IQR at Exhibits HQGRANT-03, MFOR-03, and PERFORM-03.
[252] *Id*.; *see also* Marmen Second SQR Part 2 at Exhibits Énergie -05 and Marmen-08.
[253] *Id*. at Exhibits HQGRANT-03, MFOR-03, and PERFORM-03.
[254] *Id*.

intercompany sales figures were consistent, apart from insignificant rounding errors, with the figures previously reported.[255] Also, Marmen labeled the net-of-intercompany sales figures and resulting sales denominators in Exhibit PERFORM-03 as "Applicable Sales Value (CAD)."[256]

On October 25, 2019, Commerce requested a reconciliation of these reported figures.[257] Along with revised versions of the originally-provided sales tables, Marmen provided an exhibit demonstrating necessary adjustments to the total sales figures provided in the sales tables to get to a) the sales figures reported in Marmen Inc's and Marmen Énergie Inc.'s 2007-2018 financial statements, and to b) the sales figures recorded in Marmen Inc's and Marmen Énergie Inc.'s general ledger sales accounts where all of Marmen Inc's and Marmen Énergie Inc.'s sales are recorded in each companies' financial accounting systems.[258] For the years 2016 through 2018, among the adjustments needed were adjustments for "Year End auditor adjustment in GL{} for Gain(loss) exchange rate."[259] There was no further explanation of this adjustment on the record, save for a note to the financial statements regarding currency conversions.[260] Although Marmen's financial statements and the note itself are business proprietary, Marmen provided a public excerpt of the relevant sections which state, in part: "The Company's foreign currency transactions are translated into Canadian dollars using the exchange rate in effect at the date of transaction."[261]

In the *Preliminary Determination*, Commerce used the 2018 sales figures Marmen originally reported in Exhibits HQGRANT-03, MFOR-03, and PERFORM-03 of Marmen's IQR as the sales denominators, without making any adjustments.[262] However, on December 18, 2019, Marmen submitted a ministerial error allegation regarding Commerce's selection of the 2018 sales denominator used in the *Preliminary Determination*.[263] Marmen argued that the "Year End auditor adjustment in GL 40000 for Gain(loss) exchange rate" adjustment mentioned above is needed to convert Marmen's other reported total sales figures into Canadian dollars (CAD), and that Commerce erred by not adding this figure to Marmen's reported total sales figure. [264] Marmen referenced the notes to the financial statements mentioned above for further explanation.[265] However, Commerce disagreed that the decision not to make the adjustment Marmen advocated constituted a ministerial error and did not issue an amended preliminary determination.[266]

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[255] *See* Marmen IQR at Exhibits HQGRANT-03, MFOR-03, and PERFORM-03, and Marmen Second SQR Part 2 at Exhibits Énergie -05 and Marmen-08.
[256] *See* Marmen IQR at Exhibits HQGRANT-03, MFOR-03, and PERFORM-03.
[257] *See* Marmen Third SQR at Exhibits 3rd Supp-09 and 3rd Supp-10.
[258] The revisions did not affect the total sales or intercompany sales figures (*see* Marmen Third SQR at Exhibits 3rd SUPP-08).
[259] *See* Marmen Third SQR at Exhibits 3rd Supp-09 and 3rd Supp-10.
[260] *See* Marmen Second SQR Part 2 at Exhibits
[261] *See* Marmen Ministerial Error Allegation at 2 and Footnote 3; *see also* Marmen IQR at Exhibit Marmen-02 and Énergie-01.
[262] *See Preliminary Determination* PDM at
[263] *See* Marmen Ministerial Error Allegation.
[264] *Id*.
[265] *Id*. at 2 and Footnote 3.
[266] *See* Ministerial Error Memorandum.

At verification, Commerce officials found that Marmen had originally recorded the USD value of USD-denominated sales in the general ledger sales accounts without converting to Canadian dollars (CAD).[267] Company officials explained that Marmen had recorded all foreign currency sales on a one-to-one basis in the sales account and used the auditor's adjustment to make currency conversions at the end of the year based on a single annual average exchange rate.[268] Commerce officials also found that Marmen's auditor's adjustment included sales denominated in non-USD foreign currencies, as well as CAD-denominated sales which were recorded as USD sales. Such CAD-denominated sales recorded as USD sales would have been erroneously converted by the auditor's adjustment using the single annual average USD-CAD exchange rate.[269] Commerce reviewed the calculation of the auditor's adjustment, finding five sales treated as USD sales that were recorded as euro sales in Marmen's general ledger sales accounts.[270] Commerce reviewed documents related to these "euro" sales and discovered that two of these sales were CAD sales.[271] In some cases, the errors came from Marmen's general ledger sales accounts in Marmen's electronic financial accounting system themselves, as these sales accounts contained sales for which the currency of the sale was wrongly identified.[272] Commerce officials discovered these currency identification and conversion errors as a result of spot-checking Marmen's records during verification.[273]

Commerce officials also discovered that the 2016, 2017, and 2018 inter-company sales reported by Marmen also included unconverted USD sales values and collected sufficient information at verification to convert 2016, 2017, and 2018 USD-denominated intercompany sales figures..[274] As the USD was always at a premium to the CAD during 2018, the inclusion of USD values would tend to overstate the 2018 sales denominator if the auditor's adjustment were used without offsetting currency adjustments to account for USD intercompany sales values.

In addition, Commerce officials found at verification that Marmen's 2007-2015 total sales figures and Marmen's 2007-2015 net-of-intercompany sales figures were also reported in mixed currencies and that Marmen made no accounting adjustments in the reporting of Marmen's audited financial statements to account for the un-converted foreign currencies recorded in the companies' general ledger sales accounts for those years.[275] While these figures reflect the effect of mixed currencies, they are consistent with Marmen's audited financial statements for those years.[276]

On a related issue, Marmen officials explained at verification that the company had re-stated its 2018 audited financial statements in December 2019.[277] This restatement resulted in a currency

[267] *See* Marmen Verification Report at 2-3, 23-24, and Verification Exhibits at VE-12 at 2, 3, 29-54 and 116-134, and VE-13 at 2 and 77-107.
[268] *Id*. at 23-24 and 26-27.
[269] *See* Marmen Verification Report at 2, 26-27, and Verification Exhibits at VE-12 at 2, 3, 29-54 and 116-134.
[270] *Id*. at 2-3, 26-27, and Verification Exhibits at VE-12 at 2, 3, and 29-54, and VE-13 at 77-78.
[271] *See* Marmen Verification Report at 2-3, 26-27, and Verification Exhibits at VE-12 at 2, 3, 30, and 116-134.
[272] *See* Marmen Verification Report at 2, 26-27, and Verification Exhibits at VE-12 at 2, 3, 29-54 and 116-134.
[273] *See* Marmen Verification Report at 2, 26-27, and Verification Exhibits at VE-12 at 2, 3, 29-54 and 116-134; *see also* Marmen Verification Outline at 4.
[274] *See* Marmen Verification Report at 2, 33-34, and Verification Exhibits at VE-4.
[275] *Id*. at 23.
[276] *Id*. at 23.
[277] *Id*. at 15-18.

exchange loss being moved from financial (non-operating) expenses in the original audited financial statements to sales revenue in the re-stated financial statements. Marmen officials claimed that the restatements were the result of Marmen's realized (as opposed to unrealized) gains and losses on foreign currency exchange forward contracts.[278] Marmen further stated that under hedge accounting allowed under Canadian generally accepted accounting practices (GAAP), Marmen had appropriately recorded unrealized foreign exchange contract gains and losses according to market accounting based on year-end exchange rates and using the auditor's adjustment.[279] However, Marmen classified realized exchange gains and losses incorrectly on the income statement by reflecting the gains and losses on realized foreign currency contracts as financial (non-operating) income, rather than reporting these losses as part of the CAD value of the sales figure on the income statement.[280]

Marmen officials and Marmen's auditor's representatives explained that these changes were made in order to reflect the CAD value of sales hedged by realized currency contracts, according to the CAD-USD exchange rate of the associated foreign currency exchange forward contracts.[281] The re-statement of Marmen's financial statements recognizes a loss, a reduction in Marmen's sales values, which Marmen and its auditors claimed is required to record currency hedging related losses properly as a reduction in revenue, rather than as the financial losses that were originally reported in the audited financial statements.[282]

We have not included Marmen's auditor's adjustment in the sales denominators used for the final determination. As Commerce found multiple improperly identified and improperly converted euro and CAD values in the calculation of the auditor's adjustment at verification, we find that the auditor's adjustment is unverified and unreliable.[283] As the purpose of these checks was to sample and spot check the transactions in Marmen's books and records to determine whether Marmen's auditor's adjustment was accurate and reliable, we conclude that the auditor's adjustment was not accurate or reliable. We also note that Commerce lacks the ability to check each sale at verification, and so performs these checks in order to test the broader reliability of reported information. However, we find that the vast majority of the sales-related and other tests Commerce performed throughout the verification uncovered no other errors. Therefore, we are relying on Marmen's reported information, without the auditor's adjustment, as facts available pursuant to section 776(a)(2)(D) of the Act.

Regarding the restatement of Marmen's financial statements, Commerce has not used the re-stated sales figures. We find that the losses Marmen incurred on currency exchange forward contracts are related to currency hedging rather than to simply translating foreign currency sales into CAD, the currency of Marmen's financial statements and other ordinary books and records.[284] Commerce does not normally consider the effect of currency hedging transactions in CVD calculations.[285] In addition, we note that Marmen's restatement occurred after the

[278] *Id*. at 16-17.
[279] *Id*. at 16-17.
[280] *Id*. at 17.
[281] *Id*. at 15-18.
[282] *Id*. at 16-17 and Verification exbibits at VE-12 at 2 and VE-13 at 2.
[283] *See* Marmen Verification Report at 2-3, 26-27, and Verification Exhibits at VE-12 at 2, 3, 29-54 and 116-134.
[284] *See* Marmen Verification Report at 15-18.
[285] *See, e.g., Welded Line Pipe from the Republic of Turkey: Final Results of Countervailing Duty*

preliminary results and the complete restated financial statements have not been placed on the record, nor have interested parties been afforded the opportunity to review or comment on them.[286] Accordingly, consistent with our past practice, we have not revised the 2018 sales denominator used in the Preliminary Determination to account for Marmen's restated sales figures.

Comment 7: Whether Marmen's Other Wind - Time-Billed Activities, Repair Charges, Early Payment Discounts, Deferred Revenue, Inter-Company Revenues, and Other Non-Production Related Income Should Be Included in Marmen's Total Sales Denominator

Marmen's Case Brief

- Marmen is a manufacturer, not a service provider. Therefore, revenues from activities supporting production operations, such as storage of wind tower sections, loading of wind tower sections onto railcars, obtaining certifications of materials, conducting testing of wind tower sections, and repairs to wind tower sections damaged in transit, should not be deducted from Marmen's 2018 total sales denominator.[287]
- Marmen's small and infrequent administration fees classified as "Other Wind – Goods (non-subject)" revenues should not be deducted from Marmen's 2018 sales denominator. These fees were meant to cover selling and administrative expenses in cases where sales revenue on small value sales would not otherwise cover these expenses and should not be deducted because sales revenue would normally be expected to cover such expenses.[288]
- Repair charges classified as "Other Wind – Goods (non-subject)" revenues s should not be deducted because they relate to Marmen's Operations as a manufacturer and seller of Wind Towers.[289]
- Intercompany management fees classified as "Other Wind – Goods (non-subject)" revenues are included in Marmen's intercompany sales, and therefore need not be deducted separately.[290]
- Revenues for loading, testing and certification, storage, repairs, and a single small transportation charge classified as "Other Wind – Time-Billed Activities" support Marmen's operations as a Manufacturer and Seller of wind towers, and should not be deducted from Marmen's 2018 sales denominator.[291]
- If Commerce were to deduct administration fees and repairs revenues classified as Other Wind – Goods (non-subject)," or revenues for loading, testing and certification, storage, repairs, and transportation classified as "Other Wind – Time-Billed Activities" from

Administrative Review; 2015, 83 FR 34113 (July 19, 2018), and accompanying IDM at 12, Comment 2.
[286] *See* Marmen Verification Report at 15-18.
[287] *See* Marmen Case Brief at 5-7 (citing *Foil from China Final Determination* IDM at 39; *PSF from China Final Determination* IDM at 47; *Pipe from Turkey Final Determination* IDM at 29-30; Marmen IQR at MARMEN-2, Marmen Third SQR at 19-20, and Marmen Verification Report at 3-4, 12-13, 27-29, 31-32, Exhibit VE-12 at 57 and 90, and Exhibit VE-13 at 62).
[288] *Id*. at 6-7 (citing Marmen Verification Report at 28).
[289] *Id*. (citing Marmen Verification Report at 13 and 27).
[290] *Id*. at 6-8 (citing Marmen Verification Report at 34, Exhibit VE-4 at 2 and 15 and Exhibit VE-12 at 58).
[291] *Id*. at 7 (citing Marmen Verification Report at 12, 28-29, 31, Exhibit VE-12 at 90, and Exhibit VE-13 at 62).

Marmen's 2018 sales denominator, Commerce would need to convert the reported amounts to CAD.[292]

- It is not necessary to make freight adjustments as Marmen only provided freight for certain non-subject machining/fabricating sales and charged small amount to customers for freight services, compared to the value of Marmen's machining/fabricating sales.[293]

Petitioner's Case Brief

- The 2018 sales denominator used by Commerce to calculate the *ad valorem* countervailing duty rate is the sales values net of all discounts, rebates, intercompany sales, and price adjustments.[294]
- At verification, Commerce officials found that Marmen failed to make standard adjustments to its reported total sales, such as adjusting for early payment discounts, deferred revenue, and service, loading, intercompany sales of parts, and non-production related income.[295]
- Commerce should account for early payment discounts and exclude deferred revenue, service revenue, loading revenue, inter-company revenues and inter-company sales of parts, and other non-production related income from the 2018 sales denominator used in the *ad valorem* calculations.[296]

Marmen's Rebuttal Brief:

- Marmen agrees with Petitioner's argument that the 2018 sales denominator must be net of all discounts, rebates, intercompany sales, and price adjustments. However, Marmen disagrees that additional adjustments are necessary for deferred revenue, "service, loading, and intercompany sales within Marmen's "Other Wind-Goods (non-subject) and "Other Wind—Time Billed Activities" sales categories.[297]
- Commerce officials confirmed that Marmen did deduct deferred revenues to calculate "Total Sales in CAD"[298]
- The petitioner implies that not all intercompany revenues and intercompany sales of parts were deducted in the calculation of Marmen's total sales value in CAD. However,

[292] *Id*. at 8-9 (citing Marmen Verification Report at Exhibit VE-12 at 2-3, 57, 90, 199, 206, and Exhibit VE-13 at 62 and 108).
[293] *Id*. at 4-5 (citing Marmen IQR at MARMEN-2, Marmen Third SQR at 18-19, and Marmen Verification Report at 26-28 and Exhibit VE-12 at 4, 171-192).
[294] *See* Petitioner Case Brief at 38 (citing 19 CFR 351.525(a); *Melamine from Trinidad and Tobago: Final Determination* IDM at Comment 7; *CFS from Indonesia Final Determination* IDM at Comment 21).
[295] *See* Petitioner Case Brief at 39 (citing Marmen Verification Report at 8 and *CFS from Indonesia Final Determination* IDM at Comment 21).
[296] *See* Petitioner Case Brief at 39 (citing Marmen Verification Report at 8; *Washers from Korea Final Determination* IDM at 13 and Comment 10).
[297] *See* Marmen Rebuttal Brief at 25-26 (citing Petitioner's Case Brief at 38-39).
[298] *Id*. at 26 (citing Petitioner's Case Brief at 39, Verification Report at 3, 24, and Verification Exhibits at VE-12 at 2).

according to Marmen, all intercompany sales (including management fees, sales of parts, and sales of wind tower sections) are accounted for in the intercompany sales revenues.[299]
- Commerce has more recently clarified in *PSF from China Final Determination* and *Heavy-Walled Pipe from Turkey Final Determination* that revenue from activities supporting the respondent's production operations, such as revenue Marmen earns from on-site storage, loading, certifications of materials, testing of tower sections, and repairs, should not be deducted from the 2018 sales denominator.[300]

Petitioner's Rebuttal Brief:

- Commerce should not include Marmen's service revenues in the 2018 sales denominator as most of Marmen's service revenues are not directly associated with wind tower production, the action that precipitated the receipt of subsidies.[301]
- Service revenues should be excluded from the 2018 sales denominator because the record does not establish whether the cost of these services is included in the FOB sales values of the towers or sections upon entry.[302]
- Marmen converted U.S. dollars service revenues based on average exchange rates. However, these transactions should have been converted as of the date of the transaction, and not using average exchange rates. Any gains or losses incurred between sale date and payment date should have also been excluded as they should be accounted for as financial income or expenses. Since Marmen failed to convert U.S. dollar service revenue properly, Marmen's service revenue adjustments should be denied.[303]
- Commerce should inflate FOB sales values for service revenues only in exceptional circumstances, where the services are a core part of business operations. The services Marmen seeks to include, however, are not a core part of Marmen's business operations.[304]

Commerce's Position:

We agree with Marmen, in part, and with the petitioner, in part. In addition to the auditor's adjustment discussed above, Marmen also subtracted discounts from the sales account balance to reconcile the financial statements and subtracted deferred revenue (cash from sales not yet invoiced which Marmen recognized as revenue) to reconcile the reported sales figures.[305] Marmen also explained at verification that the sales account balance includes administrative fees, intercompany management fees, intercompany sales of parts, and revenues for repairs, rail

[299] *Id*. at 27 (citing Petitioner's Case Brief at 39, Verification Report at 34, and Verification Exhibits at VE-4, VE-12, and VE-13).
[300] *Id*. at 28 (citing Petitioner's Case Brief at 39, Marmen Case Brief at 5-9, *Washers from Korea Final Results* IDM at 13 and Comment 10, *PSF from China Final Determination* IDM at 47, and *Heavy-Walled Pipe from Turkey* IDM at 29-30).
[301] *See* Petitioner's Rebuttal Brief at 10-11 (citing Marmen Case Brief at 5-9 and Petitioner's Case Brief at 38-39).
[302] *Id*. at 11-12 (citing Marmen Case Brief at 5-9 and Petitioner's Case Brief at 38-39).
[303] *Id*. at 12 (citing Marmen Case Brief at 8-9).
[304] *Id*. at 12-13.
[305] *See* Marmen Third SQR at Exhibits 3rd Supp-09 and 3rd Supp-10 and Verification Exhibits at VE-12 at 2 and VE-13 at 2.

loading, painting certification, storage, and transportation.[306] Commerce officials also discovered at verification unconverted USD values among revenues for intercompany sales of parts, intercompany management fees, administration fees, and loading, transportation, and repair services, included in the total sales figures.[307] Administration fees are fees Marmen charges customers to cover the selling expenses of low-value sales.[308] Marmen classified administration fees as "Other Wind - Goods (non-subject)," and not as "Other Wind - Time-billed Activities (*i.e.*, services)."[309] Regarding loading services, which make up the majority of service revenues, Marmen reported that it sold towers and tower sections only on an FOB basis.[310] Nevertheless, the customer takes actual ownership when Marmen issues the invoice and "delivers" the towers to its on-site storage yard.[311] Marmen provides the service of loading the sections on trains, and the railroad pays Marmen and charges the customer for the loading service.[312] Marmen, at times, charges customers for storage services for periods of time longer than six months to a year, and sometimes charges customers for providing transportation and for making repairs.[313]

Commerce's regulations at 19 CFR 351.525(a) provide that "{t}he Secretary will calculate an *ad valorem* subsidy rate by dividing the amount of the benefit allocated to the period of investigation or review by the sales value during the same period of the product or products to which the Secretary attributes the subsidy under paragraph (b) of this section.[314] Normally, the Secretary will determine the sales value of a product on an f.o.b. (port) basis (if the product is exported) or on an f.o.b. (factory) basis (if the product is sold for domestic consumption). However, if the Secretary determines that countervailable subsidies are provided with respect to the movement of a product from the port or factory to the place of destination (*e.g.*, freight or insurance costs are subsidized), the Secretary may make appropriate adjustments to the sales value used in the 2018 sales denominator."

In *Washers from Korea*, Commerce noted that under 19 CFR 351.525(a), the calculation of the subsidy rate is derived by dividing the amount of the subsidy benefit by the sales value of the product or products manufactured by the respondent company.[315] Commerce concluded that it is required to attribute subsidy benefits to products sold by a company, not to its non-production related income.[316] Commerce recognized that 19 CFR 351.525(a) provides Commerce with the ability to make appropriate adjustments to the sales value in instances where more than production is being subsidized (specifically the regulations provide for the movement of a product from the port or factory to the place of destination to be included where such activities

[306] *See* Marmen Verification Report at 3-4 27-29 and 30-31 and Verification Exhibits at VE-12 at 55-58.
[307] *See* Verification Exhibits at VE-12 at 2, and VE-13 at 2.
[308] *See* Marmen Verification Report at 27-28.
[309] *Id*. and Verification Exhibits at VE-12 at 55-58.
[310] *See* Marmen Second SQR Part 2 at LCONTENT-5 and Marmen Verification Report at 14, and 28.
[311] *See* Marmen Verification Report at 12.
[312] *Id*. at 3-4, 11-12, 21, 26, and 28-29, and 31 and Verification Exhibits VE-12 at 90-91, and 93, and VE-13 at 55-61.
[313] *Id*. at 3-4, 12, and 28-29, and Verification Exhibits VE-12 at 4, 90-91, and 96.
[314] 19 CFR 351.525(b) relates to attribution of subsidies to certain products (all products; exported products; products sold to a particular market; particular products which the subsidy is tied to; the products of cross-owned producers, holding companies, and input suppliers; or cross-owned recipients of transferred subsidies).
[315] *See Washers from Korea* and accompanying IDM at Comment 13.
[316] *Id*.

are themselves subsidized).[317] However, Commerce concluded that the only countervailable subsidies at issue in *Washers from Korea* were subsidies tied to the respondent's products.[318]

Marmen references *Certain Aluminum Foil from the People's Republic of China*, *PSF from China Final Determination*, and *Heavy-Walled Pipe from Turkey Final Determination*, arguing that service income should be included on the sales denominators for subsidies which are not tied to production, and that, in particular, services which are production-related may also be included in sales denominators.[319] In *PSF from China Final Determination*, Commerce concluded that the non-operational and service income at issue was related to the production of the merchandise under investigation and included the income in its calculations.[320] In *Heavy-Walled Pipe from Turkey Final Determination*, Commerce also included in its calculations service revenue (*e.g.*, revenue for slitting, tolling, de-beading) involving the use of production facilities and workers in the ordinary course of business.[321] Similarly, in *Certain Aluminum Foil from the People's Republic of China*, Commerce found that the income at issue was related to production.[322]

In *Heavy-Walled Pipe from Turkey Final Determination*, *PSF from China Final Determination*, and *Aluminum Foil from China Final Determination*, Commerce found that certain production-related services performed in the ordinary course of business, and certain services involving use of productive facilities and performed by the company's workers in the ordinary course of business should be included in the FOB sales denominators.[323] We agree with Marmen that these cases reflect Commerce's current practice, which has evolved since the discussion on services in *Certain Steel from Austria*.[324] We assess whether to include or exclude certain service revenue in the denominator on a case-by-case basis, but generally will include such revenue unless there is a strong argument for excluding it where the service in question bears no relation at all to the company's productive operations.

We agree with both parties that that deferred revenues, the CAD value of all discounts provided, and all intercompany revenues, of whatever sort, should be excluded from the sales figures as these do not represent part of Marmen's FOB sales value. In particular, the CAD value of all intercompany sales and fees should be excluded to avoid double-counting. We also disagree with Marmen that all intercompany sales transactions, including intercompany management fees and intercompany sales of parts, are covered under the reported intercompany sales figures. Accordingly, to calculate Marmen Inc.'s and Marmen Énergie Inc.'s total sales net of intercompany sales, we have reduced Marmen Inc.'s total sales figures by Marmen Inc.'s intercompany management fees and intercompany sales of parts, as converted to CAD, and by

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[317] *Id*.
[318] *Id*.
[319] *See* Marmen Rebuttal Brief at 28 (citing Petitioner's Case Brief at 39, Marmen Case Brief at 5-9, *Washers from Korea Final Results* IDM at 13 and Comment 10, *Aluminum Foil from China Final Determination* IDM at Comment 9, *PSF from China Final Determination* IDM at 47, and *Heavy-Walled Pipe from Turkey* IDM at 29-30).
[320] *See PSF from China Final Determination* IDM at 4.
[321] *See Heavy-Walled Pipe from Turkey* IDM at 29-30.
[322] *See Aluminum Foil from China Final Determination* IDM at Comment 9.
[323] *See Certain Aluminum Foil from the People's Republic of China* IDM at Comment 9, *PSF from China Final Determination* IDM at 47; *Pipe from Turkey Final Determination* IDM at 29-30.
[324] *See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217 (July 9, 1993), General Issues Appendix. (*Certain Steel from Austria*)

Marmen Énergie Inc.'s intercompany sales to Marmen Inc. as converted to CAD. However, we agree with Marmen that the reported sales figures used in the *Preliminary Determination* did not include deferred revenues.

Furthermore, we agree with Marmen that "administration fees" relate to Marmen's production activities, as they are meant to cover the selling costs of low-value product sales.[325] We find that this classification, which applies to production and production-related services generally, represents relevant sales revenue. Accordingly, we agree with Marmen that "administration fees" revenues should not be excluded from the 2018 sales denominator.

We also agree with Marmen that loading and storage service revenues should be included in the 2018 sales denominators. Regarding transport-related service revenues, 19 CFR 351.525(a) requires Commerce to determine the sales value on the basis of product sales on an FOB factory basis for domestic sales and FOB port basis for export sales. Under FOB (factory) terms, loading and other pre-loading activities, such as storage at the factory are normally performed by the seller, and thus would not be excluded for domestic sales under 19 CFR 351.525(a).[326] Similarly, movement expenses required to satisfy the seller's responsibilities under FOB (port) terms are not excluded from the sales values of export sales.

In contrast, under 19 CFR 351.525, freight expenses (exclusive of loading and other services required to place the products in an FOB (factory) state) are normally excluded for domestic sales and international freight expenses (exclusive of services performed by the seller in order to place the products in an FOB (port) state) are excluded for export sales, unless such activities are themselves subsidized.[327] Accordingly, Commerce may make appropriate adjustments to the sales values for the value of activities required to place the sales values on an FOB basis. Although these revenues are for services which occur after invoicing and after delivery under Marmen's sales terms, these activities are normally performed by sellers under FOB (factory) terms.[328] Accordingly, the value of such services are properly included in the calculation of the FOB value of Marmen's sales. However, we agree with the petitioner that the CAD value of transportation services should not be included, as transportation for domestic sales and

[325] *See* Marmen Verification Report at 27-28 and Verification Exhibits at VE-12 at 55-58.
[326] For example, Marmen explained that it sells wind towers under FOB (factory) terms in which the customer is responsible for transportation (*see* Marmen Second SQR Part 2 at LCONTENT-6 and Marmen Verification Report at 28 and 44). These are also referred to as "FCA" terms, which are distinguished from "ex-works" terms because the seller is not responsible for loading under ex-works terms (*see*, *e.g.*, Marmen Verification Report at 14, and https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-rules-2010/#:~:text=Incoterms%C2%AE%202010,and%20students%20of%20international%20trade). However, Marmen charges the railroad for loading some tower sections onto railcars and, in some cases, charged customers for long-term storage (*see* Marmen Second SQR Part 2 at Marmen Verification Report at 28 and 44).
[327] *See* 19 CFR 351.525(a); *see also* INCOTERMS 2010 (https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-rules-2010/#:~:text=Incoterms%C2%AE%202010,and%20students%20of%20international%20trade).
[328] *Id*. at 3-4, 12, and 28-29, and Verification Exhibits VE-12 at 4, 90-91, and 96; *see also* https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-rules-2010/#:~:text=Incoterms%C2%AE%202010,and%20students%20of%20international%20trade.

international transportation are not services which the seller is responsible for under FOB (factory) or FOB (port) terms.

Further, we agree with Marmen that the value of other service revenues should not be excluded. In *Certain Aluminum Foil from the People's Republic of China*, *Heavy-Walled Pipe from Turkey Final Determination* and *PSF from China Final Determination,* Commerce included service revenues that were production-related, or involved the company's productive facilities and are performed by the company's workers in the ordinary course of business.[329] Similar to the services at issue in the cases cited above, Marmen's repair and paint system certification service revenues are related to Marmen's productive activities. Accordingly, we have not excluded Marmen's repair and paint system certification service revenues from the 2018 sales denominator.

For these reasons we have continued to exclude deferred revenue from the 2018 sales denominators and have modified the 2018 sales denominator to deduct the value of discounts, to remove transportation revenues, and to properly account for the full CAD value of all intercompany sales, transportation revenues, and discounts. However, we have not removed loading, storage, administration fees, or repair revenues from the 2018 sales denominator.

Comment 8: Whether Additional Income Taxes Paid by Marmen during the POI on the Previous Year's GASPÉTC Should Be Deducted from Marmen's POI GASPÉTC Benefit

Marmen's Case Brief

- Marmen claimed the GASPÉTC tax credit on its 2017 tax year provincial tax return. However, the GASPÉTC tax credit is reported as taxable income in the year it is claimed (on the following year's tax return).[330]
- Under 19 CFR 351.509(a)(1), a benefit exists for a tax program "to the extent that the tax paid as a result of the program is less than the tax the firm would have paid in the absence of the program." However, Commerce's calculation in the *Preliminary Results* do not account for the tax loss Marmen incurred as a result of the tax credit under the program being considered taxable income. Therefore, Commerce should adjust the benefit calculation by deducting the additional taxes paid by Marmen as a result of the previous year's GASPÉTC tax credit.[331]
- At verification, Commerce officials verified Marmen's tax credit from tax year 2016 included in Marmen's 2017 taxable income.[332]
- The additional taxes paid as a result of the GASPÉTC tax credit may not be disregarded as a "tax consequence" pursuant to 19 C.F.R. § 351.503(e) because Section 351.503(a)

[329] *See Certain Aluminum Foil from the People's Republic of China* at IDM Comment 9, *PSF from China Final Determination* IDM at 47; *Pipe from Turkey Final Determination* IDM at 29-30.
[330] *See* Marmen Case Brief at 10 (citing Marmen IQR at Exhibits GASPÉTC-01, GASPÉTC-02, and GASPÉTC-06).
[331] *Id*. at 10-12 (citing Marmen Preliminary Decision Memorandum at 16, Marmen IQR at Exhibits ÉNERGIE-01, GASPÉTC-06).
[332] *Id*. at 10-12 (citing Marmen Verification Report at 36 and Exhibit VE-21).

dictates that where a specific rule establishes the calculation of a benefit conferred, the Department must follow that rule, and 19 C.F.R. § 351.509(a) outlines a specific rule requiring Commerce to compare the difference between the tax paid as a result of the program and the tax that would have been paid in the absence of the program, which necessarily includes losses incurred as a result of the GASPÉTC program.[333]

GOQ Case Brief

- Commerce should amend the benefit calculation for the final determination to account for additional taxes paid by Marmen in 2017 as a result of the GASPÉTC program.[334]
- Commerce preliminarily determined that the benefit amount for the Employment Tax Credit was the full amount of the tax credit Marmen received on its tax return filed during the POI. However, Marmen explained that because the tax credit produces both a credit amount and income, Marmen had to pay taxes on the Employment Tax Credit it received in tax year 2017 that it would not have had to pay otherwise. To identify its actual tax savings, Marmen subtracted the additional federal and provincial taxes it had to pay in tax year 2017 from the nominal tax credit it claimed for tax year 2017.[335]
- The Marmen Verification Report states that Commerce officials reviewed the relevant schedules form Marmen's tax returns and noted no discrepancies.[336]
- Under 19 CFR 351.509(a)(1), "a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program." The phrase "less than the tax the firm would have paid in the absence of the program" does not limit Commerce to the simple act of equating the tax savings to the nominal value of the credit received. The regulation established a "but for" test such that "but for the GASPÉTC, what would the tax liability have been?"[337]
- The GASPÉTC has two simultaneous impacts that would not exist absent the program. First, Marmen's tax year 2017 tax return included federal and provincial tax for the extra taxable income produced by the measure and included in Marmen's tax year 2017 liability. Second, the tax credit reduced Marmen's tax liability for tax year 2017.[338]

Petitioner's Rebuttal Brief:

- Marmen and the GOQ claim that by not offsetting the additional taxes Marmen paid on the prior year's GASPÉTC against the GASPÉTC claimed during the POI, Commerce

[333] *Id*. at 12 and Footnote 32.
[334] *See* GOQ Case Brief at 5.
[335] *Id*. at 4-5 (citing *Preliminary Decision Memorandum* at 16, Preliminary Calculation Memorandum at 4-5, and Marmen IQR at Exhibit GASPÉTC-02).
[336] *Id*. at 4 (citing Marmen verification Report).
[337] *Id*. at 5.
[338] *Id*. at 5 (citing Marmen IQR at Exhibits GASPÉTC-02 and GASPÉTC-06).

failed to comply with 19 C.F.R 351.509(a)(1).[339] However, Commerce correctly determined the benefit from the GASPÉTC .[340]

- Marmen's and the GOQ's arguments ignore 19 CFR 351.503(c), the overarching regulation on benefit, which states that "{i}n calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit." However, considering the tax consequences is exactly what Marmen and the GOC are asking Commerce to do.[341]
- Marmen's and the GOQ's proposed methodology is prohibited by Section 771(6) of the Act, which defines "net countervailable subsidy" as the gross amount of the subsidy less three allowable offset types: (1) the deduction of applicable fees, deposits, or similar payments necessary to qualify for 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.[342]
- In *FSS from Canada*, Commerce was presented with a nearly identical argument regarding payments by Hydro Quebec to the respondent under the Industrial Systems Program. There, Commerce refereed to 19 CFR 351.503(c) and Section 771(6) of the Act, finding that no offsets for taxes owed on the benefit received are permitted.[343]

Commerce's Position:

We agree with the Petitioners. The GOQ's GASPÉTC program provided an income tax credit in the tax year covering 2017 (*i.e.*, it is included in the calculation of the income tax due in the 2018 POI on Marmen's 2017 taxable income).[344] Under 19 CFR 351.509(b)(1), this credit provides a benefit in the POI, the year in which Marmen otherwise would have had to pay the income taxes exempted or remitted by the GASPÉTC program. However, this tax credit is also considered taxable income at the federal and provincial level.[345] Specifically, the 2016 tax year credit, claimed in 2017, generated 2017 tax year federal and provincial taxes which were due in 2018.[346] Thus, the income taxes Marmen paid on the 2016 tax year credit are a consequence of the GASPÉTC program as a whole. However, said payments are not a component or a consequence of the 2017 tax year credit. Rather, income taxes incurred on the taxable income generated by the 2016 tax year credit were due to be paid to the GOC and GQOQ in the same year that the 2017 tax year tax credit was received as a benefit (*i.e.*, in the POI, 2018).

As explained above, both Marmen and the GOQ both argue that Commerce should reduce the calculation of the benefit amount provided by the 2017 tax year GASPÉTC by the 2017 tax year

[339] As discussed above, under 19 CFR 351.509(a)(1), "a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program."
[340] *See* Petitioner's Rebuttal Brief at 13 (citing Verification Report at 4-5, Preliminary Decision Memorandum at 15-16, Marmen Case Brief at 10-12, and GOQ Case Brief at 4-6).
[341] *See* Petitioner's Rebuttal Brief at 13-14 (citing Marmen Case Brief at 11).
[342] *Id*. at 14.
[343] *Id*. at 14-15 (citing *FSS from Canada Final Determination* and accompanying IDM at Comment 15.
[344] *See* Marmen IQR at ÉNERGIE-01, Exhibit GASPÉTC-01, GASPÉTC-02, GASPÉTC-05, GASPÉTC-06, and Verification Exhibits atVE-21.
[345] *See* Marmen IQR at GASPÉTC-02, GASPÉTC-05, GASPÉTC-06, and Verification Exhibits at VE-21.
[346] *Id*.

income tax Marmen paid on the 2016 tax year GASPÉTC.[347] Marmen and the GOQ argue that, under 19 CFR 351.509(a)(1), a benefit exists for a tax program "to the extent that the tax paid as a result of the program is less than the tax the firm would have paid in the absence of the program," and therefore Marmen's income tax paid on the 2016 tax year GASPÉTC should be deducted from Marmen's gross tax credit.[348] Put another way, Marmen and the GOQ argue that Commerce should reduce the benefit calculation for the GASPÉTC tax credit received during the POI by subtracting taxes resulting from taxation of a previous year's GASPÉTC.

Our regulations at 19 CFR 351.503(e) provide that "{i}n calculating the amount of a benefit, the Secretary will not consider the tax consequences of the benefit." However, the GOQ and Marmen point to 19 CFR 351.509(a)(1), which provides that "a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program."[349] In support, Marmen argues that 19 CFR 351.503(e) is not applicable to the GASPÉTC program because, according to 19 CFR 351.503(a),[350] 19 CFR 351.503(e) may not be read so as to contravene 19 CFR 351.509(a)(1).[351]

Commerce's preliminary treatment of federal taxation of the GASPÉTC in the year the credit is received is analogous to Commerce's treatment of other tax credits which have similar tax consequences. Commerce has repeatedly found that the treatment of income taxes resulting from countervailable tax programs is governed by Section 771(6) of the Act, which limits the subsidy offsets that Commerce may recognize to specific circumstances, and by 19 CFR 351.503(e), which prohibits Commerce from considering the tax consequences of subsidies generally. For example, in *CORE From Korea 2017*, *CTL Plate From Korea 2017*, *CORE From Korea 2015-2016*, *Washers From Korea*, and *Refrigerators From Korea*, Commerce addressed Korea's Special Rural Development Tax, which was levied as a result of respondents' receiving certain countervailable tax exemptions.[352] The GASPÉTC is considered taxable income, and is taxed as income by both the GOC and the GOQ in the year it is claimed. Similarly, Korea's Special Rural Development Tax was set as ten percent of the Acquisition Tax exemptions received by respondents, which Commerce found to have provided countervailable subsidy benefits.[353] Commerce repeatedly found, however, that it was not permitted by the Act or the regulations to offset the Acquisition Tax exemptions by the Special Rural Development Tax.[354] Notably, Commerce's decisions in these cases rely on the categories of subsidy off-sets permitted under

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[347] *See* above; *see also* GOQ Case Brief at 4-5; and Marmen Case Brief at 10-12.
[348] *See* above; *see also* GOQ Case Brief at 5; and Marmen Case Brief at 10-12.
[349] *Id*.
[350] As explained above, 19 CFR 351.503(a) provides that "{i}n the case of a government program for which a specific rule for the measurement of a benefit is contained in this subpart E, the Secretary will measure the extent to which a financial contribution (or income or price support) confers a benefit as provided in that rule. For example, § 351.504(a) prescribes the specific rule for measurement of the benefit of grants."
[351] As explained above, 19 CFR 351.509(a)(1) provides that "a benefit exists to the extent that the tax paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program."
[352] *See e.g.*, *CORE from Korea 2017 Review Final Results* and the accompanying IDM at Comment 4; *Certain CTL Plate from Korea 2017 Review Final Results* and the accompanying IDM at Comment 1; *CORE from Korea 2015-2016 Review Final Results* and the accompanying IDM at Comment 2; *Washers from Korea Final Determination* and the accompanying IDM at 16 and Comment 10; *Bottom-Mount Refrigerators from Korea Final Determination* and accompanying IDM at 23-24.
[353] *Id*.
[354] *Id*.

Section 771(6) of the Act and/or on 19 CFR 351.503(e)'s directive against considering the tax consequences of a subsidy benefit.[355]

Regarding Section 771(6) of the Act, and as the petitioner notes, the circumstances under which Commerce may use as offset in the calculation of a subsidy benefit are limited to: a) application fees, *etc*., paid in order to qualify for or to receive the benefit; b) a loss in the value in the case of a deferred subsidy; and c) export taxes, *etc*., on U.S. exports to offset the subsidy.[356] Neither Marmen nor the GOQ specifically address these limitations, none of which would cover the 2017 tax year income taxes paid on Marmen's tax credit claimed for tax year 2016.

Also, and as the petitioner notes, 19 CFR 351.503(e) specifically states that we "will not consider the tax consequences of the benefit" from a subsidy; thus, under this rule we do not take into account whether a benefit in one year may add to the company's reportable income in the next. We disagree with Marmen that applying this rule would contravene 19 CFR 351.509(a)(1), which directs Commerce to consider the benefit to be the difference between the "tax paid as a result of the program" and "the tax the firm would have paid in the absence of the program." This rule simply provides direction in assessing how the program results in a benefit in the year at issue (the POI), with no regard to any consequences from the prior year's benefit. For these reasons, we have not modified the calculation of Marmen's benefit under the GASPÉTC program used in the *Preliminary Determination*.

Comment 9: Tax credit for On-The-Job Training

GOQ's Case Brief

- Commerce's *de facto* specificity determination is based on an illogical conclusion that whenever the number of recipients of a tax measure is less than the total number of tax filers that the measure is *de facto* specific. The record facts demonstrate broad usage of the Tax Credit for On-the-Job Training and that the credit is not specific to a particular enterprise or industry, as required under the law.[357]
- *Bethlehem Steel* instructs that the de facto specificity analysis is not just an analysis of whether less than all of the companies in the province used the program. Rather, when looking at whether a program is limited in number, Commerce must look to whether: (1) benefits were limited to a few companies or industries, or went to many companies in a

[355] *See e.g.*, *CORE from Korea 2017 Review Final Result*, and accompanying IDM at Comment 4; *Certain CTL Plate from Korea 2017 Review Final Results* and accompanying IDM at Comment 1; *CORE from Korea 2015-2016 Review Final Results* and accompanying IDM at Comment 2; *Washers from Korea Final Determination* and accompanying IDM at 16 and Comment 10; and *Bottom-Mount Refrigerators from Korea Final Determination* and accompanying IDM at 23-24 (finding that off-sets for the Special rural Development Tax were not permitted under Section 771(6)(A) of the Act); and *CORE from Korea 2017*, and the accompanying IDM at Comment 4; *Certain CTL Plate from Korea 2017 Review Final Results* and accompanying IDM at Comment 1; *CORE from Korea 2015-2016 Review Final Results* and accompanying IDM at Comment 2; *Washers from Korea Final Determination* and accompanying IDM at 16 and Comment 10; and *Bottom-Mount Refrigerators from Korea Final Determination* and accompanying IDM at 23-24 (finding that off-sets for the Special rural Development Tax were not permitted under 19 CFR 351.503(e)); *see also FSS from Canada Final Determination* IDM at Comment 15.
[356] *See* Section 771(6) of the Act.
[357] *See* GOQ's Case Brief at 6-11.

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.[358]

- Commerce's methodology also fails to stand scrutiny when viewed against the analytical framework set out by the WTO Appellate Body for assessing if a subsidy has been granted to a "limited number of certain enterprises" under Article 2.1(c) of the Agreement on Subsidies and Countervailing Measures, an article analogous to the Act's Article 771(5A)(D)(iii).[359]
- Commerce's *de facto* specificity analysis simply states that a program is specific because it is limited in number and cites to exhibits without an explanation of what data in those exhibits let Commerce to that conclusion. As a result, the GOQ was denied an opportunity to provide meaningful comments on Commerce's determination.[360]

Petitioner's Rebuttal Brief:

- The GOQ's reliance on *Bethlehem Steel* is untenable. Subsequent to *Bethlehem Steel*, the court upheld Commerce in distinguishing its specificity analysis regarding a voluntary curtailment electricity program used by steel manufacturers from appropriate specificity analysis for a tax credit program, similar to the one at issue in this proceeding.[361]
- In support of its preliminary determination, Commerce cites to the GOQ's IQR at Exhibit QC-009-17 and Exhibit QC-009-18. An examination of these documents provides a clearly discernable path for Commerce's reasoning —especially in light of Commerce's citation to section 771(5A)(D)(iii)(I) of the Act. Both documents to which Commerce cites contain business proprietary information. Moreover, the GOQ stated in its response that the two exhibits relied upon by the Department and cited in the preliminary determination contain "{s}ensitive government information whose release to the public would cause substantial harm to the Government of Quebec." Thus, Commerce was legally barred from explaining its full analysis in its public decision memorandum. However, the Commerce's reasoning is easily discernable and, particularly given the GOQ's recent participation in *Fabricated Structural Steel from Canada*, it is disingenuous at best to both claim BPI treatment for the relevant specificity data, then argue that Commerce's preliminary decision memorandum is lacking in detail which, legally, it cannot provide publicly.[362]
- Following its reasoning in *Fabricated Structural Steel from Canada* and *100- to 150-Seat Large Civil Aircraft from Canada*, Commerce should continue to find this program de facto specific according to section 771(5A)(D)(iii)(I) of the Act because "the actual

[358] *Id.* at 7-9.
[359] *Id*. at 9.
[360] *Id*. at 10.
[361] *See* Petitioner's Rebuttal Brief at 26-28 (citing *Samsung Electronics Co. v. United States*, 37 F. Supp. 3d 1320 (CIT 2014).
[362] *Id*. at 28 to 31.

recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number."[363]

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 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."[364] 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."[365]

The GOQ reported that the purpose of this tax credit is to encourage businesses and individuals in business to take on trainees and improve the professional skills of young workers.[366] The GOQ also reported the total number of companies that claimed the tax credit from 2015 to 2018.[367] 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*.[368] 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.[369] 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.

[363] *Id*. at 31.
[364] *See* SAA at 929.
[365] *Id.* at 930.
[366] *See* GOQ IQR at Exhibit QC-C09-A.
[367] *Id.* at Exhibit QC-C09-17.
[368] *See* PDM at 14 n.78, where we identified the source documentation, *i.e.*, GOQ June 28, 2019 SQR at Exhibit QC-C09-17.
[369] *See* GOQ June 28, 2019 SQR at Exhibit QC-C09-17.

IX. 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

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

APPENDIX I

A. ACROYNM AND ABBREVIATION TABLE

This section is sorted by Complete Name.

Acronym/Abbreviation	Complete Name
ACCA	Accelerated Capital Cost Allowances
AD	Antidumping Duty
AFFR	Affiliation Response
AJCTC	Apprenticeship Job Creation Tax Credit
AITC	Atlantic Investment Tax Credit
AUL	Average Useful Life
CCA	Capital Cost Allowance
CIT	Court of International Trade
CITA	Canadian Income Tax Act
CITR	Canadian Income Tax Regulation
CRA	Canada Revenue Agency
CEP	Consultations for Employment Program
CVD	Countervailing Duty
EA	Electricity Act, 1998
EDC	Export Development Canada
EFSEI	Export Financing for Steel Export Insurance
EFSL	Export Financing for Steel Loans
EFSLG	Export Financing for Steel Loan Guarantees
EGP	Export Guarantee Program
FACCA	Federal Accelerated Capital Cost Allowances
FAITCCE	Federal Affairs and International Canada CanExport
FAJCTC	Federal Apprenticeship Job Creation Tax Credit
FIT	Feed-In Tariff
FR	Federal Register
FSREDTC	Federal Scientific Research and Experimental Development Tax Credit
GOC	Government of Canada
GOO	Government of Ontario
GOQ	Government of Québec
HTSUS	Harmonized Tariff Schedule of the United States
ITA	Income Tax Act
ITR	Income Tax Regulations
IESO	Independent Electricity System Operator
IQR	Initial Questionnaire Response
IDM	Issues and Decision Memorandum
ITC	Investment Tax Credit
kW	Kilowatt

LCR	Local Content Requirements
LTAR	Less than adequate remuneration
Marmen	Marment Inc., Marmen Énergie Inc., and Gestion Marmen, Inc.
MPPD	Manufacturing and Processing Profits Deduction
MTAR	More Than Adequate Remuneration
NFI	New Factual Information
NSA	New Subsidy Allegation
NAICS	North American Industry Classification System
OME	Ontario Ministry of Energy
OPA	Ontario Power Authority
POI	Period of Investigation
PDM	Preliminary Decision Memorandum
QR	Questionnaire Response
Q&V	Quantity and Value
SLSMC	St. Lawrence Seaway Management Corporation
SMB	Small and Medium-Sized Businesses
SQR	Supplemental Questionnaire Response
The Act	Tariff Act of 1930, as Amended
CBP	U.S. Customs and Border Protection
Commerce	U.S. Department of Commerce
USITC	U.S. International Trade Commission
USTR	United States Trade Representative
wind towers	Utility Scale Wind Towers
COALITION	Wind Tower Trade Coalition *a.k.a.* the petitioner or Petitioner
VCA	Voluntary Curtailment Adjustment
WTO	World Trade Organization

B. ADMINISTRATIVE DETERMINATIONS AND NOTICES TABLE

Short Citation	Administrative Case Determinations
Aluminum Extrusions from the PRC 2010-2011 Admin Review Final Results	*Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014)
Steel from Austria Final Determination	*Final Affirmative Countervailing Duty Determination: Steel Products from Austria, 58 FR 37217, 37238* (July 9, 1993)
Biodiesel from Indonesia Final Determination	*Biodiesel from the Republic of Indonesia: Final Affirmative Countervailing Duty Determination*, 82 FR 53471 (November 16, 2017)
FSS from Canada Final Determination	*Certain Fabricated Structured Steel from Canada: Final Negative Countervailing Duty Determination*, 85 FR 5387 (January 30, 2020)

Shrimp from India Final Determination	*Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013)
Certain Pasta from Italy Final Results	*Certain Pasta from Italy: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11172 (March 2, 2015)
Nails from Oman Final Determination	*Certain Steel Nails from the Sultanate of Oman: Final Negative Countervailing Duty Determination*, 80 FR 28958 (May 20, 2015)
Steel Wheels from China Final Determination	*Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012)
Lumber V from Canada Preliminary Determination	*Certain Softwood Lumber Products from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 82 FR 19657 (April 28, 2017)
Lumber V from Canada Final Determination	*Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51814 (November 8, 2017)
Certain Softwood Lumber Products from Canada 2017-18 AR Preliminary Results	*Certain Softwood Lumber Products from Canada: Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review; 2017-2019*, 85 FR 7273 (February 7, 2020)
Certain Softwood Lumber Products from Canada 2015 Expedited Review Final	*Certain Softwood Lumber Products from Canada: Final Results of Countervailing Duty Expedited Review*, 84 FR 32121 (July 5, 2019)
Uncoated Groundwood Paper from Canada Preliminary Determination	*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)
Uncoated Groundwood Paper from Canada Final Determination	*Certain Uncoated Groundwood Paper from Canada: Final Affirmative Countervailing Duty Determination*, 83 FR 39414 (August 9, 2018)
CWP from Oman Final Determination	*Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman: Final Affirmative Countervailing Duty Determination*, 77 FR 64473 (October 22, 2012)
CWP from UAE Final Determination	*Circular Welded Carbon-Quality Steel Pipe from the United Arab Emirates: Final Affirmative Countervailing Duty Determination*, 77 FR 64465 (October 22, 2012)
Citric Acid and Certain Citrate Salts from China 2011 AR Final Results	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2011*, 79 FR 108 (January 2, 2014)

Citric Acid and Certain Citrate Salts from China 2008-09 AR Final Results	*Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*, 76 FR 77206 (December 12, 2011)
CFS from China Final Determination	*Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007)
CRS from Russia Final Determination	*Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016)
CVD Preamble	*Countervailing Duties; Final Rule*, 63 FR 65348 (November 25, 1998)
Asociacion de Exportadores April 2, 2020 Draft Remand Results	Draft Results of Remand Redetermination: *Asociacion de Exportadores e Industriales de Mesa, Aceitunas Guadalquivir, S.L.U., Agro Sevilla Aceitunas S. COOP. And., and Angel Camacho Alimentacion, S.L., v. United States*, Consol. Court. No. 18-00195, Slip Op. 20-8 (April 2, 2020)
Cold-Rolled Carbon Steel Flat Products from Brazil Final Determination	*Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products from Brazil*, 67 FR 62128 (October 3, 2002)
Certain CTL from Korea Final Determination	*Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 73176 (December 29, 1999)
Fresh Cut Flowers from the Netherlands Final Determination	*Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from the Netherlands*, 52 FR 3301 (February 3, 1987)
DRAM from Korea Final Determination	*Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea*, 68 FR 37122 (June 23, 2003)
LHF from Canada Final Determination	*Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring (LHF) from Canada*, 62 FR 5201 (February 4, 1997)
Live Swine from Canada Final Determination	*Final Negative Countervailing Duty Determination: Live Swine from Canada*, 70 FR 12186 (March 11, 2005)
Magnesium from Israel Final Determination	*Magnesium from Israel: Final Affirmative Countervailing Duty Determination*, 84 FR 65785 (November 29, 2019)
NOES from Taiwan Final Determination	*Non-Oriented Electrical Steel from Taiwan: Final Affirmative Countervailing Duty Determination*, 79 FR 61602 (October 14, 2014)
Certain Pasta from Turkey; 2014 Preliminary Results	*Pasta from Turkey: Preliminary Results of Countervailing Duty Administrative Review; 2014*, 81 FR 52825 (August 10, 2016), and accompanying PDM at "Investment Encouragement Program (IEP): Customs Duty and VAT Exemptions," unchanged in *Pasta from Turkey: Final Results of Countervailing Duty Administrative Review; 2014*, 81 FR 90775 (December 15, 2016)

Certain CTL from Korea Preliminary Determination	*Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 40445 (July 26, 1999)
LHF from Canada Preliminary Determination	*Preliminary Negative Countervailing Duty Determination: Certain Laminated Hardwood Trailer Flooring ("LHF") from Canada*, 61 FR 59079 (November 20, 1996)
SC Paper from Canada Final Determination	*Supercalendered Paper from Canada: Final Affirmative Countervailing Duty Determination,* 80 FR 63535 (October 20, 2015)
SC Paper from Canada 2014 Expedited Review Final	*Supercalendered Paper from Canada: Final Results of Countervailing Duty Expedited Review*, 82 FR 18896 (April 24, 2017)
SC Paper from Canada 2014 Expedited Review Prelim	*Supercalendered Paper from Canada: Preliminary Results of Countervailing Duty Expedited Review*, 81 FR 85520 (November 28, 2016)
Initiation Notice	*Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Initiation of Countervailing Duty Investigations*, 84 FR 38216 *(*August 6, 2019)
ITC Preliminary Determination	*Utility Scale Wind Towers from Canada, Indonesia, Korea, and Vietnam*, 84 FR 45171 (August 28, 2019).
Preliminary Determination	*Utility Scale Wind Towers from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 84 FR 68126 (December 13, 2019)
Postponement of Final Determination	*Utility Scale Wind Towers from Canada: Preliminary Affirmative Determination of Sales at Less-Than-Fair Value, Preliminary Negative Determination of Critical Circumstances, and Postponement of Final Determination and Extension of Provisional Measures*, 85 FR 8562 (February 14, 2020)
Preliminary Negative Critical Circumstances Determination	*Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam; Countervailing Duty Investigations: Preliminary Determinations of Critical Circumstances*, 85 FR 7724 (February 11, 2020)
Postponement	*Utility Scale Wind Towers from Canada, Indonesia, and the Socialist Republic of Vietnam: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 84 FR 48329 (September 13, 2019)
Wire Decking from China Final Determination	*Wire Decking from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 75 FR 32902 (June 10, 2010)
Hardwood Trailer Flooring from Canada Final Determination	*Final Negative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Laminated Hardwood Trailer Flooring from Canada*, 62 FR 5201, 5202 (February 4, 1997).

Certain CTL from Italy Amended Final Determination	*Certain Cut-To-Length Plate From Italy: Notice of Amended Final Determination Pursuant to Final Court Decision and Partial Revocation of Order*, 64 FR 73244 (December 29, 1999)
Certain Concrete Reinforcing Bars from Turkey 2001-2002 Review Final Results	*Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part*, 68 FR 53127 (September 9, 2003)
Aluminum Foil from China Final Determination	*Countervailing Duty Investigation of Certain Aluminum Foil From the People's Republic of China: Final Affirmative Determination*, 83 FR 9274 (Mar. 5, 2018)
PSF from China Final Determination	*Countervailing Duty Investigation of Fine Denier Polyester Staple Fiber From the People's Republic of China: Final Affirmative Determination*, 83 FR 3120 (Jan. 23, 2018)
Heavy-Walled Pipe from Turkey Final Determination	*Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Affirmative Countervailing Duty Determination*, 81 FR 47349 (July 21, 2016)
Melamine from Trinidad and Tobago Final Determination	*Melamine from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination*, 80 FR 68849 (November 6, 2015)
CFS from Indonesia Final Determination	*Coated Free Sheet Paper from Indonesia: Final Affirmative Countervailing Duty Determination*, 72 FR 60642 (October 25, 2007)
Washers from Korea Final Determination	*Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012)
FSS from Canada Final Determination	*Certain Fabricated Structural Steel from Canada: Final Negative Countervailing Duty Determination*, 85 FR 5387 (January 30, 2020)
CORE from Korea 2017 Review Final Results	*Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2017*, 85 FR 11512 (March 17, 2020)
Certain CTL Plate from Korea 2017 Review Final Results	*Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; Calendar Year 2017*, 83 FR 42893 (August 19, 2019)
CORE from Korea 2015-2016 Review Final Results	*Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2015–2016*, 84 FR 11749 (March 28, 2019)
Bottom-Mount Refrigerators from Korea Final Determination	*Bottom Mount Combination Refrigerator-Freezers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 17410 (March 26, 2012)

C. CASE-RELATED DOCUMENTS

This section is sorted by Short Citation.

Emphasis, symbols, and short site setups were removed from all document titles.

Short Citation	Complete Document Title
CBP Data Release Letter	Commerce's Letter, "Utility Scale Wind Towers from Canada Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection," dated July 22, 2019
Consultations Memorandum	Memorandum, "Consultations with Government Officials from the Government of Canada on the Countervailing Duty Petition Regarding Utility Scale Wind Towers from Canada," dated July 24, 2019
Early Conclusion of Verification Memorandum	Memorandum, "Early Conclusion of Verification," dated April 1, 2020
Extension of Factual Information Submission Memorandum	Memorandum, "Extension of Time to Submit Factual Information on the Record of the Countervailing Duty Investigation on Utility Scale Wind Towers from Canada," dated November 5, 2019
GOC Case Brief	GOC's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Case Brief of the Government of Canada," dated May 6, 2020
GOC Comments – NSA	GOC's Letter, "Government of Canada's Comments on Petitioner's New Subsidy Allegation Utility Scale Wind Towers from Canada (C-122-868)," dated September 30, 2019
GOC Critical Circumstances Allegation Comment	GOC's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Response to Petitioner's Critical Circumstances Allegations," dated December 23, 2019
GOC IQR	GOC's Letter, "Section II Questionnaire Response of the Government of Canada for Federal Programs Utility Scale Wind Towers from Canada (C-122-868)," dated October 9, 2019
GOC First SQR Part 1	GOC's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Response of the Government of Canada to the First Supplemental Questionnaire," dated November 8, 2019
GOC First SQR Part 2	GOC's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Response of the Government of Canada to Questions 5 and 14 of the First Supplemental Questionnaire," dated November 12, 2019
GOC First SQR Part 3	GOC's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Response of the Government of Canada to the First Supplemental Questionnaire," dated November 14, 2019
GOC NSA QR	GOC's Letter, "Countervailing Duty Investigation of {Utility Scale Wind Towers} from Canada: Response of the Government

	of Canada to the New Subsidy Allegations Questionnaire," dated January 21, 2020
GOC Second SQR	GOC's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Response of the Government of Canada to the Second Supplemental Questionnaire," dated November 5, 2019
GOO IQR	GOO's Letter, "Utility Scale Wind Towers from Canada: Initial Questionnaire Response" dated October 9, 2019; and "Utility Scale Wind Towers from Canada: Exhibits ON-FIT-1 through ON-FIT-3," dated October 10, 2019
GOO First SQR	GOO's Letter, "Utility Scale Wind Towers from Canada: First Supplemental Questionnaire Response," dated November 6, 2019
GOO Second SQR	GOO's Letter, "Utility Scale Wind Towers from Canada: Second Supplemental Questionnaire Response," dated November 20, 2019
GOO Third SQR	GOO's Letter, "Utility Scale Wind Towers from Canada: Third Supplemental Questionnaire Response," dated November 26, 2019
GOO Rebuttal Brief	GOO's Letter, "Utility Scale Wind Towers from Canada: Rebuttal Brief of the Government of Ontario," dated May 13, 2020
GOQ Case Brief	GOQ's Letter, "Utility Scale Wind Towers from Canada: The Government of Québec's Case Brief," dated May 6, 2020
GOQ Comments – NSA	GOQ's Letter, "Utility Scale Wind Towers from Canada: the Government of Québec's Comments on Petitioner's New Subsidy Allegations," dated September 26, 2019
GOQ Comments – Pre-Prelim	GOQ's Letter, "Utility Scale Wind Towers from Canada: The Government of Québec's Pre-Preliminary Comments," dated November 27, 2019
GOQ Factual Information	GOQ's Letter, "Utility Scale Wind Towers from Canada: Government of Québec Submission of Factual Information," dated November 15, 2019
GOQ First SQR	GOQ's Letter, "Utility Scale Wind Towers from Canada: the Government of Québec's Response to the Department's First Supplemental Questionnaire," dated November 6, 2019
GOQ IQR	GOQ's Letter, "Utility Scale Wind Towers from Canada: the Government of Québec's Response to the Department's August 28, 2019 Initial Questionnaire," dated October 9, 2019
GOQ NSA QR	GOQ's Letter, "Utility Scale Wind Towers from Canada: The Government of Québec's Response to the Department's New Subsidy Allegations Questionnaire," dated January 22, 2020
GOQ Rebuttal Brief	GOQ's Letter, "Utility Scale Wind Towers from Canada: the Government of Québec's Rebuttal Brief," dated May 13, 2020
GOQ Second SQR	GOQ's Letter, "Utility Scale Wind Towers from Canada: the Government of Québec's Response to the Department's Second Supplemental Questionnaire," dated November 22, 2019
Initial Questionnaire	Commerce's Letter to the GOC (and the mandatory respondents), "Countervailing Duty Investigation of Utility Scale Wind Towers

	from Canada: Countervailing Duty Questionnaire," dated August 28, 2019
Initiation Checklist	Memorandum, "Countervailing Duty Investigation Initiation Checklist: Utility Scale Wind Towers from Canada," July 29, 2019
Marmen AFFR	Marmen's Letter, "Utility Scale Wind Towers from Canada: Affiliated Companies Response," September 11, 2019
Marmen Benchmark Submission	Marmen's Letter, "Utility Scale Wind Towers from Canada: Benchmark Submission," dated November 15, 2019
Marmen Case Brief	Marmen's Letter, " Utility Scale Wind Towers from Canada: Case Brief," dated May 6, 2020
Marmen Comments – Pre-Prelim	Marmen's Letter, "Utility Scale Wind Towers from Canada: Pre-Preliminary Determination Comments," dated November 20, 2019
Marmen Critical Circumstances Allegation Comment	Marmen's Letter, "Utility Scale Wind Towers from Canada: Response to Petitioner's 'Critical Circumstances' Allegations," dated December 23, 2019
Marmen Q&V Response	Marmen's Letter, "Utility Scale Wind Towers from Canada: Response to Quantity and Value Questionnaire," dated December 23, 2019
Marmen First SQR	Marmen's Letter, "Response to First Supplemental Questionnaire," September 25, 2019
Marmen Fourth SQR	Marmen's Letter, "Response to the November 15, 2019, Fourth Supplemental Questionnaire," November 22, 2019
Marmen Fifth SQR	Marmen's Letter, "Utility Scale Wind Towers from Canada: Response to the January 29, 2020, Fifth Supplemental Questionnaire," dated February 5, 2020
Marmen IQR	Marmen's Letter, "Utility Scale Wind Towers from Canada: Section III Response," dated October 9, 2019
Marmen NSA QR	Marmen's Letter, "Utility Scale Wind Towers from Canada: Response to New Subsidy Allegations Questionnaire," dated January 21, 2020
Marmen Preliminary Calculation Memorandum	Memorandum, "Preliminary Determination of the Countervailing Duty Investigation on Utility-Scale Wind Towers from Canada: Preliminary Determination Calculations for Marmen Inc., Marmen Énergie Inc., and their cross-owned affiliates," dated concurrently with this memorandum
Marmen Rebuttal Brief	Marmen's Letter, "Utility Scale Wind Towers from Canada: Rebuttal Brief," dated May 13, 2020
Marmen Request for Clarification and Notification of Potential Reporting Difficulties	Marmen's Letter, "Utility Scale Wind Towers from Canada: Request for Clarification of the Questionnaire and Notification of Potential Reporting Difficulties," dated September 11, 2019
Marmen Second Request for Clarification	Marmen's Letter, "Utility Scale Wind Towers from Canada: Request for Extension of Time to Respond to Question 3 of the

	Second Supplemental Questionnaire and Request for Clarification of the Questionnaire," dated September 30, 2019
Marmen Second SQR Part 1	Marmen's Letter, "Response to Questions 1A, 1B, 2, and 4 through 7 of the September 25, 2019, Supplemental Questionnaire," dated October 2, 2019
Marmen Second SQR Part 2	Marmen's Letter, "Utility Scale Wind Towers from Canada: Response to Question 2.B and the "local content requirement" questions of Section III General Questions of the Department's Countervailing Duty Questionnaire, and Questions 1.C, 3, and 8-17 of the Second Supplemental Questionnaire," dated October 15, 2019
Marmen Third SQR	Marmen's Letter, "Response to Third Supplemental Questionnaire," dated November 7, 2019
Marmen Ministerial Error Allegation	Marmen's Letter, "Utility Scale Wind Towere from Canada: Ministerial Error Comments," dated December 18, 2019.
Marmen Ministerial Error Allegation Rebuttal Comments	Armen's Letter, "Utility Scale Wind Towers from Canada: Request to Reject Petitioner's Response to Marmen's Ministerial Error Comments," dated December 24, 2019.
Verification Exhibits	Marmen Letter, "Utility Scale Wind Towers from Canada: Submission of Verification Exhibits," dated February 27, 2020
Marmen Verification Outline	Commerce's Letter to Marmen, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada; Verification of Marmen, Inc.'s; Marmen Énergie Inc.'s; and Gestion Marmen's Questionnaire Responses," dated February 7, 2020.
Marmen Verification Report	Memorandum, "Verification of Questionnaire Responses of Marmen Inc., Marmen Énergie Inc., and Gestion Marmen," dated April 16, 2020
Ministerial Error Memorandum	Memorandum, "Allegation of Ministerial Error in the Preliminary Determination of the Countervailing Duty Investigation on Utility-Scale Wind Towers from Canada," dated January 31, 2020
NSA Decision Memorandum	Memorandum, "Utility Scale Wind Towers from Canada: Decision Memorandum on September 16, 2019 New Subsidy Allegations," dated January 10, 2020 *see also* Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: New Subsidy Allegations Questionnaire," dated January 10, 2020
NSA Questionnaire – GOC	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: New Subsidy Allegations Questionnaire," dated January 10, 2020
NSA Questionnaire – GOQ	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: New Subsidy Allegations Questionnaire," dated January 10, 2020
NSA Questionnaire – Marmen	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: New Subsidy Allegations Questionnaire," dated January 10, 2020

NSA Questionnaire – Petitioner	Commerce's Letter, "Utility Scale Wind Towers from Canada: New Subsidy Allegations Supplemental Questions," dated October 22, 2019
NSA Submission	Petitioner's Letter, "Utility Scale Wind Towers from Canada: New Subsidy Allegation," dated September 16, 2019
Petition	Petitioner's Letter, "Petitions for the Imposition of Antidumping Duties and Countervailing Duties on Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam," dated July 9, 2019
Petitioner Case Brief	Petitioner's Letter, "Utility Scale Wind Towers from Canada: Case Brief," dated May 6, 2020
Petitioner Comments – GOQ IQR	Petitioner's Letter, "Utility Scale Wind Towers from Canada: Submission of Supplemental Questions for the Department's Consideration," dated November 15, 2019
Petitioner Comments – Marmen's Notification of Reporting Difficulties	Petitioner's Letter, "Utility Scale Wind Towers from Canada: Response to Marmen's Notification of Reporting Difficulties," dated September 17, 2019
Petitioner Comments – Pre-Prelim	Petitioner's Letter, "Utility Scale Wind Towers from Canada: Petitioner's Pre-Preliminary Determination Comments," dated November 15, 2019
Petitioner Critical Circumstances Allegation	Petitioner's Letter, "Utility Scale Wind Towers from Canada, Indonesia, the Republic of Korea, and the Socialist Republic of Vietnam: Critical Circumstances Allegations," dated December 13, 2019
Petitioner Ex Parte Memorandum	Memorandum, "Ex-Parte Meeting: Petitioner Case and Rebuttal Brief Issues," dated May 29, 2020
Petitioner Factual Information – Rebuttal	Petitioner's Letter, "Utility Scale Wind Towers from Canada: Rebuttal Factual Information on the Government of Canada's Section II Response," dated October 23, 2019
Petitioner Ministerial Error Rebuttal Comments	Petitioner's Letter, "Utility Scale Wind Towers: Petitioner's Response To Marmen's December 18, 2019 Ministerial Error Comments and Request That The Department Reject Marmen's Submission," dated December 23, 2019.
Petitioner NSA QR	Petitioner's Letter, "Utility Scale Wind Tower from Canada: Response to New Subsidy Allegations Supplemental Questionnaire," dated October 24, 2019
Petitioner Rebuttal Brief	Petitioner's Letter, "Utility Scale Wind Towers from Canada: Rebuttal Brief," dated May 13, 2020
Petitioner Request – Alignment	Petitioner's Letter, "Utility Scale Wind Towers from Canada: Request to Align Countervailing Duty Investigation Final Determination with Antidumping Duty Investigation Final Determination," dated November 27, 2019
Petitioner Request – Postponement	Petitioner's Letter, "Utility Scale Wind Towers from Canada: Request to Postpone Preliminary Determination," dated August 30, 2019

Post-Preliminary Determination Memorandum	Memorandum, "Post-Preliminary Analysis Memorandum in the Countervailing Duty Investigation of Utility Scale Wind Towers from Canada," dated February 12, 2020
Respondents Ex Parte Memorandum.	Memorandum, "Ex-Parte Meeting: {Respondents} Case and Rebuttal Brief Issues," dated June 4, 2020
Respondent Selection Memorandum	Memorandum, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Respondent Selection," dated August 21, 2019
Supplemental Questionnaire – GOC I	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: First Supplemental Questionnaire," dated October 28, 2019
Supplemental Questionnaire – GOC II	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Second Supplemental Questionnaire," dated October 31, 2019
Supplemental Questionnaire – GOO I	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: First Supplemental Questionnaire," dated October 28, 2019
Supplemental Questionnaire – GOO II	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Second Supplemental Questionnaire," dated November 14, 2019
Supplemental Questionnaire – GOO III	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Third Supplemental Questionnaire," dated November 19, 2019
Supplemental Questionnaire – GOQ I	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: First Supplemental Questionnaire," dated October 28, 2019
Supplemental Questionnaire – GOQ II	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: {Second} Supplemental Questionnaire," dated November 15, 2019
Supplemental Questionnaire – Marmen I	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Supplemental Questionnaire for Marmen Inc. and Marmen Énergie Inc." dated September 18, 2019
Supplemental Questionnaire – Marmen II	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Questions Regarding Marmen Inc.'s and Marmen Énergie Inc.'s Request for Clarification of the Questionnaire and Notification of Potential Reporting Difficulties," dated September 25, 2019
Supplemental Questionnaire – Marmen III	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Questions Regarding Marmen Inc.'s and Marmen Énergie Inc.'s Request for Clarification of the Questionnaire and Notification of Potential Reporting Difficulties," dated October 25, 2019
Supplemental Questionnaire – Marmen IV	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Supplemental Questionnaire," dated November 15, 2019

Supplemental Questionnaire – Marmen V	Commerce's Letter, "Countervailing Duty Investigation of Utility Scale Wind Towers from Canada: Fifth Supplemental Questionnaire," dated January 29, 2020

D. MISCELLANEOUS TABLE (REGULATORY, COURT CASES, ARTICLES, *ETC.*)

Short Citation	Complete Title
accord Corus Staal BV	*accord Corus Staal BV v. United States*, 502 F. 3d 1370, 1375 (Feb. Cir. 2007)
Allegheny	*Allegheny Ludlum Corp. v. United States*, 112 F. Supp. 2d 1141, 1152 n. 15 (CIT 2000)
Al Tech	*Al Tech Specialty Steel Corp. v. United States*, 28 Ct. Int'l Trade 1468, 1475-1477 (2004)
Asociación de Exportadores	*Asociación de Exportadores e Industriales de Aceitunas de Mesa v. United States*, Consol. Court. No. 18-00195, Slip Op. 20-8 (CIT 2020)
Canada-Certain Measures Affecting the Renewable Energy Generation Sector	Third-Party Participant Oral Statement of the United States of America, *Canada-Certain Measures Affecting the Renewable Energy Generation Sector*, AB-2013-1/DS412 (March 14, 2013) at 9
Carlisle Tire	*Carlisle Tire & Rubber Co. v. United States*, 564 F. Supp. 834, 836-839 (CIT 1983)
Corus Staal BV	*Corus Stall BV v. United States*, 395 F. 3d 1343, 1347-1349 (Fed. Cir. 2005)
FFC	*Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001)
Hynix	*Hynix Semiconductor, Inc. v. United States*, 391 F. Supp. 2d 1337, 1342-1343, 1346 (CIT 2005)
Micron Tech	*Micron Tech., Inc. v United States*, 117 F.3d 1386, 1396-1397 (Fed. Cir. 1997)
NSK Ltd.	*NSK Ltd. v. United States*, 510 F. 3d 1375, 1379-80 (Fed. Cir. 2007)
PPG Industries	*PPG Industries, Inc. v. United States*, 978 F. 2d 1232, 1240 (Feb. Cir. 1992)
RZBC	*RZBC Group Shareholding Co. v. United States*, 100 F. 3d 1288, 1301-1303 (CIT 2015)
Tianjin Machinery	*Tiangin Machinery Import & Export Corp. and Shandong Machinery Import & Export Corp. v. United States*, 806 F. Supp. 1008, 1015 (CIT 1992)
IRS Pub 946	U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods
US – Definitive Anti-Dumping and Countervailing Duties on	Appellate Body Report, *US – Definitive Anti-Dumping and Countervailing Duties on Certain Products from China*, WT/DS379/AB/R (March 11, 2011) at 373 and 386

Certain Products from China	
US – Subsidies on Upland Cotton	Panel Report, *United States – Subsidies on Upland Cotton*, WTO Doc. WT/DS267/R (September 8, 2004) at 1124, and 1142-1143
SAA	The Statement of Administrative Action, URAA, H. Doc. 316, Vol. 1, 103d Cong. (1994)
Mannesmann-Sumerbank Boru	*Mannesmann-Sumerbank Boru T.A.S. v. United States*, Ct. No. 98-05-02185, slip op. 00-50 (CIT, May 3, 2000))

APPENDIX II

NOT-USED AND NOT-MEASURABLE PROGRAMS[370]

Marmen

Programs Determined Not to Provide Measurable Benefits to Marmen During the POI

Count	Title
	Government of Canada Programs
1	Federal Apprenticeship Job Creation Tax Credit
	Province of Québec Programs
2	Revenue Québec - Additional Deduction for Depreciation of Goods Used in Manufacturing, Processing or Computer-Related Activities
3	Land purchases and Leases / Land Transactions in Trois-Rivieres
4	Ministry of Economy and Innovation (MEI) - Export Program
5	Emploi Québec - Mesure: Formation de la Main-D'Oeuvre volet Enterprises (MFOR)
6	Emploi Québec - Le Programme d'aide a l'integration des Immigrants et des Minorites Visibles en Emploi (PRIME)
7	Emploi Québec: Subvention salariale / Insertion en employ / Emploi Québec - Wage Assistance
8	Carrefour Jeunesse Emploi (Wage Assistance)
9	Provision of Land in the Parc Industrial Dessureault for Less than Adequate Remuneration

Programs Determined Not to Be Used or Confer a Benefit by Marmen 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

[370] Commerce also preliminarily determined that the Loans from the Economic Diversification Fund for the Centre-du-Quebec and Mauricie Regions program was tied to non-subject merchandise. *See Preliminary Determination* and accompanying PDM at 17 and Post-Preliminary Determination Memorandum at 2. Commerce also preliminarily determined that the Provision of Land in the Parc Industriel Dessureault for Less than Adequate Remuneration, Hydro Québec – Industrial Systems Program/Hydro-Québec Funding for Lighting, Sectoral Committee on Labor in Industrial Metallic Manufacturing (PERFORM), Investissement Québec Loan, and City of Trois-Rivieres Property Tax Credit programs were not countervailable. *See Preliminary Determination* and accompanying PDM at 17-18 and Post-Preliminary Determination Memorandum at 2-3. We have not revised our preliminary findings in with respect to these programs.

5	Export Development Canada Export Financing for Steel Export Insurance
6	Federal Accelerated Capital Cost Allowances for Class 43.1 and 43.2 Assets
7	Federal Scientific Research and Experimental Development Tax Credit
8	Export Development Canada Export Financing for Steel Export Insurance
9	Duty Drawback Program[371]
	Province of Ontario Programs
9	Ontario Employer Trainer Grant (Canada-Ontario Job Grant)
10	Independent Electricity System Operator (IESO) Demand Response
11	Purchase of Wind Towers for MTAR / Ontario Local Content Requirements
	Province of Québec Programs
12	Hydro Québec Interruptible Electricity Option Program
13	Hydro Québec Electricity Discount Program for Capital Investments
14	Hydro Québec Electricity Discount Program for Industrial Users
15	ESSOR Program - Investment Projects Support Component Grants
16	ÉcoPerformance - MERN (TEQ)/ Energy Efficiency Conversion Projects
17	ESSOR Program - Investment Projects Support Component Loans
18	ESSOR Program - Investment Projects Support Component Loan Guarantees
19	Québec Tax Holiday for Large Investment Projects
20	Québec Columbia Scientific Research and Experimental Development Tax Credit
21	Transport Québec: Programme visant la reduction des émissions de GES par le développement du transport intermodal / Reduction Assistance Program to avoid greenhouse gas emissions by the development of intermodal transport
22	Purchase of Wind Towers for MTAR / Québec Local Content Requirements
23	Green Fund (Fonds Vert) Programs[372]

[371] *See* Post-Preliminary Determination Memorandum at 3.

[372] *See Preliminary Determination* PDM at 17-18; and Post-Preliminary Determination Memorandum at Appendix II.