



C-469-818
Investigation
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E&C/OI: Team

November 20, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for the Preliminary Determination in the
Countervailing Duty Investigation of Ripe Olives from Spain

I. SUMMARY

The Department preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain ripe olives in Spain, as provided in section 703 of the Act.

II. BACKGROUND

A. Initiation and Case History

On June 22, 2017, the Coalition for Fair Trade in Ripe Olives (the petitioner),¹ filed a petition with the Department seeking the imposition of countervailing duties (CVD) on imports of ripe olives from Spain.² Supplements to the petition and our consultations with the Government of

¹ The Coalition consists of domestic processors Bell-Carter Foods and Musco Family Olive Company.

² See "Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 731 of the Tariff Act of 1930, As Amended," dated June 21, 2017 (alleging countervailable subsidies at Volume III (CVD Petition)). The petition was filed with the U.S. Department of Commerce and the International Trade Commission on June 21, 2017, after 12:00 noon, and pursuant to 19 CFR 207.10(a), are deemed to have been filed on the next business day, June 22, 2017.



Spain and the Commission of the European Union are described in the Initiation Checklist.³ On July 12, 2017, the Department initiated a CVD investigation on ripe olives from Spain.⁴

B. Respondent Selection

We stated in the *Initiation Notice* that we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for the Harmonized Tariff Schedule of the United States (HTSUS) subheadings listed in the scope of the investigation.⁵ We released the CBP entry data under administrative protective order (APO) on July 6, 2017.⁶ We received comments from the petitioner on July 18, 2017.⁷ No other party filed comments regarding respondent selection. Section 777A(e)(1) of the Tariff Act of 1930, as amended (“the Act”), directs the Department to determine an individual countervailable subsidy rate for each known exporter/producer of subject merchandise. The Department, however, may limit its examination to a reasonable number of exporters/producers under section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2) if it determines that it is not practicable to determine individual countervailable subsidy rates because of the large number of exporters/producers involved in the investigation.

On July 28, 2017, the Department determined that it was not practicable in this investigation to examine all of the exporters/producers of ripe olives from Spain because of the large number of identified exporters and producers relative to the resources available at the Department to conduct this investigation.⁸ Further, the Department selected the three exporters/producers accounting for the largest volume of subject merchandise exported to the United States from Spain during the period of investigation (POI), based upon CBP entry data: Aceitunas Guadalquivir S.L.U. (Aceitunas Guadalquivir), Agro Sevilla Aceitunas S.Coop.And. (Agro Sevilla), and Angel Camacho Alimentacion S.L.(Angel Camacho).⁹

C. Questionnaires and Responses

On August 4, 2017, the Department issued its initial questionnaire to the European Commission (EC) and the Government of Spain (GOS) requesting information on programs used by mandatory respondents Agro Sevilla, Aceitunas Guadalquivir, and Angel Camacho (collectively,

³ See “Countervailing Duty Investigation Initiation Checklist: Ripe Olives from Spain,” dated July 12, 2017 (Initiation Checklist).

⁴ See *Ripe Olives from Spain: Initiation of Countervailing Duty Investigation*, 82 FR 33050 (July 19, 2017) (*Initiation Notice*).

⁵ See *Initiation Notice*.

⁶ See Department Memorandum, “Ripe Olives from Spain Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection,” dated July 6, 2017.

⁷ See Letter from the Coalition for Fair Trade in Ripe Olives, “Ripe Olives from Spain: Comments on Respondent Selection,” July 18, 2017.

⁸ See Memorandum to James Maeder from Mary Kolberg, International Trade Compliance Analyst, “Countervailing Duty Investigation of Ripe Olives from Spain: Respondent Selection,” July 28, 2017, at 2-3.

⁹ *Id.* at 5.

the company respondents) which may constitute subsidies under U.S. law, as well as a sourcing questionnaire to the company respondents regarding the sources of their raw olives.¹⁰

On August 14, 2017, the Department received timely responses to the sourcing questionnaire.¹¹ On August 18, 2017, the Department received affiliation responses from respondents.¹² After receiving responses from respondents identifying the sources of their raw olives, the Department issued questionnaires to respondents' largest suppliers, by volume, on September 7, 2017.¹³

On September 7, 2017, the Department placed on the record information about the European Union's Common Agricultural Policy (CAP), and issued a letter to the GOS requesting additional information on the CAP program.¹⁴ On September 14, 2017, the GOS replied to the Department's questions regarding beneficiaries of assistance under CAP.

On September 18, 2017, the Department received a letter from respondents in which they requested that the Department streamline its supplier questionnaire claiming that it would be exceptionally difficult to respond within the time limits set by the Department.¹⁵ Additionally, on September 18, 2017, the Department received responses to its initial questionnaire from the EC and the GOS,¹⁶ and on September 19, 2017, we received timely responses from Agro Sevilla,

¹⁰ For reasons explained in the *Initiation Notice*, we determined that subsidies allegedly provided to producers of raw olives as well as the producers of ripe olives should be included in this investigation. See Initiation Checklist at 6. See also letters to the European Commission, GOS, "Countervailing Duty Investigation on Ripe Olives from Spain: *Initial Questionnaire*," dated August 4, 2017 (Initial Questionnaire); see also letters from the Department to Agro Sevilla Aceitunas, Angel Camacho Alimentacion, S.L., and Aceitunas Guadalquivir S.A. re: Countervailing Duty (CVD) Investigation on Ripe Olives from Spain: Questionnaire on Sources of Raw and Ripe Olives," dated August 4, 2017 (sourcing questionnaire).

¹¹ See letter from Agro Sevilla, "Agro Sevilla Aceitunas S.Coop.And.'s Olive Sourcing Questionnaire Response," dated August 14, 2017; (Agro Sevilla sourcing QR); see also letter from Aceitunas Guadalquivir, "Aceitunas Guadalquivir S.LU.'s Olive Sourcing Questionnaire Response," dated August 14, 2017 (Aceitunas Guadalquivir sourcing QR); see also letter from Angel Camacho, "Angel Camacho Alimentacion S.L.'s Olive Sourcing Questionnaire Response," dated August 14, 2017 (Angel Camacho sourcing QR).

¹² See letter from Agro Sevilla, "Agro Sevilla Aceitunas S.Coop.And.'s Affiliations Questionnaire Response: Ripe Olives from Spain (C-469-818)," dated August 18, 2017; (Agro Sevilla's Affiliation Response); see also letter from Aceitunas Guadalquivir, "Aceitunas Guadalquivir S.LU.'s Affiliation Questionnaire Response: Ripe Olives from Spain (C-469-818)," dated August 18, 2017 (Aceitunas Guadalquivir Affiliation Response); see also letter from Angel Camacho, "Angel Camacho Alimentacion S.L.'s Affiliations Questionnaire Response: Ripe Olives from Spain (C-469-818)," dated August 18, 2017 (Angel Camacho Affiliation Response).

¹³ See letter to Agro Sevilla, "Countervailing Duty (CVD) Investigation of Ripe Olives from Spain: Questionnaire to Affiliated Suppliers of Agro Sevilla Aceitunas S.Coop.And.," dated September 7, 2017; see also letter to Aceitunas Guadalquivir, "Countervailing Duty (CVD) Investigation of Ripe Olives from Spain: Questionnaire to Unaffiliated Suppliers of Aceitunas Guadalquivir, S.L.U.," dated September 7, 2017; see also letter to Angel Camacho, "Countervailing Duty (CVD) Investigation of Ripe Olives from Spain: Questionnaire to Unaffiliated Suppliers of Angel Camacho Alimentacion S.L.," dated September 7, 2017 (Supplier Questionnaire).

¹⁴ See letter to the GOS, "Countervailing Duty Investigation on Ripe Olives from Spain: Publication of the Beneficiaries of CAP Aid," dated September 7, 2017.

¹⁵ See letter from Aceitunas Guadalquivir, Agro Sevilla, and Angel Camacho, "Request for Limiting Olive Supplier Response Burdens," dated September 18, 2017.

¹⁶ See letter from the EC, "Countervailing Duty Investigation of Ripe Olives from Spain - CVD Questionnaire Response," dated September 18, 2017 (EC IQR); see also letter from the GOS, "Response of Government of Spain to the Department's August 3, 2017 Initial Questionnaire," dated September 18, 2017 (GOS IQR).

Aceitunas Guadalquivir, and Angel Camacho.¹⁷ On September 20, 2017, the Department received comments from the petitioner regarding the company respondents' responses to the olive sourcing and affiliation questionnaires.¹⁸

On September 26, 2017, the Department issued additional instructions limiting the reporting required to complete the supplier questionnaires,¹⁹ and the Department later requested that respondents resubmit information on the sourcing of their raw and ripe olives.²⁰ The company respondents provided the Department with revised sourcing data²¹ and responded to our revised supplier questionnaire on October 6, 2017, and October 10, 2017, respectively.²² We issued additional supplemental supplier questionnaires on October 25, 2017,²³ and received timely responses on November 8, 2017.²⁴

We issued supplemental questionnaires to Agro Sevilla on October 10, 2017, to Angel Camacho, and Aceitunas Guadalquivir on October 20, 2017, and to the EU and the GOS on October 25,

¹⁷ See letter from Agro Sevilla, "Initial Questionnaire Response of Agro Sevilla S.Coop.And. Ripe Olives from Spain (C-469-818)," dated September 19, 2017 (Agro Sevilla IQR) ; *see also* letter from Aceitunas Guadalquivir, "Initial Questionnaire Response of Aceitunas Guadalquivir, S.L.U -Ripe Olives from Spain (C-469-818)," dated September 19, 2017 (Aceitunas Guadalquivir IQR) ; *see also* letter from Angel Camacho, "Initial Questionnaire Response of Angel Camacho Alimentacion S.L. -Ripe Olives from Spain (C-469-818)," dated September 19, 2017 (Angel Camacho IQR).

¹⁸ See letter from the petitioner, "CVD Investigation on Ripe Olives from Spain; Comments on Responses to the Olive Sourcing and Affiliation Questionnaires," dated September 20, 2017.

¹⁹ See letter to Aceitunas Guadalquivir, Agro Sevilla, and Angel Camacho, dated September 26, 2017.

²⁰ See memo to the file from Mary Kolberg, re: Ripe Olives from Spain Countervailing Duty Investigation: Clarification of the Department's September 26, 2017 Letter," dated September 27, 2017.

²¹ See letter from Agro Sevilla, "Agro Sevilla Aceitunas S.Coop.And.'s Revised Olive Sourcing Data: Ripe Olives from Spain (C-469-818), dated October 6, 2017 (Agro Sevilla October 6, 2017 sourcing QR); *see also* letter from Angel Camacho, "Angel Camacho Alimentacion, S.L. Revised Olive Sourcing Data: Ripe Olives from Spain (C-469-818)," dated October 6, 2017 (Angel Camacho October 6, 2017 sourcing QR).

²² See letter from Agro Sevilla, "Supplier Questionnaire Response of Agro Sevilla Aceitunas S.Coop.And.," dated October 10, 2017 (Agro Sevilla October 10, 2017 supplier QR); *see also* letter from Aceitunas Guadalquivir, "Supplier Questionnaire Response of Aceitunas Guadalquivir S.L.U.," dated October 10, 2017 (Aceitunas Guadalquivir October 10, 2017 supplier QR); *see also* letter from Angel Camacho, "Supplier Questionnaire Response of Angel Camacho Alimentacion, S.L.," dated October 10, 2017 (Angel Camacho October 10, 2017 supplier QR).

²³ See letter to Agro Sevilla, "Countervailing Duty (CVD Investigation of Ripe Olives from Spain: Supplemental Questionnaire to Agro Sevilla S.Coop.And.," dated October 25, 2017; *see also* letter to Aceitunas Guadalquivir, "Countervailing Duty (CVD Investigation of Ripe Olives from Spain: Supplemental Questionnaire to Aceitunas Guadalquivir, S.L.U.," dated October 25, 2017; *see also* letter from Angel Camacho, "Countervailing Duty (CVD Investigation of Ripe Olives from Spain: Supplemental Questionnaire to Angel Camacho Alimentacion, S.L.," dated October 25, 2017.

²⁴ See letter from Agro Sevilla, "Supplier Supplemental Questionnaire Response of Agro Sevilla S.Coop.And. Ripe Olives from Spain (C-469-818)," dated November 8, 2017 (Agro Sevilla November 8, 2017 supplier QR); *see also* letter from Aceitunas Guadalquivir, Supplier Supplemental Questionnaire Response of Aceitunas Guadalquivir S.L.U. Ripe Olives from Spain (C-469-818)," dated November 8, 2017 (Aceitunas Guadalquivir November 8, 2017 supplier QR); *see also* letter from Angel Camacho, "Supplier Supplemental Questionnaire Response of Angel Camacho Alimentacion, S.L. Ripe Olives from Spain (C-469-818)," dated November 8, 2017 (Angel Camacho November 8, 2017 Supplier QR).

2017.²⁵ Agro Sevilla replied on October 25, 2017,²⁶ and Angel Camacho and Aceitunas Guadalquivir responded on October 30, 2017.²⁷ We received timely supplemental responses from the GOS on November 7, 2017,²⁸ and from the EU on November 8, 2017.²⁹ We issued additional supplemental questionnaires to the company respondents and to the GOS between November 3, 2017 and November 14, 2017,³⁰ to which we received timely responses.³¹

²⁵ See letter to Agro Sevilla, “Countervailing Duty (CVD) Investigation of Ripe Olives from Spain: Supplemental Questionnaire to Agro Sevilla S.Coop. And.,” dated October 10, 2017; see also letter to Angel Camacho, “Countervailing Duty (CVD) Investigation of Ripe Olives from Spain: Supplemental Questionnaire to Angel Camacho Alimentacion S.L.,” dated October 20, 2017; see also letter to Aceitunas Guadalquivir, “Countervailing Duty (CVD) Investigation of Ripe Olives from Spain: Supplemental Questionnaire to Aceitunas Guadalquivir, S.L.U.,” dated October 20, 2017; see also letter to the EC, “Countervailing Duty Investigation on Ripe Olives from Spain: First Supplemental Questionnaire,” dated October 25 2017; see also letter to the GOS “Countervailing Duty (CVD) Investigation of Ripe Olives from Spain: Supplemental Questionnaire to the Government of Spain,” dated October 25, 2017.

²⁶ See letter from Agro Sevilla, “Countervailing Duty (CVD) Investigation of Ripe Olives from Spain: Supplemental questionnaire to Agro Sevilla S.Coop.And.,” dated October 25, 2017 (Agro Sevilla October 25, 2017 SQR).

²⁷ See letter from Angel Camacho, “Supplemental Questionnaire Response of Angel Camacho Alimentacion, S.L.,” dated October 30, 2017 (Angel Camacho October 30, 2017 SQR); see also “Supplemental Questionnaire Response of Aceitunas Guadalquivir S.L.U.,” dated October 30, 2017 (Aceitunas Guadalquivir October 30, 2017 SQR).

²⁸ See letter from the GOS, “Response of the Government of Spain to the Department’s October 25, 2017 Supplemental Questionnaire,” dated November 7, 2017 (GOS November 7, 2017 SQR).

²⁹ See letter from the EC, “Countervailing Duty Investigation on Ripe Olives from Spain -CVD Supplemental Questionnaire response,” dated November 8, 2017 (EC November 8, 2017 SQR).

³⁰ See letter to Agro Sevilla, “Countervailing Duty (CVD) Investigation of Ripe Olives from Spain: Supplemental First-Tier Supplier Questionnaire to Agro Sevilla S.Coop.And.,” dated November 3, 2017; see also letter to the GOS, “Countervailing Duty (CVD) Investigation of Ripe Olives from Spain: Supplemental Questionnaire to the Government of Spain regarding Agro Sevilla Aceitunas S.Coop.And.’s First-Tier Suppliers,” dated November 6, 2017; see also letter to Angel Camacho, “Countervailing Duty (CVD) Investigation of Ripe Olives from Spain: Supplemental questionnaire to Angel Camacho Alimentacion S.L.,” dated November 7 2017; see also letter to Aceitunas Guadalquivir, “Countervailing Duty (CVD) Investigation of Ripe Olives from Spain: Supplemental Questionnaire to Aceitunas Guadalquivir S.L.U.” dated November 7, 2017; see also letter to Agro Sevilla, “Countervailing Duty (CVD) Questionnaire to Agro Sevilla Scoop.And.,” dated November 14, 2017.

³¹ See Aceitunas Guadalquivir, “Supplier Supplemental Questionnaire Response of Aceitunas Guadalquivir S.L.U. (AUL Sales Data) Ripe Olives from Spain (C-469-818),” dated November 13, 2017 (Aceitunas Guadalquivir November 13, 2017 supplier QR); letter from Angel Camacho, “Supplier Supplemental Questionnaire Response of Angel Camacho Alimentacion S.L. (AUL Sales Data) Ripe Olives from Spain (C-469-818),” dated November 13, 2017 (Angel Camacho November 13, 2017 supplier QR); letter from Agro Sevilla, “Supplier Supplemental Questionnaire Response of Agro Sevilla S.Coop.And. (AUL Sales Data) Ripe Olives from Spain (C-469-818),” dated November 13, 2017 (Agro Sevilla November 13, 2017 supplier QR); letter from Angel Camacho, “Second Supplemental Questionnaire to Angel Camacho Alimentacion S.L. Ripe Olives from Spain (C-469-818),” dated November 14, 2017 (Angel Camacho November 14, 2017 SQR); letter from Aceitunas Guadalquivir, “Second Supplemental Questionnaire to Aceitnas Guadalquivir, S.L.U. Ripe Olives from Spain (C-469-818),” dated November 14, 2017 (Aceitunas Guadalquivir November 14, 2017 SQR); letter from the GOS, “Response of the Government of Spain to the Department’s November 6 2017 Supplemental Questionnaire regarding Agro Sevilla Aceitunas S. Coop.And.’s First-Tier Suppliers,” dated November 15, 2017 (GOS November 15, 2017 Supplier QR); letter from Agro Sevilla, “Second Supplemental Questionnaire to Agro Sevilla S.Coop. And. Ripe Olives from Spain (C-469-818),” dated November 15, 2017 (Agro Sevilla November 15, 2017 SQR); letter from the GOS, “Response of the Government of Spain to the Department’s October 25, 2017 Supplemental Questionnaire,” dated November 15, 2017.

On November 15, 2017, the petitioner submitted comments for the Department to consider in the preliminary determination.³² On November 16, 2017, the petitioner requested that the Department align its final determination to the date of the final antidumping determination.³³

D. Postponement of the Preliminary Determination

On August 22, 2017, based on a request from the petitioner, the Department postponed the deadline for the preliminary determination, until November 20, 2017, in accordance with section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).³⁴

E. Period of Investigation

The period of investigation (POI) is January 1, 2016, through December 31, 2016.

F. Injury Test

Because Spain is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Spain materially injure, or threaten material injury to, a U.S. industry. On August 7, 2017, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of ripe olives from Spain that are allegedly subsidized by the Government of Spain.³⁵

III. SCOPE COMMENTS

In accordance with the Preamble, our *Initiation Notice* provided a period of 20 calendar days, until August 20, 2017, for interested parties to raise issues regarding product coverage (*i.e.*, comments on the scope).³⁶ We received no comments regarding the scope of this investigation.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain processed olives, usually referred to as “ripe olives.” The subject merchandise includes all colors of olives; all shapes and sizes of olives, whether pitted or not pitted, and whether whole, sliced, chopped, minced, wedged, broken, or otherwise reduced in size; all types of packaging, whether for consumer (retail) or institutional (food service) sale, and whether canned or packaged in glass, metal, plastic, multi-layered airtight containers (including pouches), or otherwise; and all manners of preparation and

³² See letter from the petitioner, “Petitioner’s Pre-Preliminary Determination Comments on Submissions by Respondents, the EU, and the Government of Spain,” dated November 15, 2017 (Petitioner’s November 15 Comments).

³³ See letter from the petitioner, “Ripe Olives from Spain: Request for Alignment of Final Determination,” dated November 16, 2017.

³⁴ See *Ripe Olives from Spain: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 82 FR 41210 (August 30, 2017).

³⁵ See *Ripe Olives from Spain*, Investigation Nos. 701-TA-582 and 731-TA-1377 (Preliminary), Publication 4718, August 2017.

³⁶ See Preamble at 27323; see also, *Initiation Notice*.

preservation, whether low acid or acidified, stuffed or not stuffed, with or without flavoring and/or saline solution, and including in ambient, refrigerated, or frozen conditions.

Included are all ripe olives grown, processed in whole or in part, or packaged in Spain. Subject merchandise includes ripe olives that have been further processed in Spain or a third country, including but not limited to curing, fermenting, rinsing, oxidizing, pitting, slicing, chopping, segmenting, wedging, stuffing, packaging, or heat treating, or any other processing that would not otherwise remove the merchandise from the scope of the investigation if performed in Spain.

Excluded from the scope are: (1) specialty olives³⁷ (including “Spanish-style,” “Sicilian-style,” and other similar olives) that have been processed by fermentation only, or by being cured in an alkaline solution for not longer than 12 hours and subsequently fermented; and (2) provisionally prepared olives unsuitable for immediate consumption (currently classifiable in subheading 0711.20 of the Harmonized Tariff Schedule of the United States (HTSUS)).

The merchandise subject to this investigation is currently classifiable under subheadings 2005.70.0230, 2005.70.0260, 2005.70.0430, 2005.70.0460, 2005.70.5030, 2005.70.5060, 2005.70.6020, 2005.70.6030, 2005.70.6050, 2005.70.6060, 2005.70.6070, 2005.70.7000, 2005.70.7510, 2005.70.7515, 2005.70.7520, and 2005.70.7525 HTSUS. Subject merchandise may also be imported under subheadings 2005.70.0600, 2005.70.0800, 2005.70.1200, 2005.70.1600, 2005.70.1800, 2005.70.2300, 2005.70.2510, 2005.70.2520, 2005.70.2530, 2005.70.2540, 2005.70.2550, 2005.70.2560, 2005.70.9100, 2005.70.9300, and 2005.70.9700. Although HTSUS subheadings are provided for convenience and US Customs purposes, they do not define the scope of the investigation; rather, the written description of the subject merchandise is dispositive.

³⁷ Some of the major types of specialty olives and their curing methods are:

- “Spanish-style” green olives. Spanish-style green olives have a mildly salty, slightly bitter taste, and are usually pitted and stuffed. This style of olive is primarily produced in Spain and can be made from various olive varieties. Most are stuffed with pimento; other popular stuffings are jalapeno, garlic, and cheese. The raw olives that are used to produce Spanish-style green olives are picked while they are unripe, after which they are submerged in an alkaline solution for typically less than a day to partially remove their bitterness, rinsed, and fermented in a strong salt brine, giving them their characteristic flavor.
- “Sicilian-style” green olives. Sicilian-style olives are large, firm green olives with a natural bitter and savory flavor. This style of olive is produced in small quantities in the United States using a Sevillano variety of olive and harvested green with a firm texture. Sicilian-style olives are processed using a brine-cured method, and undergo a full fermentation in a salt and lactic acid brine for 4 to 9 months. These olives may be sold whole unpitted, pitted, or stuffed.
- “Kalamata” olives: Kalamata olives are slightly curved in shape, tender in texture, and purple in color, and have a rich natural tangy and savory flavor. This style of olive is produced in Greece using a Kalamata variety olive. The olives are harvested after they are fully ripened on the tree, and typically use a brine-cured fermentation method over 4 to 9 months in a salt brine.
- Other specialty olives in a full range of colors, sizes, and origins, typically fermented in a salt brine for 3 months or more.

V. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise. Pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System,³⁸ the AUL in this proceeding is 12 years for olive processors and 10 years for olive growers. The Department notified the respondents of the AUL periods in the Initial Questionnaire and requested that the respondents provide data accordingly. No party in this investigation disputed the allocation periods.

Furthermore, for non-recurring subsidies, we have applied the "0.5 percent test," as described in 19 CFR 351.524(b)(2). Under this test, we divide the amount of subsidies approved under a given program in a particular year by the relevant sales value (*e.g.*, total sales or export sales) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than over the AUL.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), the Department normally attributes a subsidy to the products produced by the company that received the subsidy. However, 19 CFR 351.525(b)(6)(ii)-(v) provides additional rules for the attribution of subsidies received by respondents with cross-owned affiliates. Subsidies to the following types of cross-owned affiliates are covered in these additional attribution rules: (ii) producers of the subject merchandise; (iii) holding companies or parent companies; (iv) producers of an input that is primarily dedicated to the production of the downstream product; or (v) an affiliate producing non-subject merchandise that otherwise transfers a subsidy to a respondent. Further, 19 CFR 351.525(c) provides that benefits from subsidies provided to a trading company which exports subject merchandise shall be cumulated with benefits from subsidies provided to the firm producing the subject merchandise that is sold through the trading company, regardless of affiliation.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets. This section of the Department's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. The *CVD Preamble* to the Department's regulations further clarifies the Department's cross-ownership standard.³⁹ According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other

³⁸ See IRS Pub 946.

³⁹ See *CVD Preamble*, 63 FR at 65401-02.

corporation in essentially the same way it can use its own assets (or subsidy benefits) . . . Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.⁴⁰

Thus, the Department’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists.

The U.S. Court of International Trade upheld the Department’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.⁴¹

Aceitunas Guadalquivir

Aceitunas Guadalquivir is a producer of ripe olives subject to this investigation. In addition to its own response, Aceitunas Guadalquivir provided questionnaire responses for the following three companies and identified their roles:

- Coromar Inv., S.L. (Coromar) – holding company with land assets that produces raw olives used in the production of subject merchandise by Aceitunas Guadalquivir.
- AG Explotaciones Agricolas, S.L.U. (AGEA) – producer of raw olives used in the production of subject merchandise by Aceitunas Guadalquivir.
- Grupo Aceitunas Guadalquivir, S.L. (Grupo Guadalquivir) – holding company of the mandatory respondent.⁴²

We have preliminarily determined that these entities are cross-owned with Aceitunas Guadalquivir because all are ultimately held by the same set of individual shareholders.⁴³ Grupo Guadalquivir is a holding company that holds Aceitunas Guadalquivir; Coromar is an additional reported holding company.⁴⁴ Thus, we preliminarily determine that Grupo Guadalquivir and Coromar are cross-owned with Aceitunas Guadalquivir as provided in 19 CFR 351.525(b)(6). However, Coromar also sells raw olives to Aceitunas Guadalquivir. Coromar reported receiving benefits during the POI that are related to its olive production. That is, it qualified for such subsidies based on the fact it is an olive grower. On this basis, we are preliminarily attributing to Aceitunas Guadalquivir subsidies received by Coromar in accordance with 19 CFR 351.525(b)(6)(iv). To calculate the countervailable subsidy rate from subsidies received by Coromar, we are dividing the benefit amount by the combined sales of Coromar and Aceitunas Guadalquivir, less intercompany sales. Grupo Guadalquivir did not report the receipt of any

⁴⁰ *Id.*, 63 FR at 65401.

⁴¹ See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).

⁴² See Aceitunas Guadalquivir Affiliation Questionnaire Response.

⁴³ See Aceitunas Guadalquivir IQR at 3.

⁴⁴ See Department’s memorandum, “Preliminary Determination Calculation for Aceitunas Guadalquivir, S.L.U.,” dated November 20, 2017 (Aceitunas Guadalquivir Preliminary Calculation Memorandum).

benefits. We also preliminarily determine that AGEA is a cross-owned raw olive supplier to Aceitunas Guadalquivir; therefore, under 19 CFR 351.525(b)(6)(iv) we are preliminarily attributing to Aceitunas Guadalquivir subsidies received by AGEA by dividing the benefit amount by the combined sales of AGEA and Aceitunas Guadalquivir, less intercompany sales.

Agro Sevilla

Agro Sevilla reported that it is a producer of subject merchandise that sources raw olives from its affiliates, with which it is not cross-owned. The company explained that it operates as a second-tier cooperative that purchases raw olives from its 11 members -- S.C.A. Agropecuaria de Herrera; La Purisima Concepcion de Alameda, S.C.A.; Olivarera San Jose de Lora de Estepa, S.C.A.; Agricola Roda, S.C.A.; Olivarera S. Isidro de Gilena, S.C.A.; Ntra. Sra. Del Rosario, S.C.A.; Olivarera del Genil, S.C.A.; Agrojara, Sdad.Coop.And., S.C.A.; Agropecuaria Industrial (Capi-Ecija); Coop. Olivar de Casariche, S.C.A.; and Utreace, S.C.A. Each of these 11 members is considered a first-tier cooperative and is comprised of hundreds of members that grow raw olives. According to Agro Sevilla, the first-tier cooperatives establish with Agro Sevilla specific production capacities and commit to supply a specific volume of raw olives. Agro Sevilla explains that its 11 members each contribute capital proportionate to its production contribution; according to Agro Sevilla, this capital does not reflect a share in the assets of the company, and if a member chooses to leave Agro Sevilla, its capital contribution is returned.

We reviewed the cooperative's by-laws and found that each member has equal voting rights regardless of its capital contribution. Agro Sevilla is managed via a general assembly comprised of one representative from each first-tier cooperative. The agenda for the general assembly meeting is established by the Consejo Rector, the functional equivalent of the Board of Directors, which is comprised of representatives of each of the 11 first-tier cooperatives. All decisions made by the Consejo Rector require a simple majority vote.⁴⁵

Likewise, Agro Sevilla maintains that it has no ability to control the assets of its 11 members and that there is no ownership or managerial control over the 11 cooperatives or the individual farmers that comprise the first-tier cooperatives. Thus, the relationships between Agro Sevilla and its 11 member cooperatives do not meet the definition of cross-ownership under 19 CFR 351.525(b)(6)(vi); therefore, we preliminarily determine that there is no basis to attribute to Agro Sevilla subsidies provided to the 11 first tier cooperatives that are members of Agro Sevilla. However, given our relative inexperience with corporate structures like that of Agro Sevilla, an agricultural cooperative that is formed by 11 other cooperatives, we will continue to examine this issue.

Agro Sevilla reported that it operates several subsidiaries, with whom it is cross-owned, and further reported that none of the subsidiaries produces subject merchandise, provides an input into the production of subject merchandise, or is a parent company of Agro Sevilla.⁴⁶ Therefore, under 19 CFR 351.525(b)(6), we preliminarily determine that there is no basis to attribute to Agro Sevilla any subsidies that may have been provided to these subsidiaries. Thus, in

⁴⁵ See Agro Sevilla Affiliation Response.

⁴⁶ *Id.*

accordance with 19 CFR 351.525(b)(6)(i), we are preliminarily attributing subsidies received by Agro Sevilla to the products produced solely by Agro Sevilla.

Angel Camacho

Angel Camacho reported that it is a producer of subject merchandise that sources raw olives from two cross-owned affiliates and numerous non-affiliated suppliers.⁴⁷ Angel Camacho identified Grupo Angel Camacho Alimentación (Grupo Camacho) as its parent company with 100-percent ownership.⁴⁸ Angel Camacho reported that Grupo itself is a holding company with no productive operations of its own.⁴⁹ We are preliminarily treating Grupo as a cross-owned parent company and are attributing any subsidies received by Grupo to the sales of Angel Camacho, net intercompany transactions, pursuant to 19 CFR 351.525(b)(6)(iii).

Angel Camacho also identified Cuarterola S.L.(Cuarterola) and Cucanoche S.L. (Cucanoche) as input suppliers that are cross-owned through Grupo Camacho's majority ownership.⁵⁰ We are thus preliminarily attributing to Angel Camacho subsidies received by either of these cross-owned raw olive suppliers to the combined sales of Angel Camacho and the relevant raw olive supplier, net of intercompany transactions, pursuant to 19 CFR 351.525(b)(6)(iv).

Angel Camacho reported that a controlled affiliate involved in the packing of olives, Internacional Envasadora SA, was absorbed by Grupo Camacho in 2008 and the business activities were transferred to Grupo Camacho.⁵¹ We are using available sales information for Internacional Envasadora to calculate benefits received during its operation and considering any benefits to be benefits to Angel Camacho.

Angel Camacho reported that it is affiliated with several other companies through its parent company, Grupo Camacho. Angel Camacho further reported that none of these affiliates produce subject merchandise, provide an input into the production of subject merchandise, or is a parent company of Angel Camacho.⁵² Therefore, under 19 CFR 351.525(b)(6), we determine that there is no basis to attribute to Angel Camacho any subsidies that may have been provided to these affiliates.

C. Applicability of Section 771(5B)(F) of the Act

Pursuant to section 702(b)(4)(A)(ii) of the Act, the Department held consultations with the EC and the GOS on July 10, 2017.⁵³ At the consultations, the EC and the GOS presented their views that the Department should not initiate the countervailing duty investigation because the subsidy programs alleged by the petitioner meet the requirements of Article 13 and Annex 2 of the WTO

⁴⁷ See Angel Camacho Affiliation Response at 5.

⁴⁸ *Id.* at 4 and Exhibit 1.

⁴⁹ *Id.* at Exhibit 2.

⁵⁰ *Id.* at 5 and Exhibit 2.

⁵¹ *Id.* at 7.

⁵² *Id.* at Exhibits 1 and 2.

⁵³ See Ex-Parté Memorandum, "Ripe Olives from Spain Countervailing Duty Petition: Consultations with Officials from Spain and European Union," dated July 11, 2017.

Agreement on Agriculture, and therefore are not actionable.⁵⁴ The EC, the GOS, and the company respondents have argued as well in their questionnaire responses, that under the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement), certain subsidies are not countervailable.⁵⁵

The Department is guided by the statute in conducting this investigation. Section 771(5B)(F) of the Act, which addresses the implementation of the WTO Agreement on Agriculture, states the following:

Domestic support measures that are provided with respect to products listed in Annex 1 to the Agreement on Agriculture, and that the administering authority determines conform fully to the provisions of Annex 2 to that Agreement, shall be treated as noncountervailable.

However, Section 771(5B)(G)(ii) implements a time limit for the application of this provision, stating, in relevant part, “[s]ubparagraph (F) shall not apply to imports from a WTO member country at the end of the 9-year period beginning on January 1, 1995.”

As further explained in the Statement of Administrative Action (SAA),⁵⁶ the Act is consistent with the obligations under Article 31 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement):

Under Article 31 of the Subsidies Agreement, Article 8 {“Identification of Non-Actionable Subsidies”} expires in five years unless there is an agreement to extend its application . . . Pursuant to Article 13 of the Agreement on Agriculture, Annex 2 domestic support measures are non-actionable only for the duration of the implementation period, which, pursuant to Article 1(f) of that Agreement, is the nine-year period commencing in 1995.

Thus, for purposes of administering the Act, the requirement to treat agricultural subsidies as not countervailable no longer applies to imports of WTO Member countries – in this case, Spain – after January 1, 2004. With regard to the European Union, a similar interpretation applies. As of the expiration of the nine-year period, the Department is not required under the Act to consider assistance provided by the EU or the GOS to agricultural products as not countervailable. As such, the Department initiated, and is conducting, this investigation under the authority granted by the Act.

D. Application of Section 771B of the Act

Section 771B of the Act addresses the calculation of countervailable subsidies on certain processed agricultural products:

⁵⁴ See letter from the Delegation of the European Union to the United States of America, “Countervailing Duty Petition on Ripe Olives from Spain,” dated July 10, 2017.

⁵⁵ See EC IQR at 17; see also GOS IQR at 9.

⁵⁶ Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 316, 103d Cong., 2d Session (1994) at pages 267 – 268.

In the case of an agricultural product processed from an agricultural product in which—

- (1) the demand for the prior stage product is substantially dependent on the demand for the latter stage product, and
- (2) the processing operation adds only limited value to the raw commodity,

countervailable subsidies found to be provided to either producers or processors of the product shall be deemed to be provided with respect to the manufacture, production, or exportation of the processed product.

Based on the information in the CVD Petition, the Department found that the petitioner satisfied the criteria under 771B of the Act and initiated the investigation.⁵⁷ In support of its argument regarding the applicability of section 771B(1) of the Act, the petitioner claimed that demand for raw olives is substantially dependent on the demand for processed olives.⁵⁸ The petitioner stated that, because all olives must be processed to be edible, raw olives are wholly dedicated to the production of a downstream product, either olive oil or table olives (including ripe olives).⁵⁹ To support its claim that the processing of raw olives into ripe olives adds only limited value in 771B(2), the petitioner provided a summary of the cost of production of ripe olives, which, according to the petitioner, demonstrates that the processing of raw olives into ripe olives adds limited value, *i.e.*, less than three percent of the final value.⁶⁰ The petitioner also maintained that the processing of raw olives into ripe olives does not change the essential character of the raw olive.⁶¹

The GOS and the company respondents disagree with the applicability of section 771B of the Act.⁶² Both the GOS and the company respondents argue that the demand for raw olives is not substantially dependent on the demand for ripe olives. They provided information that table olives (which include ripe olives) produced in Spain are derived primarily from the hojiblanca and manzanilla varieties, which constitute more than 71 percent of the raw olives processed into table olives in Spain, and that not all of these olives are used to produce subject merchandise, but instead are used to produce non-subject table olives.⁶³ They further claim that almost 90 percent of the manzanilla olives and 48 percent of the hojiblanca olives sent to table olive production were processed into green olives, not subject to investigation.⁶⁴ Moreover, the company respondents contend that hojiblanca olives are dual use olives and may be consumed in the production of table olives (including ripe olives and green olives) or of olive oil. The GOS explains that, of the 7.4 million tons of raw olives produced in Spain in 2016, only eight percent

⁵⁷ See Initiation Checklist at 7.

⁵⁸ *Id.* at 6.

⁵⁹ *Id.*

⁶⁰ *Id.* at 6-7.

⁶¹ *Id.* at 7.

⁶² See GOS November 7, 2017, Supplemental Questionnaire Response (GOS November 7, 2017 SQR); Agro Sevilla Affiliation Response at 8.

⁶³ *Id.*

⁶⁴ *Id.*

were devoted to table olive production.⁶⁵ The company respondents further explain that of the 7.4 million tons, only 206,000 tons, or approximately three percent, were used to produce ripe olives (*i.e.*, the olives subject to this investigation).⁶⁶ Thus, they contend that the demand for raw olives is not substantially dependent on the demand for the ripe olives that are subject to this investigation; rather, the demand for raw olives is substantially dependent on the demand for olive oil production and other forms of table olives.⁶⁷

In addition, the company respondents claim that the processing operation adds more than “limited value.” First, they claim that transforming a raw inedible product to an edible processed product definitively changes the essential character of the raw product.⁶⁸ Second, they claim that the value added to transform a raw table olive into a processed ripe olive is substantial.⁶⁹ Further, the company respondents claim that packaging is an essential element of the processing operation, and they maintain that even the petitioner acknowledges that all processing, including packaging, accounts for 60 percent of the total cost of the processed product.⁷⁰

In comments submitted on November 15, 2017, the petitioner argues that section 771B(1) of the Act applies to olive grower subsidies because demand for the prior stage product – raw olives – is entirely dependent on the demand for the latter stage product – processed olives.⁷¹ The petitioner also states that contrary to the respondents’ proclamations that section 771B(1) of the Act does not apply, because only a portion of raw olives is processed into ripe olives, the Department found the first prong was met when less than half of the raw product goes towards further processing.⁷² Moreover, the petitioner argues that the statutory language does not require that the latter stage product must be the subject merchandise or the foreign like product. The petitioner also points to the legislative history, particularly, the statements made by Senator Baucus who argued for the Senate bill that became 771B of the Act, as support for interpreting the statute more liberally.⁷³ In addition, the petitioner notes that the Department has acknowledged that the “continuous line of production” concept, that is, if (1) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and (2) the processed agricultural product is produced substantially or completely from the raw product, lends further support to a finding that the first prong is met.⁷⁴

For the second prong of section 771B, the petitioner contends that the Department has found this prong to be met where processing operations do not change the “essential character” of the raw

⁶⁵ See GOS November 7, 2017 SQR at 4.

⁶⁶ See Agro Sevilla November 8, 2017 supplier SQR.

⁶⁷ *Id.* at 5.

⁶⁸ *Id.* at 4.

⁶⁹ *Id.* at 4-5.

⁷⁰ *Id.* at 5.

⁷¹ See Petitioner’s November 15 Comments at 5.

⁷² *Certain Frozen Warmwater Shrimp from China*: Final Affirmative Countervailing Duty Determination, 78 FR 50391 (August 19, 2013) and accompanying Issues and Decision Memorandum (*Shrimp from China*), at Comment 5.

⁷³ See Petitioner’s November 15 Comments at 6.

⁷⁴ *Id.* at 7.

product. The petitioner cites *Rice from Thailand*⁷⁵ and *Shrimp from China*,⁷⁶ two cases where the Department determined that where the processing operation left the raw agricultural product essentially unchanged in composition and character, it must be considered to have added only limited value to the raw commodity. In so arguing, the petitioner reiterates the plain language of the statute which refers to “the processing operations.” The petitioner argues that the various brining and debittering steps merely “bring out the natural character of the olives,” and the various packaging and packing steps merely allow for the olives to be marketed; neither change the “essential character.” In other words, while processing removes bitterness and adds flavor and tenderness, it does not change the essence of the product – they are olives when they are raw and they are olives when they are processed. Furthermore, the petitioner states that, exclusive of packaging costs, the cost of processing ripe olives amounts to less than three percent of the total cost and the cost of raw olives is the single largest component, roughly 40 percent, of the processed product.⁷⁷

For the preliminary determination, the Department finds that both prongs of section 771B of the Act are satisfied. First, the statute does not provide a definition for the term “latter stage product” as used within 771B; as such, the statutory language does not require the latter stage product to be the subject merchandise or the foreign like product. Therefore, the Department does not believe that “the latter stage product” is defined narrowly to only include subject merchandise, ripe olives. Consistent with the legislative history of the Act,⁷⁸ section 771B was enacted by Congress in order to capture the subsidies that are provided to raw agricultural products that are processed into a next-stage product, such as live swine into pork⁷⁹ and paddy rice into milled rice. In this investigation, similarly, a raw olive is simply processed into the next-stage olive product. Therefore, we find that all processed olives should be included when considering the latter stage product in this context.

In *Shrimp from China*, the Department stated that even if it accepted the Government of China’s claim that only 25 percent of fresh shrimp was ultimately used for processing into frozen shrimp, it would be reasonable to consider this amount “substantial” and to find that the criterion under section 771B(1) was met.⁸⁰ The Department found that the provision of one quarter of the raw

⁷⁵ See *Rice from Thailand; Final Results of Countervailing Duty Administrative Review*, 59 FR 8906, 8909 (February 24, 1994) (*Rice from Thailand*).

⁷⁶ See *Shrimp from China* at Comment 5.

⁷⁷ These cost estimates were provided by the Musco Family Olive Company, a member of the Coalition for Fair Trade in Ripe Olives, the petitioner.

⁷⁸ See CVD Petition at Exhibit III-19 (citing 133 Congressional Record S8814 (1987) (Statement from Senator Baucus: “a foreign nation could avoid a U.S. countervailing duty on an agricultural product merely by doing some minor processing of the agricultural product before it is exported to the United States. For example, a duty on raspberries could be avoided by merely freezing the raspberries before they are shipped to the United States...and that is why Senator Grassley and myself, with the support of Senator Pryor, are today offering an amendment to the trade bill that directs the Commerce Department to place duties on processed agricultural products if the raw agricultural product is being subsidized.”)).

⁷⁹ See *Final Affirmative Countervailing Duty Determination; Live Swine and Fresh, Chilled, and Frozen Pork Products from Canada*, 50 FR 25097 (June 17, 1985) (*Live Swine from Canada*).

⁸⁰ However, the Department also considered other information on the record (company-specific yield loss rate information) indicating that the percentage of fresh shrimp used for processing into frozen shrimp was 44.7 percent and reached a similar conclusion.

product to the production of the processed product was “substantial,” and the demand for fresh shrimp was therefore, “dependent” upon demand for frozen shrimp, because if demand for frozen shrimp were to cease, one quarter of the fresh shrimp market would collapse.⁸¹ To date the Department has not found, or otherwise established, a specific minimum threshold for what amount is considered “substantially dependent.” Rather, the Department’s analysis has focused on the nature of the raw product and the market, as it did in *Shrimp from China*.

In this case, we find that while the percentage of raw olives that are used to produce table olives (including ripe olives) is smaller in comparison to the percentage of raw olives used to produce olive oil, these olives, nevertheless, are grown to produce table olives, which include ripe olives. As we noted above, information on the record shows that eight percent of the raw olives grown in Spain are processed into table olives.⁸² The Department finds that the figure eight percent to be “substantial,” and that the demand for raw olives is “dependent” upon demand for table olives, because if the latter demand were to cease, eight percent of the market, producing millions of dollars in export sales to the United States,⁸³ at a minimum, would be negatively affected. Furthermore, the demand by the processors for 206,000 tons of raw olives is dependent upon the demand for ripe olives. Thus, we preliminarily determine that the demand for these unprocessed, raw olives, is “substantially dependent” on the demand for table olives, including ripe olives, in accordance with section 771B(1) of the Act.

As for 771B(2), only the petitioner provided specific cost information supporting a quantitative analysis of the “limited value” in this prong.⁸⁴ The respondent companies and the GOS were asked to “provide quantitative data in addressing this factor,” but did not provide specific data in response. Rather, the GOS and the respondents relied on the inverse of the petitioner’s statement that if 40% of the cost of the processed olive is attributable to the cost of the raw input, then it must be true that the remaining 60% of the product value arises from the costs of processing, packing, and packaging the processed product.⁸⁵ However, we note that in prior cases, including *Rice from Thailand* and *Pork from Canada*,⁸⁶ the Department did not include in its analysis of value any costs associated with packaging, labeling, or similar post-processing activities. Therefore, absent quantitative data with supporting documentation regarding the value of processing, exclusive of packing and packaging activities, and our past practice of considering only processing activity values, we find that the only information demonstrating the value of processing is the information submitted by the petitioner in the CVD Petition. As such, we preliminarily find that record evidence shows there is a three percent value for processing the raw input and that represents a limited value added to the raw commodity, in accordance with section 771B(2) of the Act. Further, we preliminarily find that irrespective of the relationship between cost and value, the processing operation does not change the essential character of the olive.

⁸¹ See *Shrimp from China* at Comment 5.

⁸² See GOS November 7, 2017 SQR at 4.

⁸³ See CVD Petition at Exhibit I-6.

⁸⁴ As noted above, according to the petitioner, only the cost of processing raw olives into ripe olives adds a 3% value to the 40% value of the raw input. This excluded packing and packaging costs.

⁸⁵ See GOS November 7, 2017 SQR at 4.

⁸⁶ See *Final Affirmative Countervailing Duty Determination: Fresh, Chilled and Frozen Pork from Canada*, 54 FR 30774 (July 24, 1989) (*Pork from Canada*).

Given the above, for purposes of determining that the benefits provided to olive growers benefit the processors of ripe olives, in accordance with section 771B, we have preliminarily calculated a weighted-average per kilogram benefit using the information provided by all the reporting olive growers. As shown in the preliminary calculation memorandum for each mandatory respondent company, to determine the benefit attributable to the mandatory respondents, we multiplied this benefit by the volume in kilograms of raw olives purchased by each respondent.⁸⁷ We divided this benefit by the respondent's sales of olives and olive products to determine the *ad valorem* countervailable subsidy rate.

E. Denominators

In accordance with 19 CFR 351.525(b)(1)(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. We have identified the denominator we used to calculate the countervailable subsidy rate for each program, as discussed below and in the calculation memoranda prepared for this preliminary determination.⁸⁸

F. Discount Rates

The Department is investigating non-recurring, allocable subsidies that the respondents received.⁸⁹ Consistent with 19 CFR 351.524(d)(3)(i)(C), we have used, as our discount rate, information provided by the GOS from the Banco De España. For years in which a respondent company was approved for a non-recurring subsidy and for which Banco de España did not report, and for which no respondent company provided interest rate information, we relied on data from the International Monetary Fund's International Financial Statistics. The discount rates used in our preliminary calculations are provided in the preliminary calculation memorandum for each mandatory respondent company.

VI. PARTIAL USE OF FACTS AVAILABLE

Legal Standard

Sections 776(a)(1) and (2) of the Act provide that the Department shall, subject to section 782(d) of the Act, apply "facts otherwise available" if necessary information is not on the record or an interested party or any other person: withholds information that has been requested; fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; significantly impedes a proceeding; or provides information that cannot be verified as provided by section 782(i) of the Act.

⁸⁷ See Memoranda to the File: Preliminary Determination Calculations for Aceitunas Guadalquivir, S.L.U.; Preliminary Determination Calculations for Agro Sevilla Aceitunas S.Coop.And; and, Preliminary Determination Calculations for Angel Camacho Alimentacion S.L, dated concurrently with this preliminary determination.

⁸⁸ *Id.*

⁸⁹ See 19 CFR 351.524(b)(1).

We preliminarily find that Aceitunas Guadalquivir, Agro Sevilla, and Angel Camacho withheld the necessary information that was requested of it and failed to provide information in the form and manner requested. We requested that each mandatory respondent solicit information from a certain number of their suppliers of raw olives. Each respondent provided information from numerous suppliers, and from numerous olive growers that provided raw olives to the non-grower suppliers, and this information is sufficient for us to examine subsidies provided to olive growers, for purposes of this preliminary determination. However, no respondents were able to provide responses for all of the suppliers for which we requested information. Thus, the Department must rely on “facts otherwise available” for purposes of the preliminary determination with regard to calculating the benefit to the olive processors from the assistance provided to the olive growers, pursuant to section 776(a)(1)(a)(A)-(B) of the Act. Thus, for those olive growers for which the respondents were not able to provide the amount of assistance they received, and for whom we cannot calculate a weighted per kilogram benefit, we are using, as partial facts available, the simple average of the weighted per kilogram benefit for all reporting growers or suppliers which reported producing raw olives and provided a questionnaire response.

VII. ANALYSIS OF PROGRAMS

Based upon our analysis of the record and the responses to our questionnaires, we preliminarily determine the following:

A. Programs Preliminarily Determined To Be Countervailable

European Union (EU) Common Agricultural Policy (CAP)

The petitioner alleged that EU subsidies provided to olive growers, in the form of annual grants to olive growers, benefit processors of ripe olives, through their purchases of raw olives. The petitioner further alleges that despite the EU’s claims that grants currently provided to olive farmers are not provided based on the crop type, the regulations that govern the current annual grant-to-farmer program for olive growers state that the grant amount calculation is essentially based on an earlier form of the annual grant-to-farmer program. Because this earlier program determined annual grant amounts based on the type of crop and the volume of production, the calculation of the current annual grant amount is effectively still based on the type of crop and the volume of production. All respondents, and many the growers surveyed, reported receiving assistance under various aspects of the Common Agricultural Policy.

Basic Payment Scheme (BPS)

In 2013, the EU began to develop the BPS with three main sub-programs: Direct Payment, Greening, and Aid to Young Farmers.⁹⁰ BPS became effective in 2015 per Council Regulation

⁹⁰ See EU IQR at Exhibit 13 “Council Regulation (EC) No 1307/2013.”

(EC) No 1307/2013, and applications were submitted in 2014.⁹¹ We initiated on all three of these subprograms of the BPS.⁹² All three programs provide grants to farmers annually.⁹³

The funding for BPS and these three sub-programs is from the European Agricultural Guarantee Fund (EAGF), the source of all CAP I program funding.⁹⁴ EU Member States manage the payment to beneficiaries through national or regional paying agencies.⁹⁵ Spain created 50 regions which were determined using farmland data that was collected in 2003 for purposes of implementing the Single Payment System (SPS), an earlier program that provided annual grants to farmers.⁹⁶ Each EU Member State was required to collect data under a geographical indicator system (GIS) per Council Regulation (EC) No 1638/98 (5) Article 2(3),⁹⁷ and the information collected included the area in hectares, the types of crops on these hectares, the amount of crop these hectares produced during the periods 1999 to 2002 or 2000 to 2002, and the amount provided under the annual grant-to-farmer program for those same periods.⁹⁸ These 50 agricultural regions, which Spain created using this historical farmland data, facilitate the identification and distribution of eligible payments under BPS sub-programs. The characteristics of each region, which were categorized to reflect “the traditional agronomic practices being carried out in them...have, as an indicative element, a reference value represented by a regional rate,” are used in the calculation of the grant amount a farmer is eligible to receive under the BPS – Direct Payment and BPS- Greening programs.⁹⁹

To create each region, Spain used “the agricultural district, as a geographical reference unit... known by the agricultural sector, in which municipalities with similar agronomic characteristics are grouped together” as an administrative criterion.¹⁰⁰ Each region’s territorial definition is based on “their productive potential and the productive orientation determined in the 2013 campaign...” and this “productive orientation” is categorized as “rainfed land, irrigated land,

⁹¹ See EU IQR at Exhibit 13 “Council Regulation (EC) No 1307/2013” (1).

⁹² See Initiation Checklist at 7-10.

⁹³ See EU IQR at 2, 34, and 45.

⁹⁴ See EU IQR at 3.

⁹⁵ See GOS SQR at Exhibit 20 “Official Spanish Gazette: Order AAA/1747/2016” which states that the “establishment of a uniform national implementation model based on agricultural regions” is based on criteria cited in Council Regulation (EC) No. 1307/2013 section 23.1; specifically, “administrative criteria, agronomic and socioeconomic.” Spain carried this out through Royal Decree 1076/2014. See GOS IQR Exhibit A001.

⁹⁶ The GOS states that the regional application model of BPS in Spain was implemented based on Article 23.1 of Council Regulation (EC) No. 1307/2013. See GOS SQR at 26; see also EU IQR at Exhibit 13 “Council Regulation (EC) No 1307/2013.”

⁹⁷ See EU IQR Exhibit 11 “Council Regulation (EC) No. 1638/98.”

⁹⁸ See EU IQR at Exhibit 12 “Council Regulation (EC) No 1782/2003;” see also GOS SQR at 26. Also, Spain’s GIS system is called “the geographic identification system of agricultural plots (SIGPAC). See GOS SQR at Exhibit 18.

⁹⁹ Specifically, the “entitlement payment,” which is also described as the “basic payment right” is determined using the region’s rate. See GOS SQR Exhibits 18 “Official Spanish Gazette: Order AAA/544/2015,” 19 “Newsletter No 2: Basic Payment Entitlement Allocation,” 19, and 20 “Official Spanish Gazette: Order AAA/1747/2016.”

¹⁰⁰ See GOS SQR at 26 and Exhibits 18 “Official Spanish Gazette: Order AAA/544/2015,” and 20 “Official Spanish Gazette: Order AAA/1747/2016,” which states that Royal Decree 1076/2014, of December 19th, implemented the allocation of BPS rights and established a “uniform national implementation model based on agricultural regions, which took into account the three basic criteria cited in Council Regulation (EC) No. 1307/2013...” The “basic criteria” cited are administrative criteria, agronomic characteristics, and socioeconomic impact of crops on agricultural districts.

permanent crops and permanent pastures.”¹⁰¹ Olive groves are considered permanent crops.¹⁰² This territorial definition determines each region’s “regional rate,” which is used to determine the value of each hectare of farmland’s “basic payment entitlement.” Because of this, each basic payment entitlement amount will be weighted by the regional reference value to which it corresponds. In addition, each farmland’s entitlement value determines the amount of funds beneficiaries received in 2014 is used in determining the amount of funds Spain should receive under BPS by using each region’s “regional rate.”¹⁰³

As we noted above, a regional rate is used to calculate the eligible grant amount under two of the BPS programs. The calculation begins with determining an “initial value,” as instructed by Council Regulation (EC) 1307/2013 Article 26 and implemented by Royal Decree 1076/2014.¹⁰⁴

Under Regulation (EU) 1307/2013, Article 26 (3) states that the initial value is

{a} fixed percentage of the *value of the entitlements*, including special entitlements, which the farmer held on the date of submission of his application for 2014 *under the single payment scheme*, in accordance with Regulation (EC) No 73/2009, shall be divided by the number of payment entitlements he is allocated in 2015, excluding those allocated from the national or regional reserves in 2015.¹⁰⁵

The Spanish regulations regarding the implementation of BPS, Royal Decree 1076/2014, state that

{f}or the calculation of the initial unitary value, the level of payments received in the 2014 campaign, before deduction and exclusions, corresponding to the aid schemes paid in that campaign, amounts of which remain uncoupled or are partially or totally decoupled from 2015 onwards, shall be taken as a reference. These amounts correspond to the single payment scheme as a decoupled payment . . .¹⁰⁶

Based on these regulations, a region’s value is the initial value multiplied by an adjustment coefficient divided by the number of hectares with entitlement values. These regulations also state that the initial value is based on the amounts provided under SPS, the annual grant-to-farmer program in place prior to the implementation of the BPS in 2015.¹⁰⁷ These regulations

¹⁰¹ The “2013 campaign” refers to the SPS program. The weights assigned to each characteristic are: rainfed land (0.568), irrigated land (1,717), permanent crop (1), and permanent pastures (0.376). See GOS IQR at 8-9, and see GOS SQR at 26 and Exhibit 18 “Official Spanish Gazette: Order AAA/544/2015” and 19.

¹⁰² See GOS IQR at 44.

¹⁰³ See GOS SQR at 26 and Exhibits 18 “Official Spanish Gazette: Order AAA/544/2015” and 19.

¹⁰⁴ See EU IQR Exhibit 13 “Council Regulation (EC) No 1307/2013,” see EU IQR Exhibit 9 “Council Regulation (EC) No. 73/2009, and see GOS QR at 20-22 and Exhibits A001 “Royal Decree 1075/2014” and A002 “Royal Decree 1076/2014.”

¹⁰⁵ Emphasis added.

¹⁰⁶ See GOS IQR Exhibit A002 “Royal Decree 1076/2014.”

¹⁰⁷ See EU IQR Exhibit 13 “Council Regulation (EC) No 1307/2013,” see EU IQR Exhibit 9 “Council Regulation (EC) No. 73/2009, and see GOS QR at 20-22 and Exhibits A001 “Royal Decree 1075/2014” and A002 “Royal Decree 1076/2014.”

also state that the adjusted coefficient incorporates into the equation the amount of payments received in 2014 under SPS.¹⁰⁸ Therefore, the value that is divided by the number of eligible hectares to determine each region's value is based on the amount that farmer received per hectare in 2014 under SPS. In Spain, this value is also multiplied by the "productive orientation" weight, *e.g.* permanent crops and permanent pasture classifications receive weights of 1 percent and 0.376 percent, respectively.¹⁰⁹ Using this methodology, each of Spain's 50 regions has an assigned "unit of value" which varies based on the differences in the amounts farmers received under SPS in those regions. The Council Regulation (EC) 1307/2013 (22) acknowledges these variations in individual payments and that the differences are based on the use of historical references:

Due to the successive integration of various sectors into the single payment scheme and the subsequent period of adjustment granted to farmers, it has become increasingly difficult to justify the existence of significant individual differences in the level of support per hectare, resulting from use of historical references.¹¹⁰

The application to receive grants under the BPS subprograms Direct Payment and Greening includes the total entitlement value for the farm and this determines the amount of assistance the farmer will receive under these two BPS subprograms. To calculate a farm's total entitlement value, the number of hectares is multiplied by that location's regional value.¹¹¹ In summary, two farms of the same size can have two different total entitlement values if there is a historical difference in the amount of grant money the different regions previously received under SPS.¹¹²

SPS

As discussed above, the amount of assistance provided under BPS and its two subprograms, Direct Payment and Greening, is based on the annual grant amount provided per hectare under SPS in 2013. Specifically, the grant amounts provided under SPS in 2014 were based on applications submitted in 2013 and on 2013 calculation of the entitlement per hectare. The Council Regulation (EC) 1307/2013 Article 26(2) states:

A fixed percentage of the payments the farmer received for 2014 under the single payment scheme, in accordance with Regulation (EC) No. 73/2009, before reductions and exclusions provided for in Chapter 4 of Title II of that Regulation, shall be divided by the number of payment entitlements he allocated in 2014,

¹⁰⁸ See GOS IQR Exhibit A002 "Royal Decree 1076/2014" Section 9, and see GOS SQR at Exhibit 18 "Official Spanish Gazette: Order AAA/544/2015," 19 "Newsletter No 2: Basic Payment Entitlement Allocation," and 20 "Official Spanish Gazette: Order AAA/1747/2016."

¹⁰⁹ See GOS QR at Exhibit A002 "Royal Decree 1076/2014," and see GOS SQR at Exhibit 18 "Official Spanish Gazette: Order AAA/544/2015."

¹¹⁰ See EU IQR Exhibit 13 "Council Regulation (EC) No 1307/2013, and see EU IQR Exhibit 9 "Council Regulation (EC) No. 73/2009."

¹¹¹ See GOS QR Exhibits A001 "Royal Decree 1075/2014" and A002 "Royal Decree 1076/2014." and see GOS SQR at Exhibit

¹¹² See EU IQR Exhibit 13 "Council Regulation (EC) No 1307/2013, and see EU IQR Exhibit 9 "Council Regulation (EC) No. 73/2009."

excluding those allocated from the national reserve or regional reserves in 2015.¹¹³

The payment entitlement amount received in 2014 and applied for in 2013 under SPS, incorporates all annual grants provided to farmers since 2003, when the first CAP program was created along with its sub-programs, SPS and Aid to Olive Groves, in accordance with Council Regulation (EC) No. 1782/2003.¹¹⁴ Both programs provided annual grants to farmers.

The SPS grant amounts were calculated using a value of entitlements per hectare, like BPS' value of entitlement per hectare calculation.¹¹⁵ To determine the SPS entitlement per hectare value, the calculation relied on a "referenced amount." This referenced amount was the average of the total payment amounts under the annual grant-to-farmer program in place from 1999-2002, which for olive growers was the Common Organization of Markets in Oils and Fats program.¹¹⁶

The annual grant-to-farmer payments provided under the Common Organization of Markets in Oils and Fats program, which was in effect from 1997 until 2003 and in accordance with Council Regulation (EC) No. 136/66, provided annual grant-to-farmer payments based on crop type and production levels.¹¹⁷ Both olive oil and table olives were identified as products to receive production aid under this program.¹¹⁸

To calculate the SPS grant payment amounts to the table olive industry, the reference amount was established as a percentage of the grant payment amounts provided to the olive oil industry. The reference period for olive oil and table olives was from the 1999 through 2002, and the payments provided during this period were based on the type of crop grown on a farm and how much olive oil or table olives it produced. Specifically, hectares that grew olives for olive oil production used the equation "132.25/100kg" to calculate the value for that hectare. The value of a hectare of olives grown to produce table olives used a different calculation, in which the ratio of 100kg of processed table olives was equal to 11.5 kg of olive oil eligible for production aid.¹¹⁹ Once the value per hectare was determined using this calculation, a farmer would apply for an amount of aid equal to the number of hectares multiplied by the value of each hectare. An

¹¹³ See EU IQR Exhibit 13 "Council Regulation (EC) No 1307/2013" (22), and see EU IQR Exhibit 9 "Council Regulation (EC) No. 73/2009."

¹¹⁴ See EU IQR Exhibit 12 "Council Regulation (EC) No. 1782/2003, and see EU IQR Exhibit 9 "Council Regulation (EC) No. 73/2009."

¹¹⁵ See EU IQR Exhibit 10 "Council Regulation (EC) No. 864/2004."

¹¹⁶ This period was specific for olive oil producers. Other products used an average of payments received during 2000 – 2002. See GOS SQR Exhibit 21, and see EU IQR at Exhibit 12 "Council Regulation (EC) No 1782/2003" Article 37 and 38.

¹¹⁷ See CVD Petition Exhibit III-7, and see EU IQR at Exhibit 10 "Council Regulation (EC) No. 864/2004."

¹¹⁸ A list of all direct payments in relation to the single payment is referred to in Council Regulation (EC) No. 1782/2003 Article 33, which states that to be eligible for these grants a farmer must have been granted a payment in the reference period under at least one support scheme listed in Annex VI.¹¹⁸ Olive oil is listed in Annex VI and references Council Regulation (EEC) No. 136/66 Article 5 and notes "production aid. See EU IQR Exhibit 11 "Council Regulation (EC) No. 1638/98," and see GOS SQR Exhibit 21 which references Council Regulation (EC) No. 1782/2003 Annex VI.

¹¹⁹ See EU IQR at 11, see EU SQR at response to Question 26, and see GOS SQR at 20.

olive grower categorized each hectare based on whether the olives produced olive oil or table olives and used the two values to calculate the total payment amount provided under the Common Organization of Markets in Fats and Oils. The average of four years of this total payment is the referenced amount used as the basis for the calculated amount under the SPS annual grant-to-farmer program. The individual, calculated BPS annual grant-to-farmer amount derives from the amount of SPS grants were provided to each farmer in 2013.¹²⁰

The 2013 SPS grant amounts included the calculation just described, and the grant amounts originally provided under the Aid for Olive Groves program.¹²¹ Originally, the Aid for Olive Groves program was a grant program created to provide olive farmers grants for growing olives.¹²² The amounts calculated for the farmers in the olive sector under the Aid for Olive Groves were a maximum of 40 percent of the aid previously granted.¹²³ In 2009, CAP reform integrated Aid for Olive Groves into the SPS annual grant-to-farmer program.¹²⁴ The amount of aid olive growers received in addition to the SPS grant payment as calculated until 2009, is listed in Council Regulation (EC) No. 73/2009 Annex XIII in the chart titled “Aid for Olive Groves.” When the aid under this program was integrated into the aid provided under SPS, the amount olive farmers were entitled to receive under this program continued through 2015.¹²⁵ Therefore, the amount olive growers received under SPS in 2014 was from both programs. The current BPS program uses the amount farmers received under SPS in 2014, and this amount is based on the average amount a farmer received under the Common Organization of Markets in Fats and Oils, which determined its grant amount on the type of crop grown.

1. European Union (EU) Common Agricultural Policy (CAP) Pillar I: Basic Payment Scheme (BPS)—Direct Payment

As discussed above, this program provides annual grants to farmers and is funded by the EU under CAP Pillar I. The EU began providing grants to farmers in 1997 under the Common Organization of Markets in Oil program and the amount of these grants was based on the type of crop and the amount of related product it produced per farm.¹²⁶ When this program transitioned into the SPS program, the SPS grant amounts were calculated based on the value of each hectare in a farm. This value per hectare was determined using the average amount of grants provided to that area from 1999 through 2002.¹²⁷ The current annual grant-to-farmer program, BPS, also uses

¹²⁰ See EU IQR Exhibit 13 “Council Regulation (EC) No 1307/2013” (22), and EU IQR Exhibit 9 “Council Regulation (EC) No. 73/2009.”

¹²¹ See GOS SQR Exhibit 21 “Commission Regulation (EC) No. 795/2004” Article 31b.

¹²² See EU IQR Exhibit 9 “Council Regulation (EC) No. 73/2009.”

¹²³ See Council Regulation (EC) No 864/2004,

¹²⁴ See GOS SQR Exhibit 21, and see EU IQR Exhibit 9 “Council Regulation (EC) No. 73/2009” Article 146 and Annex 1, Annex XI “Integration of coupled support into the single payment scheme as referred to in Article 63” states “From 2010, where a Member State granted the...(b)aid for olive groves provided for in Chapter 10b of Title IV of Regulation (EC) No. 1782/2013...”

¹²⁵ See EU IQR Exhibit 9 “Council Regulation (EC) No. 73/2009” Article 146 Annex XIII.

¹²⁶ Olive oil and table olives were listed as crops eligible to receive benefits under this program. See CVD Petition Exhibit III-7, and see EU IQR at Exhibit 10 “Council Regulation (EC) No. 864/2004.”

¹²⁷ This period was specific for olive oil producers. Other products used an average of payments received during 2000 – 2002. See GOS SQR Exhibit 21, and see EU IQR at Exhibit 12 “Council Regulation (EC) No 1782/2003” Article 37 and 38.

a value per hectare in its grant amount calculation. To determine the BPS value per hectare, the grant amount received in 2014 under SPS was considered.

In summary, the annual grant amount provided to olive farmers under BPS is based on the annual grant amount provided to olive farmers under SPS. The grant amount provided to olive farmers under SPS is based on the average grant amount olive farmers received in 1999 through 2002 under the Common Organization of Markets in Oil program. The grant amount provided in 1999 through 2002 to eligible farmers, which included olive farmers, was based on the type of crop grown and the production value created from the crop. Therefore, the annual grant amount provided under BPS are based on annual grant amounts that were crop specific, thus the grant amounts received by olive growers under BPS in 2016 are directly related to the grant amount only olive growers received under Common Organization of Markets in Oil program. All respondents and many of the olive growers that supply them, received benefits under this program during the POI.¹²⁸

We preliminarily determine that the EU CAP Pillar I – BPS – Direct Payment program provided countervailable subsidies to Agro Sevilla, Aceitunas Guadalquivir, and Angel Camacho within the meaning of section 771(5) of the Act. Based on the preceding discussion, we preliminarily determine EC Regulations 1307/2013, 73/2009, and 1782/2003 provided a financial contribution because it is a direct transfer of funds from the EC, through the GOS, within the meaning of section 771(5A)(D)(i) of the Act, and bestows a benefit in the amount of the grant under 19 CFR 351.504(a).¹²⁹ We further preliminarily determine that the grants provided under this program are specific within the meaning of section 771(5A)(D)(i) of the Act because the crop type determines the grant amounts provided under this program due to the direct reliance on the grant amounts provided under previous programs, which based grant amounts on the crop type. As such, the program is specific to olive growers.

According to the EC and GOS, the benefits under this program are recurring because the benefits are applied for and received in the same year.¹³⁰ We measured the benefit received in the POI by the olive processors resulting from the assistance provided to the olive growers, as described above in the section “Application of Section 771B of the Act.” Given that the assistance provided to olive growers is granted because they are growing olives, we preliminarily determine that the assistance is tied to the production of olives, according to 19 CFR 351.525(b)(5). However, the mandatory respondents explained that the GOS does not make the olives payments separately from the payments for any other agricultural operations. In order to determine the amount of the reported Direct Payment benefit attributable to olives, for each entity that received a payment, we multiplied the payment by the ratio of that entity’s sales of olives to its total sales. We summed the benefits resulting from the application of section 771B with the benefits received by the mandatory respondent during the POI and we divided this sum by the respondent’s sales of olive and olive products. On this basis, we calculated countervailable

¹²⁸ See Angel Camacho IQR at

¹²⁹ See EU IQR Exhibit 13 “Council Regulation (EC) No 1307/2013,” see EU IQR Exhibit 9 “Council Regulation (EC) No. 73/2009, and see GOS QR at 20-22 and Exhibits A001 “Royal Decree 1075/2014” and A002 “Royal Decree 1076/2014.”

¹³⁰ See EU IQR Exhibit 13 “Council Regulation (EC) No 1307/2013” Section 3, Article 32 which states “activated payment entitlements shall give a right to the annual payment of the amounts fixed therein...”

subsidy rates of 1.47 percent *ad valorem* for Aceitunas Guadalquivir; 1.25 percent *ad valorem* for Agro Sevilla; and, 3.74 percent *ad valorem* for Angel Camacho.

2. *EU CAP Pillar I -BPS—Greening Program*

Like the Direct Payment subprogram, the Greening subprogram provides an annual grant to farmers under the CAP Pillar I – BPS program to support agricultural practices beneficial for the climate and environment.¹³¹ The criteria to qualify for a grant under the Greening subprogram, a farmer who is entitled to a grant under the Direct Payment sub-program is eligible for Greening grants if the farmer undertakes agricultural practices beneficial for the climate and the environment.¹³² As directed by the Council Regulation (EC) 1307/2013(37), EU Member states are to use part of their national ceiling funds¹³³ to provide grants, on top of the grants provided under BPS – Direct Payment, to encourage farmers to implement practices to achieve the objectives of “greening.”¹³⁴ Specifically, the three categories of environmentally-friendly farming practices are crop diversification, maintaining permanent grassland, and conserving 5% of areas of ecological interest or measures considered to have at least equivalent environmental benefit.¹³⁵ “Farmers of permanent crops (vineyards, olive groves, citrus, etc.) are entitled to ‘ipso facto’.”¹³⁶ The grant amount awarded under BPS – Greening is a ratio established annually by the national authority and the ratio is usually 50 percent of the BPS – Direct Payment grant amount.¹³⁷ The amounts awarded to the respondents under BPS – Greening is 50 percent of the amount awarded under BPS – Direct in 2016. The grants are distributed with the grants under the Direct Payment sub-program.¹³⁸

We preliminarily determine that the EU CAP Pillar I – BPS – Greening program provided countervailable subsidies to Agro Sevilla, Aceitunas Guadalquivir, and Angel Camacho within the meaning of section 771(5) of the Act. Based on the preceding discussion, we preliminarily determine EC Regulations 1307/2013, 73/2009, 1782/2003, and No. 641/2014 provided a financial contribution because it is a direct transfer of funds from the EC, through the GOS, within the meaning of section 771(5A)(D)(i) of the Act, and bestows a benefit in the amount of

¹³¹ See EU IQR Exhibit 13 “Council Regulation (EC) No. 1307/2013” (37), Exhibit 17 “Commission Implementing Regulation (EU) No. 641/2014,” Chapter 3, Article 10 and Exhibit 20 “Commission Delegated Regulation (EU) No. 639/2014” Chapter 3, Article 38 and see GOS QR at 20-22 and Exhibits A001 “Royal Decree 1075/2014” Title III Chapter II and A002 “Royal Decree 1076/2014.”

¹³² See EU IQR Exhibit 13 “Council Regulation (EC) No. 1307/2013” Chapter 3, Article 43(1) and (2), and see GOS QR at 20-22 and Exhibits A001 “Royal Decree 1075/2014” Title III Chapter II.

¹³³ National ceiling of each EU Member Country’s national reserve, which are annual funds provided by the EC. The national ceiling amount is comprised of the total value of all allocated payment entitlement. See EU IQR Exhibit 13 “Council Regulation (EC) No. 1307/2013” Articles 6 and 7, and see GOS QR A002 “Royal Decree 1076/2014” Section 9.

¹³⁴ See EU IQR Exhibit 13 “Council Regulation (EC) No. 1307/2013” (37), and see GOS QR at 20-22 and Exhibits A001 “Royal Decree 1075/2014” Title III Chapter II.

¹³⁵ *Id.*

¹³⁶ See GOS IQR at 44. , and see CVD Petition III-37 “USDA Global Agricultural Information Network (GAIN) Report, 2015 Spain” at 2.

¹³⁷ See AC IQR at 25.

¹³⁸ See EU IQR Exhibit 13 “Council Regulation (EC) No. 1307/2013” Chapter 3, Article 43, and Exhibit 17 “Commission Implementing Regulation (EU) No. 641/2014,” Chapter 3, Article 10 (54)

the grant under 19 CFR 351.504(a).¹³⁹ We further preliminarily determine that the grants provided under this program are specific under section 771(5A)(D)(i) of the Act because the crop type determines the grant amounts provided under this program due to the direct reliance on the grant amounts provided under previous programs, which based grant amounts on the crop type. As such, the program is specific to olive growers.

According to the EC and GOS, the benefits under this program are recurring because the benefits are applied for and received in the same year.¹⁴⁰ Given that the assistance provided to olive growers is granted because they are growing olives, we preliminarily determine that the assistance is tied to the production of olives, according to 19 CFR 351.525(b)(5). However, the mandatory respondents explained that the GOS does not make the olives payments separately from the payments for any other agricultural operations. In order to determine the amount of the reported Greening benefit attributable to olives, for each entity that received a payment, we multiplied the payment by the ratio of that entity's sales of olives to its total sales. We measured the benefit received in the POI by the olive processors resulting from the assistance provided to the olive growers as described above in the section "Application of Section 771B of the Act." We summed the benefits resulting from the application of section 771B with the benefits received by the mandatory respondent during the POI. To calculate the countervailable subsidy rate we divided the benefits received in the POI by each company by their respective total olive and olive products sales during the POI. On this basis, we calculated countervailable subsidy rates of 0.75 percent *ad valorem* for Aceitunas Guadalquivir; 0.78 percent *ad valorem* for Agro Sevilla; and, 2.99 percent *ad valorem* for Angel Camacho.

3. EU CAP: SPS

As discussed above, this program provides annual grants to farmers and is funded by the EU under CAP Pillar I. The Council Regulation 1307/2013 at Article 21 states that these grant payments provided under SPS would expire on December 31, 2014.¹⁴¹ However, there is a provision that allows for EU Member States to continue providing grant payments under SPS and these payments would be determined in accordance with the two main SPS regulations, Council Regulation (EC) No. 1782/2003 and Council Regulation (EC) No. 73/2009.¹⁴²

We preliminarily determine that the EU CAP SPS program provided countervailable subsidies to Agro Sevilla, Aceitunas Guadalquivir, and Angel Camacho within the meaning of section 771(5) of the Act. Based on the preceding discussion, we preliminarily determine EC Regulations 1307/2013, 73/2009, and 1782/2003 provided a financial contribution because it is a direct transfer of funds from the EC, through the GOS, within the meaning of section 771(5A)(D)(i) of

¹³⁹ See EU IQR Exhibit 13 "Council Regulation (EC) No. 1307/2013" Chapter 3, Article 43, and Exhibit 17 "Commission Implementing Regulation (EU) No. 641/2014," Chapter 3, Article 10 (54).

¹⁴⁰ See EU IQR Exhibit 13 "Council Regulation (EC) No 1307/2013" Section 3, Article 32 which states "activated payment entitlements shall give a right to the annual payment of the amounts fixed therein..."

¹⁴¹ See EU IQR Exhibit 13 "Council Regulation (EC) No. 1307/2013."

¹⁴² See EU IQR Exhibit 13 "Council Regulation (EC) No. 1307/2013" at Article 21(3) and (4), and see EU IQR Exhibit 9 "Council Regulation (EC) No. 73/2009."

the Act, and bestows a benefit in the amount of the grant under 19 CFR 351.504(a).¹⁴³ We further preliminarily determine that the grants provided under this program are specific within the meaning of section 771(5A)(D)(i) of the Act because the crop type determines the grant amounts provided under this program due to the direct reliance on the grant amounts provided under previous programs, which based grant amounts on the crop type. As such, the program is specific to olive growers.

According to the EC and GOS, the benefits under this program are recurring because the benefits are applied for and received in the same year.¹⁴⁴ Given that the assistance provided to olive growers is granted because they are growing olives, we preliminarily determine that the assistance is tied to the production of olives, according to 19 CFR 351.525(b)(5). However, the mandatory respondents explained that the GOS does not make the olives payments separately from the payments for any other agricultural operations. In order to determine the amount of the reported SPS benefit attributable to olives, for each entity that received a payment, we multiplied the payment by the ratio of that entity's sales of olives to its total sales. We measured the benefit received in the POI by the olive processors resulting from the assistance provided to the olive growers as described above in the section "Application of Section 771B of the Act." We summed the benefits resulting from the application of section 771B with the benefits received by the mandatory respondent during the POI. To calculate the countervailable subsidy rate we divided the benefits received in the POI by each company by their respective sales of olives and olive products during the POI. On this basis, we calculated countervailable subsidy rates of 0.02 percent *ad valorem* for Aceitunas Guadalquivir; 0.02 percent *ad valorem* for Agro Sevilla; and, 0.08 percent *ad valorem* for Angel Camacho.

4. *EU CAP Pillar II: Agricultural Fund for Rural Development*

Pillar II of the CAP covers the rural development policy of the EC, which seeks to ensure sustainable development of the EC's rural areas. The EC 'Agenda 2000' introduced Council Regulation (EC) 1257/1999, Support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF).¹⁴⁵ This single regulation provided assistance for rural development throughout the EC during the years 2000 through 2006. EC No. 1257/1999 provided EC assistance for rural development in Member States because support could not be sufficiently achieved by each state given the disparities that exist among the various rural areas and the limits on each state's financial resources. This regulation established priorities to ensure the development of rural areas including, but not limited to, (i) improve the processing and marketing of agricultural products, (ii) encourage sustainable forest development, and (iii) to develop employment opportunities in rural areas.¹⁴⁶ In an effort to meet these EC priorities for rural development, this regulation established a set of measures under which financial assistance

¹⁴³ See EU IQR Exhibit 13 "Council Regulation (EC) No 1307/2013," see EU IQR Exhibit 9 "Council Regulation (EC) No. 73/2009, and see GOS QR at 20-22 and Exhibits A001 "Royal Decree 1075/2014" and A002 "Royal Decree 1076/2014."

¹⁴⁴ See EU IQR Exhibit 13 "Council Regulation (EC) No 1307/2013" Section 3, Article 32 which states "activated payment entitlements shall give a right to the annual payment of the amounts fixed therein..."

¹⁴⁵ See EC November 13, 2017 response at Annex 10.

¹⁴⁶ *Id.*

is provided for, among other things, investment in agricultural holdings, support for vocational training, and support for naturally less-favored areas and areas with environmental restrictions.

During this period, Spain did not have a rural development program, but policies concerning rural development were implemented at the regional level.¹⁴⁷ The Andalusia region instituted the 2000-2006 Integrated Operational Program of Andalusia, which established measures for rural development in Andalusia that were based on the EC Agenda 2000, as expressed in EC 1257/1999.¹⁴⁸ Measures for rural development were largely implemented through decree 280/2001 of the Regional Government of Andalusia. Decree 280/2001 governs aid financed by the European Agricultural Guidance and Guarantee Fund that is included in the Integrated Operational Program for Andalusia.¹⁴⁹ The GOS reported that the three mandatory respondents received assistance under the Integrated Operational Program of Andalusia.¹⁵⁰

In 2005, the regulation was repealed and replaced with EC Regulation 1698/2005, which continued to provide assistance for rural development from 2007 through 2013. During this period, the GOS implemented a National Rural Development policy and Andalusia implemented another rural development program to coincide with the measures outlined in EC 1698/2005.¹⁵¹

In 2013, EC Council Regulation 1698/2005 was repealed and EC Regulation 1305/2013 was implemented for the period 2014 through 2020. The GOS and the Regional Government of Andalusia implemented assistance for rural development areas based on this EC directive. According to the GOS, the Andalusian Rural Development Program 2014-2020 established a thematic sub-program to provide assistance for olive groves given the importance and influence of this sector in the development of rural areas.¹⁵²

The EC's rural development regulations provided for assistance in favor of rural areas, with the purpose of improving the competitiveness of these areas. Grants were awarded to the respondents and the growers supplying them located in rural areas, including Andalusia, for enlarging their facilities and improving their manufacturing process and the quality of their products. In addition, aid was provided to growers engaged in quality enhancement, with the purpose of improving the industrial competitiveness of the area.

The GOS confirmed that Agro Sevilla, Aceitunas Guadalquivir, and Angel Camacho, as well the olive growers that supplied them, received benefits under this program during the POI and over the AUL period.¹⁵³ The council regulations demonstrate that the availability of assistance under this program was limited to companies in rural regions of the EC. Based on the foregoing, we preliminarily determine that the EC Regulations 1257/1999, EC 1698/2005, and 1305/2013 confer a countervailable subsidy because this program provides a financial contribution in the form of a direct transfer of funds within the meaning of section 771(5)(D)(i) of the Act, and bestows a benefit in the amount of the grant under 19 CFR 351.504(a). Finally, the program is

¹⁴⁷ GOS SQR November 7, 2017 at 6-7.

¹⁴⁸ *Id.* at Exhibit S-8.

¹⁴⁹ *Id.* at Exhibit S-16.

¹⁵⁰ GOS IQR September 18, 2017 at 84.

¹⁵¹ GOS SQR November 7, 2017 at Exhibits S-7 and S-9.

¹⁵² GOS IQR September 18, 2017 QR at 70-74.

¹⁵³ *Id.* at 84-85.

specific within the meaning of section 771(5A)(D)(iv) of the Act because funds under this program are limited to enterprises located within designated geographic regions within the jurisdiction of the authority providing the subsidy. Moreover, the State of Andalusia, in administering aspects of this program, established the Andalusian Rural Development Program 2014-2020, under a thematic subprogram of which olive growers were specifically identified for assistance. As such, the program is specific under section 771(5A)(D)(i) of the Act, because the assistance is limited to olive growers. Moreover, we preliminarily determine that the assistance provided under this thematic subprogram is tied to the production of olives.

This program provides both recurring and non-recurring benefits. For the benefits that are non-recurring, we first applied the “0.5 percent” test described in 19 CFR 351.524 (a)(2). For assistance provided pursuant to EC Council Regulation 1257/1999 and EC Council Regulation 1698/2005, we conducted the 0.5 percent test using the recipient’s total sales, because assistance provided pursuant to these regulations was not tied to the production of a particular product. For assistance provided pursuant to EC Council Regulation 1305/2013 we conducted the 0.5 percent test using the recipient’s sales of olives, because assistance provided pursuant to this regulation is tied to the production of olives. For amounts that were greater than 0.5 percent of the recipient’s relevant sales in the year of approval,¹⁵⁴ we allocated the benefits over the AUL, using the discount rate identified above in the section “Discount Rates.” With regard to assistance provided to olive growers, we allocated the benefits over the AUL, and then measured the POI benefit to the olive processors as described in the section “Application of Section 771B of the Act.” We also measured the recurring benefits during the POI. We summed the benefits resulting from the application of section 771B with the benefits received by the mandatory respondent during the POI (either as allocated to the POI or received during the POI) and we divided this sum by the respondent’s sales of olive and olive products. On this basis, we calculated countervailable subsidy rates of 0.07 percent *ad valorem* for Aceitunas Guadalquivir; 0.42 percent *ad valorem* for Agro Sevilla; and, 0.43 percent *ad valorem* for Angel Camacho.

B. Programs Preliminarily Determined To Be Tied To Non-Subject Merchandise

1. *Voluntary Coupled Support (VCS)*
2. *Market Measures*

Certain respondents reported receiving funds under these programs. Information on the record indicates that these programs are tied to non-subject merchandise.¹⁵⁵

¹⁵⁴ Where the record lacked information regarding the year of approval, we used the year of receipt. See calculation memoranda.

¹⁵⁵ See EU IQR Exhibit “Commission Delegated Regulation (EU) No. 639/2014” Chapter 3, Article 38; see also Aceitunas Guadalquivir October 10, 2017 supplier QR at AG Annex IV-7; Angel Camacho October 10, 2017 supplier QR at Camacho Annex I-12-13, Camacho Annex IV-9-10, Camacho Annex V-6-7; Agro Sevilla October 10, 2017 Supplier SQR at Exhibit I.G.

C. Programs Preliminarily Determined to Require Additional Information

1. Loans financed by the Centro para el Desarrollo Tecnológico Industrial (CDTI)
2. Loans financed by the European Investment Bank
3. Loans financed by the European Investment Fund
4. Loans financed by the Spanish Official Credit Institute Credit (ICO)
5. EU Canary Island Supply Regime
6. EU Regional Development Fund and Andalusia Energy Agency
7. ERDF – Project Life: Protection of Fauna and Environment
8. PROSOL

D. Programs Preliminarily Determined Not to Confer a Measurable Benefit during the POI

The respondents reported receiving benefits under various self-reported programs. Based on the record evidence, we preliminarily determine that the benefits from certain programs were fully expensed prior to the POI or are less than 0.005 percent ad valorem when attributed to the respondent's applicable sales as discussed above in the "Attribution of Subsidies" section. Consistent with the Department's practice,¹⁵⁶ we have not included those programs in our preliminary subsidy rate calculations for the respondents. Because the benefits conferred by these programs are not measurable, we have not examined whether these programs are specific or provide a financial contribution.

Aceitunas Guadalquivir

1. Grants from Programa de Incentivo al Vehículo Eficiente (PIVE) program to acquire vehicles
2. Direct grants from CDTI
3. Grants provided by Agencia Andaluza de Promoción Exterior (EXTENDA)
4. Tax Reduction under Spanish Electricity Special Tax

Agro Sevilla

1. Andalusia Energy Agency
2. Agency of Innovation and Development of Andalusia (IDEA) and the EU Regional Development Fund
3. Funds from Technical Corporation of Andalusia (CTA)
4. Funds from Andalusian Employment Service
5. Funds from Extenda-

¹⁵⁶ See, e.g., *Large Residential Washers from the Republic of Korea: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination with Final Antidumping Determination*, 77 FR 33181 (June 5, 2012) (*Large Residential Washers from Korea*), and accompanying IDM at 10, unchanged in final (*Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012)).

Angel Camacho

1. Collective Layoff Procedure 2015/2016
2. Agency of Innovation and Development of Andalusia (IDEA) and the EU Regional Development Fund
3. EXTENDA Grants
4. Assistance from the Spanish Chamber of Commerce
5. Creation for Employment for Youth
6. Andalusia Workplace Health and Safety
7. Andalusia Equine Sector
8. Miscellaneous Grants Provided in 2005

E. Programs Preliminarily Determined To Be Not Used during the POI

The respondent companies reported that they did not use the following programs during the POI or over the AUL period:

1. *EU CAP Pillar I-BPS--Aid for Young Farmers*
2. *EU Producer Organization Work Programs*

VIII. CALCULATION OF THE ALL-OTHERS RATE

In accordance with sections 703(d) and 705(c)(5)(A) of the Act, we must determine an “all others” rate for exporters or producers that are not individually investigated. Pursuant to section 705(c)(5)(A)(i) of the Act, the all-others rate is normally calculated by weight averaging the subsidy rates of the individual companies selected for individual examination by each company’s value of exports of subject merchandise to the United States, excluding any zero and *de minimis* rates, and any rates based solely on the facts available. In this investigation, we calculated above-*de minimis* countervailable subsidy rates that are not based entirely on the facts available for all three mandatory respondents. As a result, we calculated the “all-others rate” as the weighted average of the countervailable subsidy rates determined for Aceitunas Guadalquivir, Agro Sevilla, and Angel Camacho using the value of the respondents’ exports of subject merchandise to the United States.¹⁵⁷

IX. ITC NOTIFICATION

In accordance with section 703(f) of the Act, we will notify the ITC of our preliminary determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order, without the written consent of the Assistant Secretary for Enforcement and Compliance.

¹⁵⁷ See Memorandum to the File, dated concurrently with this preliminary determination, “Calculation of the All-Others Rate.”

In accordance with section 705(b)(3) of the Act, if our final determination is affirmative, the ITC will make its final determination before the later of 120 days after the date of this preliminary determination or 45 days after we make our final determination.

X. DISCLOSURE AND PUBLIC COMMENT

The Department intends to disclose to interested parties the calculations performed in connection with this preliminary determination within five days of its public announcement.¹⁵⁸ Case briefs for all non-scope issues may be submitted to Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) no later than seven days after the date on which the final verification report is issued in this investigation, and rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.¹⁵⁹

Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and, (3) a table of authorities.¹⁶⁰ This summary should be limited to five pages in total, including footnotes.

Interested parties who wish to request a hearing must do so in writing within 30 days after the publication of this preliminary determination in the *Federal Register*.¹⁶¹ Requests should contain the party's name, address, and telephone number; the number of participants; and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at a date, time and location to be determined. Parties will be notified of the date, time and location of any hearing.

Parties must file their case and rebuttal briefs, and any requests for a hearing, electronically using ACCESS.¹⁶² Electronically filed documents must be received successfully in their entirety by 5:00 p.m. Eastern Time,¹⁶³ on the due dates established above.

XI. VERIFICATION

As provided in section 782(i)(1) of the Act, we intend to verify the information submitted in response to the Department's questionnaires.

¹⁵⁸ See 19 CFR 351.224(b).

¹⁵⁹ See 19 CFR 351.309(c)(1)(i) and (d)(1).

¹⁶⁰ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁶¹ See 19 CFR 351.310(c).

¹⁶² See 19 CFR 351.303(b)(2)(i).

¹⁶³ See 19 CFR 351.303(b)(1).

XII. CONCLUSION

We recommend that you approve the preliminary findings described above.



Agree

Disagree

11/20/2017

X



Signed by: GARY TAVERMAN