



C-469-818

Administrative Review

POR: 11/28/2017 – 12/31/2018

**Public Document**

E&C/OI: Team

December 18, 2020

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

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

**SUBJECT:** Decision Memorandum for the Preliminary Results of the 2017-  
2018 Countervailing Duty Administrative Review of Ripe Olives  
from Spain

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## I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the countervailing duty (CVD) order on ripe olives from Spain for the period of review (POR) November 28, 2017 through December 31, 2018. This review covers three producers/exporters of subject merchandise, Agro Sevilla Aceitunas S.Coop Andalusia (Agro Sevilla), Angel Camacho Alimentacion, S.L. (Camacho), and Alimentary Group Dcoop S.Coop. And. (Dcoop), all of which Commerce individually examined as mandatory respondents. Commerce preliminarily determines that countervailable subsidies are being provided to producers and exporters of ripe olives from Spain.

## II. BACKGROUND

### A. Initiation and Case History

On August 1, 2018, Commerce published in the *Federal Register* a CVD order on ripe olives from Spain.<sup>1</sup> On August 2, 2019, Commerce published in the *Federal Register* a notice of opportunity to request administrative reviews of orders with August anniversary dates.<sup>2</sup> On September 3, 2019, the Coalition for Fair Trade in Ripe Olives (the Coalition), a coalition of domestic processors of ripe olives and the petitioner in the underlying investigation, requested an administrative review of Agro Sevilla, Camacho, and Dcoop for the period November 28, 2017

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<sup>1</sup> See *Ripe Olives from Spain: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order*, 84 FR 53411 (August 1, 2018) (*Order*).

<sup>2</sup> See *Antidumping and Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 84 FR 37834 (August 2, 2019).



through December 31, 2018.<sup>3</sup> Agro Sevilla and Camacho also self-requested reviews on the same date.<sup>4</sup> On October 7, 2019, Commerce initiated an administrative review of the *Order*.<sup>5</sup>

## **B. Respondent Selection**

We stated in the *Initiation Notice* that, if we limit the number of respondents for individual examination, we intended to base our selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data of U.S. imports of subject merchandise during the POR.<sup>6</sup> We released the CBP entry data under administrative protective order (APO) on October 24, 2019.<sup>7</sup> On October 31, 2019, we received comments from Musco Family Olive Company (Musco), one of the two members of the Coalition and a domestic processor of ripe olives.<sup>8</sup> No other party filed comments regarding respondent selection.

In Musco's comments, Musco requested that Commerce review all three respondents for which a review was requested. In particular, Musco had reason to believe that Dcoop produced and exported substantial quantities of ripe olives to the United States during the period of review and submitted public data from a global trade data company to support this claim. In addition, Musco presented claims from Dcoop's website that it was the largest table olive producer in the world and submitted published news articles that indicated Dcoop continues to export subject merchandise to the United States. After considering this information, Commerce did not limit the number of respondents for individual examination and issued initial questionnaires to all three respondents for which a review was requested.

## **C. Agro Sevilla and Camacho Withdrew Their Requests for Administrative Review; Claim the Coalition Lacks Standing to Request an Administrative Review**

On November 25, 2019, Agro Sevilla and Camacho timely withdrew their administrative review requests and requested that Commerce "disqualify" the Coalition's review request, arguing that the Coalition lacks standing to request an administrative review.<sup>9</sup> After considering the request and all comments submitted by the interested parties, on February 5, 2020, Commerce determined that the Coalition, as an interested party under section 771(9)(G) of the Tariff Act of

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<sup>3</sup> See Coalition's Letter, "Ripe Olives from Spain; First Administrative Review; Petitioner Request for Countervailing Duty Administrative Review," dated September 3, 2019. The Coalition consist of two domestic processors of ripe olives, Bell-Carter Foods and Musco Family Olive Company.

<sup>4</sup> See Agro Sevilla and Camacho's Letter, "Request for Administrative Review: Ripe Olives from Spain POR1," dated September 3, 2019.

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 53411 (October 7, 2019) (*Initiation Notice*).

<sup>6</sup> *Id.* at 53412.

<sup>7</sup> See Memorandum, "U.S. Customs and Border Protection (CBP) Data Release," dated October 24, 2019.

<sup>8</sup> See Musco's Letter, "Ripe Olives from Spain; 1st Administrative Review: Comments on CBP Data," dated October 31, 2019.

<sup>9</sup> See Agro Sevilla and Camacho's Letter, "Agro Sevilla Aceitunas S.COOP (And.) and Angel Camacho Alimentacion, S.L. Notice of Withdraw of Review Request: Ripe Olives from Spain POR1," dated November 25, 2019; and Agro Sevilla and Camacho's Letter, "Request to Disqualify Administrative Review Request of the Coalition for Fair Trade in Ripe Olives and Rescind Reviews: Ripe Olives from Spain POR1," dated November 25, 2019.

1930, as amended (the Act), and 19 CFR 351.102(b)(17), has standing to request an administrative review.<sup>10</sup>

#### **D. Request to Withdraw the Coalition’s Administrative Review Request**

On December 31, 2019, Bell-Carter Foods, LLC (Bell-Carter), one of the two members of the Coalition and a domestic processor of ripe olives, requested a withdrawal of the administrative review request that was submitted on behalf of the Coalition and urged Commerce to rescind the review with respect to all producers and/or exporters under review.<sup>11</sup> On January 3, 2020 Musco, the other member of the Coalition, objected to Bell-Carter’s withdrawal request.<sup>12</sup> On January 8, 2020, Dcoop submitted comments that, *inter alia*, requested that Commerce “rescind the administrative review in light of the Coalition’s timely withdrawal of the request for the administrative review submitted by {Bell-Carter}, and in the alternative, the dissolution of the Coalition that requested the administrative review.”<sup>13</sup> On January 17, 2020, Bell-Carter filed additional comments and objected to the amended entry of appearance filed by McDermott Will & Emery LLP (MWE) on January 3, 2020.<sup>14</sup> On January 23, 2020, Musco responded and restated the arguments in support of its position.<sup>15</sup> On February 5, 2020, Commerce issued a letter notifying all parties that it was continuing with the administrative review of each of the three companies (*i.e.*, Agro Sevilla, Camacho, and Dcoop) because Bell-Carter’s December 31, 2019, letter did not constitute a withdrawal of the Coalition’s review request; further, Commerce determined that there is no overlap in claimed representation on behalf of MWE and legal counsel to Bell-Carter, and that evidence on the record does not require a change in the current status of the Coalition’s representation.<sup>16</sup>

On November 17, 2020, Bell Carter requested the reconsideration of Commerce’s decision not to rescind this review with respect to Dcoop and further clarified its reconsideration request on December 4, 2020.<sup>17</sup> Bell-Carter’s reconsideration request does not raise any new arguments or facts that warrant a reversal of our original decision regarding its original request to rescind. Bell-Carter’s reconsideration request is based in part on its amended entry of appearance, submitted on April 30, 2020.<sup>18</sup> An entry of appearance is a procedural document used to identify

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<sup>10</sup> See Memorandum, “Countervailing Duty Administrative Review of Ripe Olives from Spain; 2017-2018: Petitioner’s Standing to Request Administrative Review,” dated February 5, 2020.

<sup>11</sup> See Bell-Carter’s Letter, “Ripe Olives from Spain: Petitioner’s Notice of Withdrawal of Requests for Antidumping and Countervailing Duty Administrative Reviews,” dated December 31, 2019.

<sup>12</sup> See Musco’s Letter, “Ripe Olives from Spain; 1st Administrative Reviews; Response to ‘Withdrawal of Review Requests,’” dated January 3, 2020.

<sup>13</sup> See Dcoop’s Letter, “Ripe Olives from Spain: Letter in Support of Agro Sevilla’s and Angel Camacho’s Request for Resolution of Procedural Matters and Review Status,” dated January 8, 2020.

<sup>14</sup> See Bell-Carter’s Letter, “Ripe Olives from Spain: Response to Musco’s January 3rd 2020 Comments,” dated January 17, 2020; *see also* MWE’s Amended Entry of Appearance, dated January 3, 2020. MWE represents Musco.

<sup>15</sup> See Musco’s Letter, “Ripe Olives from Spain; 1st Administrative Reviews; Response to BCF January 17 Comments,” dated January 23, 2020.

<sup>16</sup> See Commerce’s Letter, dated February 5, 2020. *See* Commerce’s Letter, dated February 5, 2020.

<sup>17</sup> See Bell-Carter’s Letter, “Comments in Advance of the Preliminary Results,” dated November 17, 2020, clarified in Bell-Carter’s Letter, “Clarification Letter of Other New Factual Information,” dated December 4, 2020.

<sup>18</sup> See Amended Entry of Appearance dated April 30, 2020. Although Bell-Carter indicated that Exhibits 1-5 to its reconsideration request contained new factual information, we determine that the documents submitted as exhibits (such as the Court of International Trade decision, Commerce’s determinations, *etc.*) do not constitute new factual information under 19 C.F.R. 351.102(b)(21).

parties to be included in a public service list<sup>19</sup> and exempted from the certification of accuracy required under 19 CFR 351.303(g).<sup>20</sup> Bell-Carter’s amended entry of appearance does not contain “clear evidence regarding whether the Coalition continues to function as an entity and, if so, whether individually one of the Coalition’s member companies has the authority to make decisions on behalf of the Coalition.”<sup>21</sup> Bell-Carter’s reconsideration request is based also in part on *Coalition for Fair Trade in Garlic*,<sup>22</sup> in which Commerce on remand found that a domestic association’s review request was invalid *ab initio* because a majority of the individuals who comprised the domestic association could not did not credibly establish that they standing to request a review at the time of the request and, thus, the domestic association lacked standing as an interested party under section 771(9)(E) of the Act.<sup>23</sup> This case is inapposite because the Coalition is an interested party under section 771(9)(G) of the Act and there is no dispute that the two individual members of the Coalition were domestic processors and producers of ripe olives at the time of the review request.

### **E. Limiting Reporting Period**

On December 6, 2019, Commerce issued a memo in which we explained that we were limiting the reporting period from the period of review, November 28, 2017 through December 31, 2018, to the calendar year of 2018.<sup>24</sup> The intention is to base the countervailing duty assessment rate for the 2017 period on the assessment rate that will be calculated for the 2018 calendar year. On December 12, 2019, Agro Sevilla, Camacho, and Musco provided comments that they had no issue with Commerce limiting the reporting period.<sup>25</sup>

### **F. Questionnaires and Responses**

On January 7, 2020, Commerce issued its initial questionnaire to the European Commission (EC) and the Government of Spain (GOS) requesting information on programs which may constitute subsidies under U.S. law that were used by the mandatory respondents: Agro Sevilla, Camacho, and Dcoop (collectively, the respondents).<sup>26</sup> On the same day, Commerce also issued a sourcing questionnaire to the respondents regarding their sources of raw and ripe olives. Specifically, we

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<sup>19</sup> See 19 CFR 351.213(d)(1); see also Public Service List dated May 1, 2020.

<sup>20</sup> See *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678, 42686 (July 17, 2013) (“{Commerce} has decided to create a narrow exception to the certification requirement for procedural submissions. Some examples of procedural submissions are ... letters of appearance, ...”).

<sup>21</sup> See Commerce’s Letter, dated February 5, 2020 at 4; see also Amended Entry of Appearance dated April 30, 2020.

<sup>22</sup> See *Coalition for Fair Trade in Garlic v. United States*, 463 F. Supp. 3d 1380, 1382 (CIT 2020) (*Coalition for Fair Trade in Garlic*).

<sup>23</sup> Section 771(9)(E) of the Act requires a majority of individual members of a trade or business association to have standing as interested parties within the meaning of section 771(9)(C) of the Act.

<sup>24</sup> See Memorandum, “Administrative Review of the Countervailing Duty Order on Ripe Olives from Spain,” dated December 6, 2019.

<sup>25</sup> See Agro Sevilla and Camacho’s Letter, “Comments on Reporting Period: Ripe Olives from Spain POR1,” and Musco’s Letter, “Ripe Olives from Spain; 1st Administrative Review: Comments on Limited Reporting Period and Standing,” dated December 12, 2019.

<sup>26</sup> See Commerce’s Letters, “Countervailing Duty Administrative Review on Ripe Olives from Spain: Initial Questionnaire,” both dated January 7, 2020 (Initial Questionnaire).

requested information on each respondent's organizational structure; we requested that each respondent identify its suppliers of raw and ripe olives; and we requested that each respondent report the volume of raw and ripe olives supplied.<sup>27</sup>

In January 2020, Commerce received timely responses from the mandatory company respondents for their affiliation questionnaires.<sup>28</sup> On the same day they submitted their affiliation questionnaire response, Camacho and Dcoop requested that Commerce exclude their reporting for a supplier that provided a negligible amount of subject merchandise to both respondents<sup>29</sup> and Commerce granted these requests.<sup>30</sup> On January 31, 2020, Commerce timely received responses from all respondents to the sourcing questionnaire.<sup>31</sup> In February, Commerce timely received responses from the EC, the GOS, and all three company respondents for the initial questionnaire.<sup>32</sup>

In February 2020, Commerce issued a supplemental questionnaire to the respondents regarding their responses to the olive sourcing questionnaire.<sup>33</sup> From March 3 through April 10, we received comments from the respondents, the GOS, the EC, and Musco regarding clarifications, potential adjustments, and difficulties in reporting the required grower information requested in the February 28 supplemental questionnaire.<sup>34</sup> From March 6 through April 14, Commerce

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<sup>27</sup> See Commerce's Letters, "First Administrative Review of the Countervailing Duty (CVD) Order on Ripe Olives from Spain; Questionnaire on Sources of Raw and Ripe Olives," all dated January 7, 2020.

<sup>28</sup> See Agro Sevilla's Letter, "Agro Sevilla Affiliation Questionnaire Response Ripe Olives from Spain C-469-818," dated January 21, 2020; Camacho's Letter, "Angel Camacho Alimentacion, S.L. Response to Section III Identifying Affiliated Companies and Olive Suppliers," dated January 21, 2020 (Camacho AQR); and Dcoop's Letter, "Ripe Olives from Spain: Affiliation Questionnaire Response," dated January 24, 2020.

<sup>29</sup> See Camacho's Letter, "Request to Exclude Negligible Unaffiliated Supplier from CVD Response," dated January 21, 2020; *see also* Dcoop's Letter, "Ripe Olives from Spain: Request to Exclude from Reporting," dated January 24, 2020.

<sup>30</sup> See Commerce's Letter, "First Administrative Review of the Countervailing Duty (CVD) Order of Ripe Olives from Spain; Exclusion of Unaffiliated Supplier of Ripe Olives," dated January 24, 2020; *see also* Commerce's Letter, "First Administrative Review of the Countervailing Duty (CVD) Order of Ripe Olives from Spain; Exclusion of Unaffiliated Supplier of Ripe Olives," dated January 29, 2020.

<sup>31</sup> See Respondents' Letters, "Ripe Olives from Spain: Response to Questionnaire on Sources of Raw and Ripe Olives;" "Agro Sevilla Sources of Raw and Ripe Olives Questionnaire Response Ripe Olives from Spain (C-469-818)," and "Angel Camacho Alimentacion, S.L. – Sources of Raw and Ripe Olives Response Ripe Olives from Spain (C-469-818)," all dated January 31, 2020.

<sup>32</sup> See EC's Letter, "Administrative Review of the CVD Order on Ripe Olives from Spain – EU response to initial questionnaire," dated February 25, 2020 (EC IQR); *see also* GOS's Letter, "Response of Government of Spain to the Initial Questionnaire (Administrative Review) Issued by the Department of Commerce on January 07, 2020," dated February 26, 2020; Agro Sevilla's Letter, "Agro Sevilla Initial Questionnaire Response Ripe Olives from Spain (C-469-818)," dated February 26, 2020; Camacho's Letter, "Angel Camacho Alimentacion, S.L.'s Response to Section III of the Initial Questionnaire Ripe Olives from Spain, POR 1 (C-469-818)," dated February 27, 2020; Dcoop's Letter, "Ripe Olives from Spain: Initial Questionnaire Response," dated February 27, 2020.

<sup>33</sup> See Commerce's Letters, "First Administrative Review of the Countervailing Duty (CVD) Order of Ripe Olives from Spain: Supplemental Questionnaire," "First Administrative Review of the Countervailing Duty (CVD) Order of Ripe Olives from Spain; Questionnaire on Sources of Raw, Semi-Processed, and Ripe Olives," and "First Administrative Review of the Ripe Olives from Spain Order: Questionnaire for Unaffiliated Suppliers of Alimentary Group Dcoop S.Coop And.," all dated February 28, 2020.

<sup>34</sup> See Agro Sevilla and Camacho's Letter, "Request to Clarify Olive Supplier Questionnaires and Adjust Reporting: Ripe Olives from Spain POR1," dated March 3, 2020; *see also* GOS's Letter, "Letter of the Government of Spain regarding the new Supplement Questionnaires Issued by the Department of Commerce on February 28, 2020 to

issued clarifications and reporting adjustments for its olive sourcing supplemental questionnaire to address the concerns presented by the interested parties.<sup>35</sup> Included in these requests for clarifications and reporting changes, Agro Sevilla and Camacho notified Commerce of difficulties in obtaining responses from a number of their growers.<sup>36</sup> Camacho proposed substituting the next largest supplier in its response, and including two additional suppliers, to which Commerce agreed and requested documentation of Camacho's efforts to obtain cooperation.<sup>37</sup> Agro Sevilla proposed substituting the second largest grower from one of its first-tier cooperatives in its response to which Commerce agreed and requested documentation of Agro Sevilla's efforts to obtain cooperation.<sup>38</sup>

In April 2020, Commerce also received timely responses from the company respondents for their olive sourcing supplemental questionnaires.<sup>39</sup> The EC resubmitted complete responses to the initial questionnaire at Commerce's request.<sup>40</sup>

In May 2020, Agro Sevilla notified Commerce that it had been unable to obtain responses to the olive sourcing supplemental questionnaire from 3 of its 50 growers and provided affidavits and emails that an effort was attempted to get a response from these three growers.<sup>41</sup> In June 2020,

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Some Mandatory Spanish Respondents," dated March 4, 2020; Dcoop's Letter, "Ripe Olives from Spain: Request to Adjust Reporting Requirements for the Department's February 28, 2020 Questionnaire on "Unaffiliated Suppliers of Alimentary Group Dcoop S.Coop And.," dated March 4, 2020; Musco's Letter, "Ripe Olives from Spain – 1st Administrative Review; Comments on Olive Grower and Supplier Questionnaires," dated March 4, 2020; EC's Letter, "Administrative Review of the CVD Order on Ripe Olives from Spain – Letter in Support of Respondents and Government of Spain," dated March 5, 2020; Dcoop's Letter, "Ripe Olives from Spain: Request for Clarification for Revised Reporting Instructions," dated March 10, 2020; Dcoop's Letter, "Ripe Olives from Spain: Notification of Reporting Difficulty and Proposal for Alternative Reporting," dated March 26, 2020; Agro Sevilla's and Camacho's Letter, "Ripe Olives from Spain: Notification of Reporting Difficulty and Proposal for Alternative Reporting Ripe Olives from Spain (C-469-818)," dated March 30, 2020 (Agro Sevilla and Camacho Reporting Difficulties); Musco's Letter, "Ripe Olives from Spain – 1st Administrative Review; Comments on Respondents' Proposals for Alternative Reporting of Olive Grower and Supplier Questionnaire Responses," dated April 1, 2020; and Dcoop's Letter, "Ripe Olives from Spain: Notification of Reporting Difficulty and Proposal for Alternative Reporting for Grower Suppliers," dated April 10, 2020.

<sup>35</sup> See Commerce's Letter, "Clarifications and Reporting for Agro Sevilla and Angel Camacho," dated March 6, 2020; *see also* Commerce's Letter, "Clarifications and Reporting for Dcoop," dated March 9, 2020; Memorandum, "Additional Clarification Regarding Reporting for Dcoop's First Tier Cooperatives and Growers," dated March 18, 2020; Commerce's Letter, "Ripe Olives from Spain: Reporting for Alternative Growers," dated April 8, 2020; Commerce's Letter, "Ripe Olives from Spain: Reporting for Alternative Growers," dated April 9, 2020; and Commerce's Letter, "Ripe Olives from Spain: Reporting for Alternate Suppliers/Growers," dated April 14, 2020.

<sup>36</sup> See Agro Sevilla and Camacho Reporting Difficulties.

<sup>37</sup> *Id.* at 3; *see also* Commerce's Letter, "Ripe Olives from Spain: Reporting for Alternative Growers," dated April 8, 2020.

<sup>38</sup> *Id.* at 3; *see also* Commerce's Letter, "Ripe Olives from Spain: Agro Sevilla's Request to Report for Alternative Growers," dated April 8, 2020.

<sup>39</sup> See Agro Sevilla's Letter, "Agro Sevilla Supplemental Questionnaire Response Regarding Suppliers/Growers Ripe Olives from Spain (C-469-818)," dated April 15, 2020; *see also* Camacho's Letter, "Camacho Supplier/Grower Supplemental Questionnaire Response Ripe Olives from Spain (C-469-818)," dated April 15, 2020; and Dcoop's Letter, "Ripe Olives from Spain: Response to Questionnaire for Unaffiliated Suppliers of Alimentary Group Dcoop S. Coop.And.," dated April 23, 2020.

<sup>40</sup> See EC's Letter, "Administrative Review of the CVD Order on Ripe Olives from Spain – Revised Initial Questionnaire Response," dated April 24, 2020.

<sup>41</sup> See Agro Sevilla's Letter, "Agro Sevilla Additional Responses to the Supplemental Questionnaire Regarding Suppliers/Growers Ripe Olives from Spain (C-469-818)," dated May 7, 2020.

Dcoop notified Commerce that it had been unable to obtain responses to the olive sourcing supplemental questionnaire from certain growers, except for one which Dcoop provided responses for on June 29, and provided email correspondence that it attempted to get a response from these growers.<sup>42</sup>

From April through December 2020, Commerce issued supplemental questionnaires and received timely responses.<sup>43</sup>

In December 2020, Musco submitted comments with respect to each respondent for consideration in the preliminary results of this review.<sup>44</sup> Dcoop provided its own comments for

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<sup>42</sup> See Dcoop's Letters, "Ripe Olives from Spain: Documentation of Efforts to Obtain Information from Suppliers," dated June 18, 2020; and "Ripe Olives from Spain: Additional Response to Questionnaire for Unaffiliated Suppliers of Alimentary Group Dcoop S.Coop.And.," dated June 29, 2020; *see also* GOS's Letter, "The Government of Spain resubmits the response of the 2nd Questionnaire filed October 26, 2020 as requested by the Department of Commerce in the Memorandum Issued November 05, 2020," dated November 6, 2020.

<sup>43</sup> See Agro Sevilla's Letter, "Agro Sevilla Response to Supplemental Questionnaire on Affiliation and General Questions Ripe Olives from Spain (C-469-818)," dated June 3, 2020; *see also* Dcoop's Letter, "Ripe Olives from Spain: Supplemental Questionnaire Response," dated July 2, 2020; Camacho's Letter, "Angel Camacho Alimentacion, S.L. Response to Supplemental Questionnaire Ripe Olives from Spain (C-469-818)," dated July 2, 2020; GOS's Letter, "Response of the Government of Spain to the Supplemental Questionnaire (CVD Administrative Review) Issued by the Department of Commerce on June 12, 2020," dated July 9, 2020; EC's Letter, "Administrative Review of the CVD Order on Ripe Olives from Spain – EU Response to Supplemental Questionnaire," dated July 16, 2020; Agro Sevilla's Letters, "Agro Sevilla Response to Supplemental Questionnaire of September 24, 2020 Ripe Olives from Spain (C-469-818) POR1," dated October 14, 2020; "Agro Sevilla Response to Question 6 of the Supplemental Questionnaire of September 24, 2020 Ripe Olives from Spain (C-469-818) POR1," dated October 16, 2020; and "Response to Supplemental Questionnaire of Agro Sevilla Ripe Olives from Spain (C-469-818) POR1," dated October 23, 2020; Dcoop's Letters, "Ripe Olives from Spain: Supplemental Questionnaire Response – Part 1," dated August 5, 2020; and "Ripe Olives from Spain Supplemental Questionnaire Response (Part 2)," dated August 17, 2020; Dcoop's Data Files, "Exhibit S-1," "Exhibit S-2," and "Exhibit S-3," dated August 31, 2020; GOS's Letter, "Response of Government of Spain to the Second Supplemental Questionnaire (Administrative Review) Issued by the Department of Commerce on October 08, 2020," dated November 6, 2020; EC's Letter, "Administrative Review of the CVD order on Ripe Olives from Spain – EU Response to Supplemental Questionnaire," dated October 29, 2020; Dcoop's Letters, "Ripe Olives from Spain: Second Supplemental Questionnaire Response (Part 1)," dated October 29, 2020; and "Ripe Olives from Spain: Second Supplemental Questionnaire Response (Part 2)," dated November 5, 2020; GOS's Letter, "Response of Government of Spain to the Second Supplemental Questionnaire (Administrative Review) Issued by the Department of Commerce on October 08, 2020," dated October 26, 2020 (GOS October 26, 2020 SQR); XXXX's Letter, "Response to the Supplemental Questionnaire of Agro Sevilla Ripe Olives from Spain (C-469-818) POR 1," dated November 2, 2020; GOS's Letter, "Response of Government of Spain to the Fourth Supplemental Questionnaire (Administrative Review) Issued by the Department of Commerce on November 3, 2020," dated November 16, 2020; Agro Sevilla's Letter, "Response to the Supplemental Questionnaire of Agro Sevilla Ripe Olives from Spain (C-469-818) POR1," dated November 17, 2020; Camacho's Letter, "Angel Camacho Alimentacion, S.L. Supplemental Questionnaire Response Ripe Olives from Spain (C-469-818), POR1," dated November 17, 2020; Dcoop's Letters, "Ripe Olives from Spain: Third Supplemental Questionnaire Response (Part 1)," dated November 17, 2020; "Ripe Olives from Spain: Third Supplemental Questionnaire Response (Part 2)," dated November 20, 2020; "Ripe Olives from Spain: Third Supplemental Questionnaire Response (Part 3)," dated November 23, 2020; and Dcoop's Letter, "Ripe Olives from Spain: Response to Request for Revised Sales Table," dated November 20, 2020.

<sup>44</sup> See Musco's Letters, "Ripe Olives from Spain; 1st Administrative Review Pre-Preliminary Comments for Camacho," dated December 1, 2020; "Ripe Olives from Spain; 1st Administrative Review Pre-Preliminary Comments for Dcoop," dated December 4, 2020; and "Ripe Olives from Spain; 1st Administrative Review Pre-Preliminary Comments for Agro Sevilla," dated December 7, 2020.

consideration in the preliminary results of this review and also in response to Musco's comments, respectively, on December 2 and 9, 2020.<sup>45</sup>

### **G. Postponement of Preliminary Results**

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days.<sup>46</sup> On May 26, 2020, Commerce extended the deadline for the preliminary results of this review by 120 days.<sup>47</sup> On July 21, 2020, Commerce tolled deadlines for preliminary results and final results in administrative reviews by an additional 60 days.<sup>48</sup> Accordingly, the deadline for the preliminary results of this review was postponed to December 18, 2020.

### **III. SCOPE OF THE ORDER**

The products covered by the *Order* 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 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 review if performed in Spain.

Excluded from the scope are: (1) specialty olives<sup>49</sup> (including "Spanish-style," "Sicilian-style," and other similar olives) that have been processed by fermentation only, or by being cured in an

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<sup>45</sup> See Dcoop's Letters, "Ripe Olives from Spain: Pre-Preliminary Results Comments," dated December 2, 2020 and "Ripe Olives from Spain: Response to Musco Family Olive Company's December 4, 2020 Pre-Preliminary Results Comments," dated December 9, 2020.

<sup>46</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments due to COVID-19," dated April 24, 2020.

<sup>47</sup> See Memorandum, "Ripe Olives from Spain: Extension of Deadline for Preliminary Results of 2017-2018 Countervailing Duty Administrative Review," dated May 26, 2020.

<sup>48</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

<sup>49</sup> 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



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 review 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 review; rather, the written description of the subject merchandise is dispositive.

### **III. SUBSIDIES VALUATION INFORMATION**

#### **A. Allocation Period**

Commerce 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. The AUL in this proceeding is 12 years for olive processors and 10 years for olive growers, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System, which is updated by the Department of Treasury.<sup>50</sup> This AUL applies unless a party claims and establishes that it does not reasonably reflect the AUL of the renewable physical assets of the company or industry under investigation. No party in this review disputed the allocation period. Commerce notified the respondents of the 12-year and 10-year AULs in the Initial Questionnaire and requested data accordingly.<sup>51</sup>

Furthermore, for non-recurring subsidies, we 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), based on the nature of the program, for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then Commerce allocates the benefit to the year of receipt rather than across the AUL.

#### **B. Attribution of Subsidies**

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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.

<sup>50</sup> See U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

<sup>51</sup> See Initial Questionnaire at II-2.

In accordance with 19 CFR 351.525(b)(6)(i), Commerce will normally attribute 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: (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.

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 Commerce'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 *Preamble* to Commerce's regulations further clarifies that Commerce's cross-ownership standard is met where:

the 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 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.<sup>52</sup>

Thus, Commerce's regulations make clear that the agency must look at the facts in each case to determine whether cross-ownership exists. The U.S. Court of International Trade (CIT) has upheld Commerce'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.<sup>53</sup>

### *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 operates as a second-tier cooperative that purchases raw olives from its 12 member first-tier cooperatives. Each of these 12 member cooperatives is comprised of hundreds of member growers that produce raw olives. The first-tier cooperatives establish specific production capacities and commit to supply a specific volume of raw olives to Agro Sevilla. Each of the 12 member cooperatives contributes capital proportionate to its production contribution, which according to Agro Sevilla, does not reflect a

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<sup>52</sup> See *Countervailing Duties, Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*Preamble*).

<sup>53</sup> See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

share in the assets of the company. Additionally, if a member cooperative chooses to leave, its capital contribution is returned.

The cooperative's bylaws state that each member has equal voting rights regardless of capital contribution. Agro Sevilla is managed via a general assembly comprised of one representative from each of its first-tier cooperatives. The agenda is set by the Consejo Rector, the functional equivalent of the Board of Directors, which is comprised of representatives from each of the 12 first-tier cooperatives. All decisions made by the Consejo Rector require a simple majority vote.<sup>54</sup>

Likewise, Agro Sevilla maintains that it has no ability to control the assets of its 12 member cooperatives and that there is no ownership or managerial control over the first-tier cooperatives or the individual growers that comprise them. Thus, consistent with our findings in the investigation,<sup>55</sup> we find that the relationships between Agro Sevilla and its 12 member cooperatives do not meet the definition of cross-ownership under 19 CFR 351.525(b)(6)(vi). However, due to the application of section 771B of the Act (*see* Section titled "C. Application of Section 771B of the Act"), Commerce has deemed subsidies provided to the producers of raw olives to be provided with respect to the processors of ripe olives. Therefore, we preliminarily calculated a weighted-average per kilogram benefit using the information provided by the reporting olive growers.<sup>56</sup>

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.<sup>57</sup> 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 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.

### *Camacho*

Camacho reported that it is a producer of subject merchandise that sources raw olives from two cross-owned affiliates and numerous non-affiliated suppliers.<sup>58</sup> Camacho identified Grupo

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<sup>54</sup> See Agro Sevilla Affiliation Response.

<sup>55</sup> See *Ripe Olives from Spain: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination*, 82 FR 56218 (November 27, 2017) (*Olives Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM) at 10-11, unchanged in *Ripe Olives from Spain: Final Affirmative Countervailing Duty Determination*, 83 FR 28166 (June 11, 2018) (*Olives Final Determination*), and accompanying Issues and Decision Memorandum at 5 and Comment 8.

<sup>56</sup> We are attributing to each of the three respondents the benefits received by its olive growers and its first-tier member cooperatives, in accordance with section 771B of the Act. To determine the benefit attributable to each respondent, for each program, we divided each supplier's benefit by its production volume in kilograms of raw and semi-processed olives to determine its benefit per kilogram of olives. We then weighted each grower's benefit by its share of the total production volume reported by the growers. We then summed the weighted benefits to determine a weighted average benefit per kilogram of olives. For more information, *see* the calculation memoranda dated concurrently with these preliminary results.

<sup>57</sup> *Id.*

<sup>58</sup> See Camacho AQR at 6; *see also* Camacho Olive Sources QR at 2-3.

Angel Camacho Alimentación (Grupo Angel Camacho) as its parent company.<sup>59</sup> Camacho further stated that Grupo Angel Camacho is a holding company without any production operations of its own.<sup>60</sup> In the investigation, Commerce found Camacho and Grupo Angel Camacho to be cross-owned.<sup>61</sup>

In the investigation, Commerce found that Cuarterola S.L. (Cuarterola) and Cucanoche S.L. (Cucanoche) were cross-owned input suppliers to Camacho.<sup>62</sup> In this administrative review, Camacho reported that since the investigation, there have been no changes in its affiliation structure or to the operations of its affiliates that would change Commerce's findings regarding cross-ownership.<sup>63</sup>

Therefore, Commerce is attributing subsidies received by either of these cross-owned suppliers of raw olives to the combined sales of Camacho and the relevant olive supplier, net of intercompany transactions, pursuant to 19 CFR 351.525(b)(6)(iv). Likewise, Commerce is attributing subsidies received by Grupo Angel Camacho to the sales of Camacho, net of intercompany transactions, pursuant to 19 CFR 351.525(b)(6)(iii).

In the investigation Camacho reported that Internacional Envasadora, S.A., an affiliated company involved in olive packing, was absorbed by Grupo Angel Camacho in 2008, with its business activities transferred to Camacho.<sup>64</sup> In the absence of any information indicating any changes, consistent with the investigation and pursuant to 19 CFR 351.525(b)(6)(iii), Commerce is continuing to use available sales information for Internacional Envasadora, S.A. to calculate benefits received during its operation and attributing any benefits received during the AUL to Camacho.

Camacho reported that it is affiliated with several other companies through its parent company, Grupo Angel Camacho. Consistent with Commerce's findings in the investigation, Camacho reported that none of these affiliates produce subject merchandise, provide an input into the production of subject merchandise, or is a parent company of Camacho.<sup>65</sup> Therefore, under 19 CFR 351.525(b)(6), we determine that there is no basis to attribute to Camacho any subsidies that may have been provided to these affiliates.

### *Dcoop*

Dcoop reported that it is a Spanish agrifood second-tier cooperative that produces subject merchandise along with a multitude of other products. At present, Dcoop has eight different divisions that produce and/or sell table olives, olive oil, wine, livestock, dry fruits, services, cereals, and pomace oil.<sup>66</sup> During the POR, the cooperative sourced both raw and semi-

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<sup>59</sup> See Camacho IQR at 3.

<sup>60</sup> See Camacho AQR at exhibit C-2.

<sup>61</sup> See *Olives Preliminary Determination* PDM at 11, unchanged in *Olives Final Determination* IDM.

<sup>62</sup> *Id.* at 11.

<sup>63</sup> See Camacho AQR at 5-6.

<sup>64</sup> See *Olives Preliminary Determination* PDM at 11; see also Camacho IQR at 3.

<sup>65</sup> *Id.*

<sup>66</sup> See Dcoop's Letter, "Ripe Olives from Spain: Initial Questionnaire Response," dated February 26, 2020 (Dcoop IQR) at 3.

processed olives that are processed into subject ripe olives from almost all of its 25 first-tier member cooperatives in the Table Olives division. The first-tier cooperatives perform initial processing, such as grading and conditioning, before the olives are supplied to Dcoop for further processing.<sup>67</sup> In turn, the first-tier suppliers obtain raw olives from its member growers. The first-tier cooperatives pay Dcoop for use of Dcoop's processing facilities and other services, including sales services. Dcoop then transfers the revenues from the sale to the first-tier cooperative. Dcoop's business activities are structured into separate divisions.

The cooperative reported that each of its first-tier cooperatives has one representative at the General Assembly, the decision-making body of the company,<sup>68</sup> but each representative's voting rights are proportional to the first-tier cooperative's volume of activity within Dcoop.<sup>69</sup> In its response, Dcoop identified each of its first-tier cooperatives in the Table Olives division, the percentage of capital contributed to the cooperative, and the percentage of votes held by each member cooperative.<sup>70</sup> Because none of the first-tier cooperatives in the Table Olives Division or any other division held a significant share of capital or accounted for a controlling percentage of the total vote, we find that no first-tier cooperative held a controlling interest in Dcoop.

Similarly, there is no evidence on the record that Dcoop exercises control over its first-tier cooperatives. In its pre-preliminary comments, Musco argues that Dcoop is cross-owned with its first-tier members because Dcoop has the ability to control and use the production of its first-tier members. Dcoop explains that the minimum volume requirements are the results of discussions between Dcoop and its members and can be renegotiated yearly; they are not dictated by Dcoop.<sup>71</sup> We find no evidence on the record indicating otherwise. Furthermore, there is no evidence that Dcoop owns a portion of its first-tier member cooperatives or is involved in the management of the cooperatives. Dcoop reported that its chief executive officer is not a member of the Board of Directors or an owner in any of Dcoop's first-tier cooperatives.<sup>72</sup> Dcoop's by-laws demonstrate that its first-tier suppliers are not required to remain with Dcoop.<sup>73</sup> According to Dcoop, a member must contribute capital proportionate to its committed production contribution.<sup>74</sup> However, if a member decides to leave Dcoop, it is entitled to a return of its capital contribution which never depreciates or appreciates in value. Dcoop attests that it had no voting rights in any of its first-tier cooperatives that supply inputs for the production of subject merchandise, and did not have power to appoint a member of the governing body in any of its first-tier cooperatives.<sup>75</sup> In an effort to determine whether Dcoop exerted control over its first-tier cooperatives in the table olives division, we asked Dcoop for the bylaws of one of its first

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<sup>67</sup> See Dcoop's Letter, "Ripe Olives from Spain: Responses to Questionnaire on Sources of Raw and Ripe Olives," dated January 31, 2020 (Dcoop Sourcing QR).

<sup>68</sup> See Dcoop's Letter, "Ripe Olives from Spain: Affiliation Questionnaire Response," dated January 24, 2020 (Dcoop AQR) at 4.

<sup>69</sup> *Id.*

<sup>70</sup> See Dcoop's Letter, "Ripe Olives from Spain: Supplemental Questionnaire Response," dated July 1, 2020 (Dcoop's ISQR) at S-2. SQR at Exhibit S-2.

<sup>71</sup> *Id.* at 11; *see also* Dcoop's Letter, "Ripe Olives from Spain: Response to Musco Family Olive Company's December 4, 2020 Pre-Preliminary Results Comments," dated December 9, 2020 at 9.

<sup>72</sup> See Dcoop AQR at 6.

<sup>73</sup> See AQR at Exhibit 2.

<sup>74</sup> See Dcoop AQR at 4.

<sup>75</sup> See Affiliation Response at 6.

tier cooperatives and the share of capital provided by the largest contributors. Our examination of the bylaws of this cooperative confirms that the cooperative may enter into relationships with third parties, including other second-tier cooperatives. The bylaws reveal that the third party may perform up to 50 percent of the economic activities and services on behalf of this cooperative.<sup>76</sup> Thus, we preliminarily find that the relationship between Dcoop and its first-tier cooperatives does not meet the definition of cross-ownership under 19 CFR 351.525(b)(6)(vi).

While Dcoop did have direct ownership interests in numerous companies during the POR, none of these entities produced subject merchandise, was a holding or parent company of Dcoop, supplied raw olives or any other input product for Dcoop's products, or received subsidies that were transferred to Dcoop. However, in 2011, Dcoop purchased a 100 percent interest in Acyco, Aceitunas Y Conservas, S.A. (Acyco).<sup>77</sup> Dcoop sold raw olives to Acyco, which processed the olives into ripe olives that it sold back to Dcoop and to third parties before being absorbed by Dcoop in 2016.<sup>78</sup> Commerce is using available sales information for Acyco to calculate benefits received during its operation and attributing any benefits received during the AUL to Dcoop. Commerce is attributing subsidies received by Dcoop to the products produced solely by Dcoop in accordance with 19 CFR 351.525(b)(6)(i).

### **C. Application of Section 771B of the Act**

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

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.

In the investigation, Commerce found there is a percentage of raw olives that are grown to produce table olives, including ripe olives. Information on the record of the investigation demonstrated that eight percent of the raw olives grown in Spain are processed into table olives.<sup>79</sup> We found that eight percent to be “substantial,” and that the demand for olives is dependent upon demand for table olives, because if the demand for table olives were to cease, eight percent of the market for raw olives, which produces millions of dollars in export sales to the United States, would be negatively affected. Thus, we determined that the demand for raw olives was substantially dependent on the demand for table olives pursuant to section 771B(1) of

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<sup>76</sup> See Dcoop's ISQR at 1 and Exhibit S-1.

<sup>77</sup> See Dcoop IQR at IQR-3.

<sup>78</sup> See Dcoop IQR at IQR-9.

<sup>79</sup> See *Olives Preliminary Determination* PDM at 15.

the Act. Additionally, we determined that processing raw olives into ripe olives adds only limited value pursuant to section 771B(2) of the Act.<sup>80</sup> We found that the cost of processing raw olives into ripe olives contributes to less than three percent of the final value.<sup>81</sup> Further, in determining whether the processing operation added only limited value to the raw commodity, we also considered whether processing the olives changes the essential character of the olive. We found that it did not. As explained below, we continue to find that both prongs of section 771B of the Act are satisfied.

There is no statutory definition of “prior stage product.” In past cases involving processed agricultural products, we considered the raw agricultural product as the “prior stage product.”<sup>82</sup> In the investigation, Commerce defined the raw agricultural product and the prior stage product to be coterminous and identified “raw olives” as the “prior stage product.”<sup>83</sup> Commerce observed that section 771B(1) of the Act uses the term “latter stage product” rather than “subject merchandise,” and identified processed table olives as the latter stage product for purposes of the section 771B(1) analysis.<sup>84</sup>

While we continue to consider processed table olives as the “latter stage product,” new factual information submitted on the record of this administrative review by interested parties required us to reconsider the definition of the “prior stage product” in the analysis of the first criterion. This new factual information established that there is recognition by the GOS and the Spanish olive industry that certain raw olive varieties are grown for producing table olives, other olive varieties are grown as mill olives to be used to produce olive oil, and other olive varieties can be used for either purpose (so-called “dual use” olives). As a result of this information, we identify the “prior stage product” as the varieties of raw olives principally suitable for use in the production of table olives. This conclusion is supported by the manner in which GOS agencies collect and publicize data on Spanish olive production and by Spanish industry data sources and reporting, both of which demonstrate that it is accepted in the olive sector that, at their source, raw olives, based on their variety, are grown for one purpose or the other. Specifically, Commerce received the following information: (1) information from the GOS’s Ministry of Agriculture and Fisheries, Food and Environment (Ministry of Agriculture) indicating that olive varieties have a certain “fitness,” meaning they are grown for use as table olives, mill olives, or for either purpose (*i.e.*, dual use);<sup>85</sup> (2) GOS agricultural insurance regulations demonstrating that there are different insurance premium rates for hectares grown for use as table olives, mill olives, or dual-use olives and that the GOS identifies varieties that are considered to be table, mill, or dual use;<sup>86</sup> (3) statistics and trend information regarding the table olive industry published by Spain’s Ministry of Agriculture and Interceituna, a Spanish professional

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<sup>80</sup> *Id.* at 13.

<sup>81</sup> *Id.*

<sup>82</sup> See *Certain Frozen Warmwater Shrimp from China: Final Affirmative Countervailing Duty Determination*, 78 FR 50391 (August 19, 2013), and accompanying IDM; see also *Rice from Thailand: Final Results of Countervailing Duty Administrative Review*, 59 FR 8906, 8909 (February 24, 1994) (*Rice from Thailand*).

<sup>83</sup> See *Olives Final Determination* IDM at 21-22.

<sup>84</sup> *Id.*

<sup>85</sup> See Musco’s Letter, “Ripe Olives from Spain; 1st Administrative Review; Response to Request for Additional Information,” dated February 25, 2020 (Musco’s February 25 Submission) at Exhibit 2.

<sup>86</sup> See Musco’s Letter, “Ripe Olives from Spain; 1st Administrative Review; Submission of New Factual Information,” dated February 5, 2020 (Musco’s February 5 Submission) at Exhibit 1.

organization;<sup>87</sup> and, (4) price data published by the Regional Government of Andalusia for each of the table olive varieties, which is separate from the prices for mill olives, which are not reported by variety.<sup>88</sup>

Furthermore, evidence on the record indicates that the GOS's Ministry of Agriculture separately tracks and distinguishes data on table olives from data on mill olives. The GOS's Ministry of Agriculture maintains statistics on the number of hectares of land dedicated to the production of table olives separately from the number of hectares dedicated to mill olives, the yearly volume of table and mill olive production, as well as their end use. The Ministry of Agriculture's statistics on Crop Surfaces and Production indicate that, in Harvest 2018, which covers the majority of the POR, 555,033 tons of raw table olive varieties were produced, of which 431,898 tons, or 78 percent, were used for the production of table olives.<sup>89</sup> The data also revealed that only two percent of raw mill varieties are used as table olives.<sup>90</sup>

As a result of this new information, we reconsidered the definition of the "prior stage product" in our analysis of section 771B(1) of the Act in this review and now define the "prior stage product" as raw olives principally suitable for use in the production of table olives. Furthermore, after examining the data provided by parties, as noted above, and finding that 78 percent were processed into processed olives in Harvest 2018, we find that the demand for raw olive varieties principally suitable for use in the production of table olives (which includes "table olive" varieties and "dual use" varieties) is substantially dependent on the demand for processed table olives and, thus, section 771B(1) of the Act is satisfied.

Commerce determined in the investigation that processing raw olives into ripe olives adds only limited value pursuant to section 771B(2) of the Act.<sup>91</sup> Specifically, as noted above, we found that the cost of processing raw olives into ripe olives contributes to less than three percent of the final value.<sup>92</sup> There is no new information or evidence submitted to the record of this review that would warrant reconsidering our determination regarding the second prong of section 771B of the Act. Thus, we continue to find that section 771B(2) of the Act is satisfied.

For purposes of determining that the benefits provided to olive growers benefit the processors of ripe olives, in accordance with section 771B of the Act, 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 respondent company,

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<sup>87</sup> See Musco's February 25 Submission at Exhibits 8 and 11.

<sup>88</sup> *Id.* at Exhibit 9.

<sup>89</sup> It is Commerce's understanding that harvest year 2018 generally covers October 1, 2017 through September 30, 2018. However, other suppliers and growers may consider the harvest year to cover September 1, 2017 through August 31, 2018, and while others define it as November 1, 2017 through October 31, 2018. See Dcoop's Letter, "Ripe Olives from Spain: Response to Questionnaire for Unaffiliated Suppliers of Alimentary Group Dcoop S. Coop. And.," dated April 22, 2020 at 2 which explains that the financial statements of each first-tier cooperative cover October 1, 2017 through September 30, 2018. In addition, some of the suppliers' tax returns included in Exhibit 2 of this submission also cover this period. Furthermore, a few first-tier suppliers' reported their sales of olive-derived products using the October 1 through September year. See Dcoop's Letter, "Ripe Olives from Spain: Third Supplemental Questionnaire Response (Part 1)," dated November 17, 2020 at Exhibit S3-1..

<sup>90</sup> See Musco's February 25 Submission at Exhibit 7B.

<sup>91</sup> *Id.* at 13.

<sup>92</sup> *Id.*



to determine the benefit attributable to the company respondents, we multiplied this per kilogram benefit by the total volume in kilograms of each respondent's purchases of raw olives used to produce subject merchandise. We then divided this total benefit by the respondent's sales of subject merchandise to determine the *ad valorem* countervailable subsidy rate.

#### **D. Denominators**

In accordance with 19 CFR 351.525(b)(1)(5), Commerce considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales. In the "Analysis of Programs – Programs Preliminarily Determined to be Countervailable" section below, as well as in the calculation memoranda prepared for these preliminary results, we identify the denominators used to calculate the countervailable subsidy rate for the various subsidy programs.<sup>93</sup>

Dcoop reported the sales data for its first-tier member cooperatives and its growers on a harvest year basis rather than calendar year because its suppliers maintain their books and records on a harvest year basis.<sup>94</sup> For the preliminary results, we are using the sales data reported on a harvest year basis. However, after the preliminary results, we will continue to seek information from Dcoop on sales data for the 2018 calendar year.

#### **E. Loan and Benchmark Interest Rates**

We are examining loans and non-recurring, allocable subsidies received by the respondents.<sup>95</sup> In the section below, we discuss the derivation of the benchmarks for the POR and previous years.

Section 771(5)(e)(ii) of the Act explains that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay for a comparable commercial loan that the recipient could actually obtain on the market," indicating that a benchmark must be a market-based rate. To determine whether government-provided loans under review conferred a benefit, Commerce uses, where possible, company-specific interest rates for comparable commercial loans obtained by the company.<sup>96</sup> When loans are denominated in a foreign currency, 19 CFR 351.505(a)(2)(i) directs us to use a benchmark denominated in the same foreign currency as the loan.

Consistent with 19 CFR 351.505(a)(2)(ii), we are using the interest rates that the respondents paid on comparable commercial loans as benchmarks to calculate the benefit. Where such benchmark rates are unavailable, consistent with 19 CFR 351.505(a)(3)(ii), we used lending rate

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<sup>93</sup> See Memoranda, "Preliminary Result Calculations for Agro Sevilla Aceitunas S. Coop. And.;" "Preliminary Result Calculations for Angel Camacho Alimentacion, S.L.;" and "Preliminary Result Calculations for Alimentary Group Dcoop S.Coop. And.," dated concurrently with these preliminary results (collectively, Calculation Memoranda).

<sup>94</sup> See Dcoop's Letter, "Ripe Olives from Spain: Supplemental Questionnaire Response (Part 2)," dated August 17, 2020 at 3-4. In this letter, Commerce also noted that the grower data for the AUL was provided based on harvest year, see Exhibit 2.

<sup>95</sup> See 19 CFR 351.524(b)(1).

<sup>96</sup> See 19 CFR 351.505(a)(2)(ii).

data from the International Monetary Fund's International Financial Statistics as our national average benchmark.<sup>97</sup>

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.<sup>98</sup> 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.

#### **IV. USE OF FACTS OTHERWISE AVAILABLE**

##### **Legal Standard**

Sections 776(a)(1) and (2) of the Act provide that Commerce 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: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that Commerce may use an adverse inference in selecting from among the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. When selecting an adverse facts available (AFA) rate from among the possible sources of information, Commerce's practice is to ensure that the rate is sufficiently adverse "as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide {Commerce} with complete and accurate information in a timely manner."<sup>99</sup> Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."<sup>100</sup>

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<sup>97</sup> See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2011*, 78 FR 64916 (October 30, 2013), and accompanying IDM at "Benchmarks and Interest Rates."

<sup>98</sup> See GOS October 26, 2020 SQR at Exhibit ARIS-16, Table 19.3 "Interest rates (NDER) on new business," and Table 19.4, "interest rates (NDER) on new business, other lending, up to 1 year." For the years 2012 through 2016, we used the rates from the Banco de España provided in the original investigation. For years 2006 through 2011, we are using the IMF Financial Statistics. See Memo to the File from Mary Kolberg, International Trade Analyst, "Placing of Discount Rates on the Record," dated December 8, 2020.

<sup>99</sup> See, e.g., *Drill Pipe from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 76 FR 1971 (January 11, 2011); see also *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998).

<sup>100</sup> See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, vol. I (1994) (SAA) at 870.

In *Nippon Steel*, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) held that, while the statute does not provide an express definition of the “failure to act to the best of its ability” standard, the ordinary meaning of “best” is “one’s maximum effort.”<sup>101</sup> Thus, according to the Federal Circuit, the statutory mandate that a respondent act to the “best of its ability” requires the respondent to do the maximum it is able to do. The Federal Circuit indicated that inadequate responses to an agency’s inquiries would suffice to find that a respondent did not act to the best of its ability. While the Federal Circuit noted that the “best of its ability” standard does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.<sup>102</sup> The “best of its ability” standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, “have familiarity with all of the records it maintains,” and “conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of” its ability to do so.<sup>103</sup> Moreover, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>104</sup>

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.<sup>105</sup> Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”<sup>106</sup> It is Commerce’s practice to consider information to be corroborated if it has probative value. In analyzing whether information has probative value, it is Commerce’s practice to examine the reliability and relevance of the information to be used. However, the SAA emphasizes that Commerce need not prove that the selected facts available are the best alternative information.

Finally, under section 776(d) of the Act, when applying AFA, Commerce may use any countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or, if there is no same or similar program, use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Additionally, when selecting an AFA rate, Commerce is not required for purposes of section 776(c) of the Act, or any other purposes, to estimate what the countervailable subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.

For purposes of these preliminary results, as explained below, we are relying in part on facts otherwise available and, as appropriate, applying an adverse inference in selecting from among the facts otherwise available.

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<sup>101</sup> See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

<sup>102</sup> *Id.* at 1382.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 1382-83; see also *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).

<sup>105</sup> See also 19 CFR 351.308(d).

<sup>106</sup> See SAA at 870.

### *Application of Facts Available: Unaffiliated Growers*

We requested that each company 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 originally requested information. We preliminarily find that necessary information is missing from the record, and that Agro Sevilla, Camacho, and Dcoop were unable to provide certain requested information. Thus, Commerce must rely on “facts otherwise available” for purposes of the preliminary results with regard to calculating the benefit to the olive processors from the assistance provided to the olive growers, pursuant to sections 776(a)(1) and 776(a)(2)(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-average per kilogram benefit, we are using, as partial facts available, the simple average of the weighted-average per kilogram benefit for all reporting growers or suppliers which reported producing raw olives and provided a questionnaire response.

### *Application of Adverse Facts Available – Government of Spain – State Foundation for Training in Employment (FUNDAE) – Specificity*

Each of the company respondents reported using this program.<sup>107</sup> In the initial questionnaire, we requested that the GOS coordinate with the mandatory respondents to respond fully for any other assistance the respondents received, and for which Commerce requires information.<sup>108</sup> This includes the Standard Questions Appendix, which asks for various data on usage of the program at issue (*i.e.*, the FUNDAE program). Specifically, we requested data on the total amount of assistance approved for all companies under the program, the total number of companies that were approved for assistance under this program, the total amount of assistance approved for the industry in which the mandatory respondent companies operate, as well as totals for every other industry in which companies were approved for assistance under this program. The GOS did not provide this information in its initial questionnaire response, but instead, provided us with a short description of the program along with the amount of assistance provided to each respondent.<sup>109</sup> On June 12, 2020, we requested a response to the Standard Questions Appendix again in a supplemental questionnaire.<sup>110</sup> The GOS stated “it has not been possible to obtain a complete answer from this institution” and referred us back to their description in the initial questionnaire response.<sup>111</sup> On November 3, 2020, we reiterated our request, specifically asking for the data on the total amount of assistance approved for all companies under the program, the total number of companies that were approved for assistance under this program, the total amount of assistance

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<sup>107</sup> See Agro Sevilla IQR at 24; *see also* Camacho IQR at 32; and Dcoop IQR at IQR-18.

<sup>108</sup> See Initial Questionnaire at 5.

<sup>109</sup> See GOS’s Letter, “Response of Government of Spain to the Initial Questionnaire (Administrative Review) Issued by the Department of Commerce on January 07, 2020,” dated February 26, 2020 at 207-209.

<sup>110</sup> See Commerce’s Letter, “First Administrative Review of the Countervailing Duty Order on Ripe Olives from Spain: Supplemental Questionnaire to the Government of Spain,” dated June 12, 2020 at 2.

<sup>111</sup> See GOS’s Letter, “Response of Government of Spain to the Supplemental Questionnaire (CVD Administrative Review) Issued by the Department of Commerce on June 12, 2020,” dated July 9, 2020 at 5.

approved for the industry in which the mandatory respondent companies operate, as well as totals for every other industry in which companies were approved for assistance under this program.<sup>112</sup> Again, the GOS stated that “the information was not provided by the institution.”<sup>113</sup> This information on program usage is necessary for Commerce’s analysis of whether this program is *de facto* specific.

Based upon the above, we preliminarily determine that necessary information to determine whether the FUNDAE program is specific is not available on the record. Further, by not providing the information requested, we find that the GOS has withheld information that was requested of it and significantly impeded the proceeding. Thus, Commerce must rely on “facts available” in making our preliminary finding in accordance with sections 776(a)(1) and 776(a)(2)(A) and (a)(2)(C) of the Act. Moreover, we preliminarily determine that the GOS failed to cooperate by not acting to the best of its ability to comply with our multiple requests for this information. Consequently, an adverse inference is warranted in the application of facts available, pursuant to section 776(b) of the Act.

In drawing an adverse inference, we note that in Law 30/2015, the regulations that guide the FUNDAE program, the GOS prioritizes certain sectors over others.<sup>114</sup> Specifically, the program prioritizes training for “sectors with greater employment prospects” and “the most innovative sectors”.<sup>115</sup> Using the limited information we received regarding this program (due to the GOS’s noncooperation), we find that the FUNDAE program reported by the company respondents is specific within the meaning of section 771(5A)(D)(iii) of the Act.<sup>116</sup>

## V. 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

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<sup>112</sup> See Commerce’s Letter, “First Administrative Review of the Countervailing Duty Order on Ripe Olives from Spain: Third Supplemental Questionnaire to the Government of Spain,” dated November 3, 2020 at 4.

<sup>113</sup> See GOS’s Letter, “Response of Government of Spain to the Fourth Supplemental Questionnaire (Administrative Review) Issued by the Department of Commerce on November 3, 2020,” dated November 16, 2020 at Annex 4 – Question 6.

<sup>114</sup> See GOS’s Letter, “Response of Government of Spain to the Fourth Supplemental Questionnaire (Administrative Review) Issued by the Department of Commerce on November 3, 2020,” dated November 16, 2020 at Exhibit ARIS4-02.

<sup>115</sup> *Id.* at 23.

<sup>116</sup> See Initial Questionnaire at 5; *see also* GOS’s Letter, “Response of Government of Spain to the Initial Questionnaire (Administrative Review) Issued by the Department of Commerce on January 07, 2020,” dated February 26, 2020 at 207-209; Agro Sevilla IQR at 24; Camacho IQR at 32; Dcoop IQR at IQR-18; Commerce’s Letter, “First Administrative Review of the Countervailing Duty Order on Ripe Olives from Spain: Supplemental Questionnaire to the Government of Spain,” dated June 12, 2020 at 2; GOS’s Letter, “Response of Government of Spain to the Supplemental Questionnaire (CVD Administrative Review) Issued by the Department of Commerce on June 12, 2020,” dated July 9, 2020 at 5; Commerce’s Letter, “First Administrative Review of the Countervailing Duty Order on Ripe Olives from Spain: Third Supplemental Questionnaire to the Government of Spain,” dated November 3, 2020 at 4; and GOS’s Letter, “Response of Government of Spain to the Fourth Supplemental Questionnaire (Administrative Review) Issued by the Department of Commerce on November 3, 2020,” dated November 16, 2020 at Exhibit Aris4-02 and Annex 4 – Question 6.

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

This program provides annual grants to farmers and is funded by the EU under CAP Pillar I.<sup>117</sup> Specifically, as we noted in the investigation, Spain implemented the Pillar I programs with reference to the operations of its two predecessor programs, the Single Payment Scheme (SPS) and the Common Organisation of Markets in Oils and Fats (the Common Market Program), and the amount of assistance provided under BPS was, by law, determined by assistance provided under these two predecessor programs.<sup>118</sup> Because the amount of assistance provided to olive farmers under the Common Market Program formed the foundation for determining the amount of assistance provided to olive farmers under the successor programs SPS and CAP Pillar I BPS, it was necessary to evaluate the Common Market Program. The Common Market Program provided production aid in the form of annual grants to farmers on the basis of type of crop and the volume of production.<sup>119</sup> Both olive oil and table olives were specifically identified as products eligible to receive production aid under this program and the payments provided were based on whether the olives were used to produce olive oil or table olives, and thus benefits under this program were expressly limited to olive growers.

Regarding whether the BPS is specific, Commerce's regulations, at 19 CFR 351.502(d), provide a rule for specificity applicable to agricultural subsidies, namely that “{t}he Secretary will not regard a subsidy as being specific under section 771(5A)(D) solely because the subsidy is limited to the agricultural sector (domestic subsidy).” The *Preamble* expands on this rule, and goes on to add that “{i}nstead, as under prior practice, the Secretary will find an agricultural subsidy to be countervailable only if it is specific within the agricultural sector, *e.g.*, a subsidy is limited to livestock, or livestock receive disproportionately large amounts of the subsidy.”<sup>120</sup> Thus, based on the *Preamble* and past Commerce practice,<sup>121</sup> Commerce's analysis of an agricultural subsidy is focused on determining whether the subsidy is specific to any subset of the agricultural sector, how the agricultural sector, writ large, was treated by the program, and whether any sub-sector of

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<sup>117</sup> See GOS's Letter, “Response of Government of Spain to the Initial Questionnaire (Administrative Review) Issued by the Department of Commerce on January 07, 2020,” dated February 26, 2020 (GOS IQR) at 5. The GOS implemented the BPS-Direct Payment Scheme in Spain through Royal Decree 1076/2014. See Exhibit ARI-A002; see also EC's Letter, “Administrative Review of the CVD Order on Ripe Olives from Spain – Revised Initial Questionnaire Response,” dated April 24, 2020 (EC Revised IQR) at 1.

<sup>118</sup> See EC Revised IQR at Annex A13 (citing EC 1307/2013, Article 26 (3)), stating that the initial BPS value is based on “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.” The SPS grant amounts were calculated using a value of entitlements per hectare based on a “referenced amount.” This reference amount was the average of the total payment amounts under the annual grant-to-farmer program for table olives and olive oil in place from 1999-2002. See Annex 12 (citing Reg. 1782/2003 at Article 37 and 38).

<sup>119</sup> See EC Revised IQR at Annex 12, referring to EC No. 1782/2003, Annex VI which notes support is given to table olives and olive oil through production aid.

<sup>120</sup> See *Preamble*, 63 FR at 65357-58.

<sup>121</sup> See, *e.g.*, *Final Negative Countervailing Duty Determination: Fresh Asparagus from Mexico*, 48 FR 21618, 21621 (May 14, 1983); *Fresh Cut Roses from Israel: Final Results of Administrative Review of Countervailing Duty Order*, 48 FR 36635, 36636 (August 12, 1983); and *Certain Fresh Cut Flowers from Mexico*, 49 FR 15007, 15008 (April 16, 1984).

the agricultural sector was afforded special treatment by an express limitation on access to the subsidy.

As noted above, the Common Market Program provided benefits that were expressly limited to olive growers. Benefits under the subsequent SPS program were determined not by any neutral or objective criteria,<sup>122</sup> but by using the average amount of grants provided from 1999 to 2002 under the Common Market Program, thereby entrenching the crop-specific nature of the subsidy. Again, in implementing the BPS program, benefits were determined with reference to the prior program, and thus continued to embed crop-specific differences.<sup>123</sup> Therefore, based on the manner in which the GOS legislatively implemented the BPS program with reference to predecessor programs, the agricultural sector writ large was not afforded uniform treatment, nor was the program implemented pursuant to neutral or objective criteria.

Commerce determined in the investigation that this program was countervailable.<sup>124</sup> There is no new information or evidence of changed circumstances that would warrant reconsidering our determination in the investigation regarding the conceivability of this program. Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence,<sup>125</sup> we preliminarily continue to find that this program under EC Regulations 1307/2013, 73/2009, and 1782/2003 provides 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 is *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act.

According to the EC, the benefits under this program are recurring.<sup>126</sup> 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). We also preliminarily find that this program bestows a benefit in the amount of the grant under 19 CFR 351.504(a). We measured the benefit received in the POR 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.” For any benefits received by the company respondents, we divided

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<sup>122</sup> Section 771(5A)(D)(ii) of the Act provides:

(ii) Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, the subsidy is not specific as a matter of law, if –

(I) eligibility is automatic  
(II) the criteria or conditions for eligibility are strictly followed, and  
(III) the criteria or conditions are clearly set forth in the relevant statute, regulation, or other official document, so as to be capable of verification.

For purposes of this clause, the term “objective criteria or conditions” means criteria or conditions that are neutral and that do not favor one enterprise or industry over another.

<sup>123</sup> See EC Revised IQR at Annex A13 citing Article 36 (3), stating that the initial BPS value is based on “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.” and Annex 12 referring to EC No. 1782/2003, establishing direct support under the Common Agricultural Policy at Annex VI, which notes support is given to table olives and olive oil through production aid

<sup>124</sup> See *Olives Final Determination* IDM at 12.

<sup>125</sup> See *Magnola Metallurgy, Inc. v. United States*, 508 F. 3d 1349, 1353-1356 (CAFC 2007) (*Magnola*).

<sup>126</sup> See EU’s Letter, “Administrative Review of the CVD Order on Ripe Olives from Spain – revised initial questionnaire response,” dated April 24, 2020, Annex A at 32.

the benefits by the respondent's total sales of olive and olive-derived products. We summed the subsidy rates resulting from the application of section 771B during the POR with the rates calculated for benefits provided directly to the respondents. On this basis, we calculated countervailable subsidy rates of 3.53 percent *ad valorem* for Agro Sevilla; 3.37 percent *ad valorem* for Camacho; and 15.73 percent *ad valorem* for Dcoop.

## 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.<sup>127</sup> A farmer who is entitled to a grant under the Direct Payment subprogram is eligible for Greening grants if the farmer undertakes agricultural practices beneficial for the climate and the environment.<sup>128</sup> As directed by the Council Regulation (EC) 1307/2013(37), EU Member states are to use part of their national ceiling funds<sup>129</sup> 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.”<sup>130</sup> Specifically, environmentally-friendly farming practices consists of crop diversification and maintenance of existing permanent pastures and areas of ecological interest.<sup>131</sup> “Farmers of permanent crops (vineyards, olive groves, citrus, *etc.*) are entitled to ‘ipso facto’.”<sup>132</sup> The grants are distributed with the grants under the Direct Payment sub-program.<sup>133</sup>

Commerce determined in the investigation that this program was countervailable.<sup>134</sup> There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence,<sup>135</sup> we preliminarily continue to find that this program under EC Regulations 1307/2013, 73/2009, 1782/2003, and No. 641/2014 provides 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 is 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.

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.<sup>136</sup> We preliminarily find that this program bestows a benefit in the amount of the grant under 19 CFR 351.504(a). We measured the benefit received

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<sup>127</sup> See EU IQR AGRI ANNEX 1.

<sup>128</sup> *Id.*

<sup>129</sup> 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.

<sup>130</sup> See EU IQR.

<sup>131</sup> See GOS IQR at 7.

<sup>132</sup> See *Olives Final Determination* IDM at 12.

<sup>133</sup> See EU IQR AGRI ANNEX 1.

<sup>134</sup> See *Olives Final Determination* IDM at 27-33.

<sup>135</sup> See *Magnola*, 508 F. 3d at 1353-1356.

<sup>136</sup> See GOS IQR at 23.



in the POR 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.” For any benefits received by the company respondents, we divided the benefits by the respondent’s total sales of olive and olive-derived products. We summed the subsidy rates resulting from the application of section 771B during the POR with the rates calculated for benefits provided directly to the respondents. On this basis, we calculated countervailable subsidy rates 1.83 percent *ad valorem* for Agro Sevilla; 1.74 percent *ad valorem* for Camacho; and 4.36 percent *ad valorem* for Dcoop.

### 3. EU CAP Pillar II: Agricultural Fund for Rural Development

EC Regulation 1305/2013 seeks to ensure sustainable development of the EU’s rural areas.<sup>137</sup> In an effort to meet the EC priorities for rural development, the Regional Government of Andalusia instituted a program consisting of 16 measures under which farmers and processors could apply for assistance. Due to the importance of the olive sector on the development of the rural areas of Andalusia, the regional government established a thematic subprogram for the olive sector in order to respond to the specific needs of the rural area. For example, within Measure 4 are Operation 4.1.2, providing assistance for investments in physical assets to improve performance and the overall sustainability in olive farms; and Operation 4.2.2, providing assistance for tangible or intangible investments in processing, marketing, or development of new agricultural products in the olive oil and table olive sector.<sup>138</sup> The council regulations demonstrate that the availability of assistance under this program was limited to companies in rural regions of the EU.

Commerce determined in the investigation that this program was countervailable.<sup>139</sup> We determined that the assistance provided under this thematic subprogram is tied to investment in the olive sector.<sup>140</sup> There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence,<sup>141</sup> we preliminarily continue to find that EC Regulations 1698/2005, and 1305/2013, the EC regulations governing rural development over the AUL, 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 is 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 and processors were specifically identified for assistance. As such, parts of the program are specific under section 771(5A)(D)(i) of the Act, because the assistance is limited to olive growers and olive processors. We determined that the assistance provided under this thematic subprogram is tied to investment in the olive sector.

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<sup>137</sup> See EU’s Letter, “Administrative Review of the CVD Order on Ripe Olives from Spain – Revised Initial Questionnaire Response,” dated April 24, 2020 at Annex A18.

<sup>138</sup> See GOS IQR at 28-36.

<sup>139</sup> See *Olives Final Determination* IDM at 12.

<sup>140</sup> See *Olives Preliminary Determination* PDM at 27, unchanged in *Olives Final Determination*.

<sup>141</sup> See *Magnola*, 508 F. 3d at 1353-1356.

This program provides both recurring and non-recurring benefits. We preliminarily find that this program bestows a benefit in the amount of the grant under 19 CFR 351.504(a). 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 Regulations 1698/2005 and 1305/2013 which govern rural development during the AUL, 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 the Regional Government of Andalusia from 2014-2018, we conducted the 0.5 percent test using the recipient’s sales of olives and olive-derived products, because assistance provided pursuant to these regulations is tied to investment in the table olive, olive oil, and other olive-derived products sector. For amounts that were greater than 0.5 percent of the recipient’s relevant sales in the year of approval,<sup>142</sup> we allocated the benefits over the AUL, using the discount rate identified above in the section “Discount Rates.” We measured the benefit received in the POR 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 subsidy rates resulting from the application of section 771B during the POR with the rates calculated for benefits provided directly to the respondents. On this basis, we calculated countervailable subsidy rates 1.00 percent *ad valorem* for Agro Sevilla; 0.09 percent *ad valorem* for Camacho; and 1.03 percent *ad valorem* for Dcoop.

#### 4. *Spanish Agricultural Insurance System (SAIS)*

Under the Spanish Agricultural Insurance System (SAIS), the GOS, through the State Entity for Agricultural Insurance (ENESA) provides subsidies to reduce the amount of the insurance premium owed to AGROSEGURO, the management entity of the insurance companies.<sup>143</sup> According to the GOS, there have only been minor changes to the program since the investigation, and these changes do not affect the general features of the SAIS.<sup>144</sup> According to the GOS, there is a new Agricultural Insurance Plan (AIP) that is approved each year, and each AIP contains the list of agricultural insurance lines available for the corresponding year. Olive farmers are included, and national legislation defines the insurable goods and yields, the minimum technical conditions of cultivation, the scope of application, warranty periods, and subscription dates and unit prices.<sup>145</sup>

Commerce determined in the investigation that this program was countervailable.<sup>146</sup> There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable.<sup>147</sup> Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the

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<sup>142</sup> Where the record lacked information regarding the year of approval, we used the year of receipt. *See* Calculation Memoranda.

<sup>143</sup> *See* GOS IQR at 70.

<sup>144</sup> *Id.* at 69.

<sup>145</sup> *Id.*

<sup>146</sup> *See Decision Memorandum for Post-Preliminary Analysis in the Countervailing Duty Investigation of Ripe Olives from Spain* (Post Preliminary Analysis) at 6-7, unchanged in *Olives Final Determination*.

<sup>147</sup> *See* GOS IQR at 69-101.

proceeding, absent the presentation of new facts or evidence,<sup>148</sup> we preliminarily continue to find that ENESA subsidies provided through the SAIS program provide a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act. We also preliminarily continue to find that is specific within the meaning of section 771(5A)(D)(i) of the Act because ENESA establishes a different base subsidy and insurance premium discount for each insurance line. The insurance lines are distinguished by the type of crop.<sup>149</sup> On this basis, this program is *de jure* specific.

Consistent with the investigation, we find that the ENESA subsidy is tied to the specific product covered by the insurance contract for which it is reducing the premium due. Although cross-owned affiliates of one mandatory respondent reported receiving the subsidy from ENESA during the POR, not all of these were associated with contracts to insure their olive groves; we only intend to capture those subsidies received, in the form of insurance reductions, relating to olive groves. We preliminarily find that the subsidy provided under this program confers a benefit within the meaning of section 771(5)(E) of the Act in the amount of the insurance premium discount provided by the GOS.

In accordance with 19 CFR 351.524(c)(1), we are treating this subsidy as a recurring subsidy,<sup>150</sup> and measuring the POR benefit as the discount applied to the payment of each companies' insurance premium during the POR. We measured the benefit received in the POR 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." On this basis, we calculated countervailable subsidy rates of 0.02 percent *ad valorem* for Agro Sevilla. For Camacho and Dcoop, the rate resulting from this calculation is less than 0.005 percent *ad valorem*, and, therefore, it is not measurable. Consistent with our practice, we are not including this amount in the overall countervailable subsidy rate for Camacho and Dcoop.

#### 5. *Spanish Official Credit Institute (ICO) – International Financing*

The ICO is a corporate state-owned entity attached to the Ministry of Economic Affairs and Digital Transformation.<sup>151</sup> The ICO is legally considered a credit institution and is classified as the government's financial agency.<sup>152</sup> The loans are provided to companies through private banks. The criteria vary for each ICO financing program. The purpose of the "International Financing" program is to "provide self-employed people and Spanish companies with the financing needed to make investments in Spain and meet liquidity needs to enter a foreign market."<sup>153</sup>

Commerce determined in the investigation that this program was countervailable.<sup>154</sup> There is no new information or evidence of changed circumstances that would warrant reconsidering our

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<sup>148</sup> See *Magnola*, 508 F. 3d at 1353-1356.

<sup>149</sup> See GOS IQR at 69.

<sup>150</sup> *Id.* at 102.

<sup>151</sup> See GOS IQR at 142.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* at 233.

<sup>154</sup> See *Olives Final Determination* IDM at 13.

determination that this program is countervailable.<sup>155</sup> Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence,<sup>156</sup> we preliminarily continue to find ICO is an authority within the meaning of section 771(5)(B) of the Act, and as such loans provided by ICO constitute a direct transfer of funds under section 771(5)(D)(i) of the Act. We also preliminarily continue to find that the loans for international financing are available only to exporters, and thus are specific as an export subsidy under section 771(5A)(A) and (B) of the Act.

We preliminary find that these loans provide a benefit in the amount of the difference between the interest that is paid on the loan and the interest that would be paid on a comparable commercial loan, in accordance with section 771(5)(E)(ii) of the Act. To calculate the benefit, we used as a benchmark the discount rates for the respective years that the loans were approved. We compared the effective interest that the companies paid to the effective interest the companies would have paid using the discount rate for the year of approval of the loan. We summed the difference between the interest paid and what would have been paid using the benchmark rate and divided each company's benefit amount by its total FOB export sales, in accordance with 19 CFR 351.525(b)(2). On this basis, we calculated a countervailable subsidy rate of 0.01 percent *ad valorem* for Agro Sevilla. For Camacho, the rate resulting from this calculation is less than 0.005 percent *ad valorem*, and, therefore, it is not measurable. Consistent with our practice, we are not including this amount in the overall countervailable subsidy rate for Camacho. Dcoop reported that it did not use this program.

#### 6. *Income Tax Credit for Foreign Trade Fair Expenses*

The objective of this program is to promote the internationalization of Spanish companies through tax incentives.<sup>157</sup> The program provides a credit toward taxes payable relating to export activities like the costs of attending international trade fairs, international marketing, acquiring holdings in foreign companies, or setting up subsidiaries directly related to the activity of exporting goods and services.<sup>158</sup>

Commerce determined in the investigation that this program was countervailable.<sup>159</sup> There is no new information or evidence of changed circumstances that would warrant reconsidering our determination that this program is countervailable. Therefore, consistent with our practice not to revisit financial contribution and specificity determinations made in a prior segment of the proceeding, absent the presentation of new facts or evidence,<sup>160</sup> we preliminarily continue to find that the tax credit provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOS. We also continue to find that the tax credit is export specific within the meaning of section 771(5A)(A) and (B) of the Act because it is granted for

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<sup>155</sup> *Id.*

<sup>156</sup> *See Magnola*, 508 F. 3d at 1353-1356.

<sup>157</sup> *See GOS IQR* at 234.

<sup>158</sup> *Id.*

<sup>159</sup> *See Olives Final Determination IDM* at 14-15.

<sup>160</sup> *See Magnola*, 508 F. 3d at 1353-1356.

expenses incurred for international trade fairs, international marketing, and activities by which companies seek to expand their export sales.

We preliminarily find that this program confers a benefit in the amount of the tax credit used by Agro Sevilla during the POR to reduce its tax obligation. In accordance with 19 CFR 351.524(c), we treat the tax credit as a recurring benefit. To calculate the countervailable subsidy, we divided the amount of the tax credit applied to reduce Agro Sevilla's tax obligation during the POR, by Agro Sevilla's export sales during the POR.<sup>161</sup> On this basis, we calculated a countervailable subsidy rate of 0.06 percent *ad valorem* for Agro Sevilla. Camacho and Dcoop reported that they did not use this program.

## 7. *European Investment Fund Loans*

Agro Sevilla reported receiving long-term loans from the European Investment Fund (EIF) to fund a research and development project under the InnovFin SME Guarantee Facility (InnovFin). The EIF is an agency, along with the European Investment Bank (EIB), that comprises the European Investment Bank Group (EIB Group) which provides financial products and instruments on behalf of the European Commission (EC).<sup>162</sup> The EIF specializes in providing risk financing to small and medium enterprises (SMEs) throughout Europe by providing capital, guarantees, credit enhancement, and microfinance to financial intermediaries.<sup>163</sup> Under the InnovFin program, the EC makes certain funds available to the EIF to issue guarantees to commercial lenders to cover up to 50 percent of losses on eligible loan portfolios.<sup>164</sup> Once the commercial lender issues the loan, it notifies the EIF for guarantee coverage.<sup>165</sup> The commercial lender is responsible for evaluating the individual loan and ensuring its compliance with the eligibility criteria set by the EIF in order to receive the guarantee coverage under the program.<sup>166</sup> For the InnovFin program, SMEs are required to comply with at least one or more "innovation eligibility criteria."<sup>167</sup> The purpose is to improve access to debt financing for public and private entities engaged in research and innovation.<sup>168</sup>

Because the EIF is a financial institution that is a part of the EIB Group, we preliminarily find that these loans confer a countervailable subsidy within the meaning of section 771(5) of the Act. These loans constitute a financial contribution in the form of a direct transfer of funds from the EC under section 771(5)(D)(i) of the Act. A benefit exists under section 771(5)(E)(ii) of the Act and 19 CFR 351.505(a)(1) equal to the difference between the interest that the company paid on the loans during the POR and the interest the company would have paid on comparable commercial loans. Regarding specificity, the SAA<sup>169</sup> states that the purpose of the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies

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<sup>161</sup> See Agro Sevilla IQR at Exhibit AS-TF-1.

<sup>162</sup> See EC IQR at Exhibit EIB 4-2.

<sup>163</sup> *Id.*

<sup>164</sup> See EC IQR at Questionnaire Reply RTD Section II.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* at Article 5 – Eligibility Criteria of SMEG Final Recipients.

<sup>168</sup> *Id.* at Questionnaire Reply RTD Section II.

<sup>169</sup> See SAA at 929.

that are truly broadly available and widely used throughout an economy.<sup>170</sup> The SAA also states that in determining whether the number of industries using a subsidy is large or small, Commerce can take into account the number of industries in the economy in question.<sup>171</sup> Therefore, under the specificity test as set forth by the SAA, a subsidy program would be found to be specific under section 771(5A)(D) of the Act unless the program was widely used throughout the economy. In 2016, the year in which the loan to Agro Sevilla was approved, only 4,279 companies in the EU were approved for assistance under this program. Therefore, we preliminarily determine that this program is *de facto* specific within the meaning of 771(5A)(D)(iii)(I) of the Act because 4,279 companies, provided in an economy the size of the EU, does not demonstrate that the subsidies provided under this program are widely used throughout the EU.

To compute the benefit, we used as a benchmark the discount rate for the year that the loan was approved. We compared the effective interest that Agro Sevilla paid to the effective interest Agro Sevilla would have paid using the discount rate for the year of approval for the loan. We summed the difference between the interest paid and what it would have paid using the benchmark rate and divided the total benefit amount by Agro Sevilla's total FOB sales, in accordance with 19 CFR 351.525(b)(2). On this basis, we preliminarily calculate a net countervailable subsidy rate of 0.01 percent *ad valorem* for Agro Sevilla. Camacho and Dcoop reported that they did not use this program.

## 8. FUNDAE

All three respondents reported receiving tax credits under this program during the POR.<sup>172</sup> Through the FUNDAE, companies are offered bonuses, in the form of credits toward reducing social security contributions, for carrying out training and professional retraining activities.<sup>173</sup> In order to receive the assistance, employers must expressly apply the credit toward their social security payments.<sup>174</sup> The credit is not applied automatically and all unused credit will expire at the end of the corresponding period.<sup>175</sup>

As discussed above in the "Use of Facts Otherwise Available" section, the GOS did not provide the requested necessary information for use in our analysis of whether this program is specific, and, therefore, in accordance with sections 776(a) and (b) of the Act, we preliminarily determine that these tax credits are specific under section 771(5A) of the Act. The social security credit provides a financial contribution under section 771(5)(D)(ii) of the Act in the form of revenue forgone by the GOS and confers a benefit in the amount of the tax credit used by the respondents during the POR to reduce their social security contributions in accordance with 19 CFR 351.524(c). Because the respondent must actively apply for the credit each time it wants to reduce its social security contribution, we preliminarily find these benefits to be non-recurring.

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<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> See Agro Sevilla IQR at 24; see also Camacho IQR at 32; and Dcoop IQR at IQR-18.

<sup>173</sup> See GOS IQR at 207.

<sup>174</sup> See Agro Sevilla IQR at 24.

<sup>175</sup> *Id.*

To calculate the countervailable subsidy, we divided the amount of the tax credit during the POR, by each respondent's total FOB sales during the POR. On this basis, we calculated a countervailable subsidy rate of 0.01 percent *ad valorem* for Agro Sevilla and 0.03 percent *ad valorem* for Camacho. For Dcoop, the rate resulting from this calculation is less than 0.005 percent *ad valorem*, and, therefore, it is not measurable. Consistent with our practice, we are not including this amount in the overall countervailable subsidy rate for Dcoop.

## **B. Programs Preliminarily Determined to be Tied to Non-Subject Merchandise**

### *1. Private Storage Aid for Certain Agricultural Products*

Dcoop reported receiving assistance under this program for privately storing olive oil during the AUL,<sup>176</sup> and indicated that their assistance was related to EC No. 826/2008, which provides a framework for setting common rules for granting private storage aid for certain agricultural products, and EC 539/2012, which sets the maximum amount of aid granted for the private storage of olive oil under the tendering procedure opened by EC 430/2012. In reviewing EC 826/2008, we found that EC 1234/2007 established provisions for receiving assistance under this program. The EC explained that Article 31 of EC 1234/2007 provided aid for the private storage of white sugar, olive oil, certain fresh or chilled meat and cheeses, but emphasized that olives were not included as a product eligible for assistance.<sup>177</sup> According to the EC, EC 1234/2007 has been repealed, and aid for the storage of certain agricultural products is now regulated under Article 17 of EC 1308/2013. Olives continue to be excluded from the list of products eligible for storage aid.<sup>178</sup>

After further examination we find this program to be the same as the "Market Measures" program, which Commerce determined to be tied to non-subject merchandise in the original investigation.<sup>179</sup> During the review, we requested that the EC provide EC 1308/2013. In reading Articles 7 through 17 of EC Reg. 1308/2013, we find that the EC discusses market intervention and aid for the private storage of eligible products, including olive oil, but not table olives. There is no record evidence indicating that this program has changed during this POR, and based on the above, we continue to find this program tied to non-subject merchandise.

## **C. Programs Preliminarily Determined to Require Additional Information**

We do not have enough information on the record to evaluate the countervailability of the following programs. We intend to seek more information from the respondents after these preliminary results, and we intend to issue a post-preliminary analysis with respect to these programs.

- 1. ICO – National Investment*
- 2. Deduction of 30 Percent of the Amount of Accounting Depreciation*

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<sup>176</sup> See Dcoop IQR at IQR-17 and Exhibit IQR-10.

<sup>177</sup> See EC's Letter, "Administrative Review of the CVD Order on Ripe Olives from Spain-EC Response to Supplemental Questionnaire," dated October 29, 2020 at Exhibit 1.

<sup>178</sup> *Id.*

<sup>179</sup> See *Olives Final Determination* IDM at 16.

3. *Income Exemption on the Transfer of Securities of Resident Entities*
4. *European Regional Development Fund (ERDF) and Andalusia Energy Agency Sustainable Energy Development of Andalusia Scheme*
5. *EU ERDF and Andalusian Promotion of Renewable Energy Installations (PROSOL)*

#### **D. Programs Preliminarily Determined to Provide No Measurable Benefit During the POR**

The company respondents reported using a number of other programs. Based on the record evidence, we preliminarily determine that the benefits from certain programs were fully expensed prior to the POR 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 Commerce's practice,<sup>180</sup> 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.

1. *EU Program for the Environment and Climate Action (LIFE)*
2. *EU ERDF and Agency of Innovation and Development of Andalusia (IDEA)*
3. *EU CAP Pillar I – Aid to Young Farmers*
4. *Occupational Safety and Health Investments for Micro and SME Grants provided by the Department of Employment*
5. *Agencia Andaluza de Promocion Exterior (EXTENDA)*
6. *Technical Corporation of Andalusia (CTA)*
7. *Andalusia Employment Service*
8. *Collective Layoff Procedure 2005/2015*
9. *Creation for Employment for Youth*
10. *Andalusia Workplace Health and Safety*
11. *Andalusia Equine Sector*
12. *Spanish Electricity Special Tax Reduction*
13. *Assistance from the Chamber of Commerce*
14. *Bonificaciones Prevencion – Fremap*
15. *Torres Quevedo Program – Agencia Estatal de Innovacion*
16. *Cooperative Integration Grant*
17. *Spanish Ministry of Employment and Social Security Measures*
18. *Reversal of Impairment of Assets*
19. *Research & Development & Innovation*
20. *FOCAL Grants*
21. *ICEX Espana Exportacion e inversiones Grants*
22. *National Program of Applied Research Projects (NPARP)*
23. *Centre for the Development of Industrial Technology (CDTI) Financing*
24. *CDTI Grants*

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<sup>180</sup> 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), and accompanying IDM at 10, unchanged in *Large Residential Washers from the Republic of Korea: Final Affirmative Countervailing Duty Determination*, 77 FR 75975 (December 26, 2012).



25. *European Investment Bank Loans*

**E. Programs Preliminarily Determined to Not be Used During the POR**

1. *ICO – Exporters*
2. *EU CAP Single Payment Scheme*
3. *EU Promotion Aid Scheme*
4. *EU Producer Organization Work Programs*
5. *Programa de Incentivo al Vehiculo Eficiente (PIVE) (Grants to acquire vehicles)*
6. *Obligatory Reserve Fund Tax Deduction for Coops*
7. *Dividend Exemption Tax Program*
8. *Fundacion Corporation de Andalusia Financing*

## VI. RECOMMENDATION

Based on our analysis, we recommend adopting the preliminary results described above. If this recommendation is accepted, we will publish the preliminary results of review in the *Federal Register*.



\_\_\_\_\_  
Agree



\_\_\_\_\_  
Disagree

12/18/2020

X



Signed by: JEFFREY KESSLER  
Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance