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Washington, D.C. 20230

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August 7, 2017

MEMORANDUM TO: Carole Showers
Executive Director, Office of Policy,
performing the duties of
Deputy Assistant Secretary for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative Determination: Countervailing Duty Investigation of Silicon Metal from Brazil

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I. SUMMARY

The Department of Commerce (the Department) preliminarily determines that countervailable subsidies are being provided to producers and exporters of silicon metal in Brazil, as provided in section 703 of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Case History

On March 8, 2017, the Department received countervailing duty (CVD) petitions concerning imports of silicon metal from Australia, Brazil, and Kazakhstan, filed in proper form on behalf of Globe Specialty Metals, Inc. (the petitioner), accompanied by antidumping duty (AD) petitions from Australia, Brazil and Norway.[1] On March 28, 2017, the Department signed a notice of initiation for the CVD investigation of silicon metal from Australia, Brazil and Kazakhstan.[2]

[1] *See* "Silicon Metal from Australia, Brazil, Kazakhstan, and Norway; Antidumping and Countervailing Duty Petition," dated March 8, 2017 (petition).
[2] *See Silicon Metal from Australia, Brazil, and Kazakhstan: Initiation of Countervailing Duty Investigations*, 82 FR 16356 (April 4, 2017) (*Initiation Notice*). On the same date, we also signed a notice of initiation for the AD investigations of silicon metal from Australia, Brazil, and Norway. *See Silicon Metal from Australia, Brazil and Norway: Initiation of Less-Than-Fair-Value Investigations*, 82 FR 16352 (April 4, 2017).

The Department stated in the *Initiation Notice* that we intended to select respondents based on data obtained from U.S. Customs and Border Protection (CBP).[3] On March 29, 2017, we released the CBP entry data under administrative protective order for the Harmonized Tariff Schedule of the United States (HTSUS) listed in the scope of the investigation. On April 5 and April 7, 2017, respectively, the petitioner and Rima Industrial S/A (Rima) submitted comments on respondent selection.[4] On April 10, 2017, the petitioner and Rima submitted rebuttal comments.[5]

On April 27, 2017, the Department selected Dow Corning Metais do Pará IND (DC Metais), Dow Corning Silicio do Brasil Indústria e Comércio Ltda. (DC Silicio), and Ligas de Aluminio S.A. – LIASA (LIASA), as mandatory respondents for this investigation[6] and, on May 1, 2017, issued the CVD questionnaire to the Government of Brazil (GOB).[7] The Department instructed the GOB to forward the questionnaire to the selected mandatory respondents. On May 22, 2017, LIASA informed the Department that it would not participate in this investigation.[8]

We received an affiliation response from DC Silicio on May 22, 2017, indicating that DC Metais merged with DC Silicio prior to the POI.[9] The GOB and DC Silicio filed initial questionnaire responses with the Department between June 14 and June 21, 2017.[10] Between June 29, 2017 and July 6, 2017, the Department issued supplemental questionnaires to the GOB and DC Silicio, and they filed responses to these questionnaires between July 12 and July 20, 2017.[11] On July

[3] *See Initiation Notice*.
[4] *See* Letter to the Department from the petitioner, re: "Silicon Metal from Brazil; Countervailing Duty Investigation; Globe Specialty Metals Comments on Respondent Selection," dated April 5, 2017; see *also* Letter to the Department from Rima, re: "Silicon Metal from Brazil – Comments on Respondent Selection and U.S. Customs and Border Protection Data," dated April 6, 2017.
[5] *See* Letter to the Department from the petitioner, re: "Silicon Metal from Brazil; Countervailing Duty Investigation; Globe Specialty Metals Rebuttal Comments on Respondent Selection," dated April 10, 2017; see *also* Letter to the Department from Rima, re: "Silicon Metal from Brazil – Rebuttal Comments on Respondent Selection," dated April 10, 2017.
[6] *See* Memorandum to Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, re: "Countervailing Duty Investigation of Silicon Metal from Brazil: Respondent Selection," dated April 27, 2017 (Respondent Selection Memo).
[7] *See* Letter to the Government of Brazil, re: "Silicon Metal from Brazil: Countervailing Duty Questionnaire," dated May 1, 2017.
[8] *See* Letter from LIASA, re: "Silicon Metal from Brazil, C-351-851 and A-351-850," dated May 22, 2017 (LIASA Letter).
[9] *See* Letter from DC Silicio, re: "Silicon Metal from Brazil: Response to Section III Regarding Affiliated Companies and Cross-Owned Affiliates for Dow Corning Silicio do Brasil Indústria e Comércio Ltda. and Dow Corning Metais do Pará IND," dated May 22, 2017 (DC Silicio's Affiliation Response).
[10] *See* Letter from DC Silicio, re: "Silicon Metal from Brazil: Response to Section III for Dow Corning Silicio do Brasil Indústria e Comércio Ltda. and Dow Corning Metais do Pará IND," dated June 14, 2017 (DC Silicio's Questionnaire Response); *see also* Letter from the GOB, re: "Silicon Metal from Brazil; Response to DoC's Countervailing Duty Questionnaire for the GOB – Section II," dated June 14, 2017 (GOB's Questionnaire Response).
[11] *See* Letter from DC Silicio, re: "Silicon Metal from Brazil: Response to Supplemental Questionnaires for Dow Corning Silicio do Brasil Indústria e Comércio Ltda. and Dow Corning Metais do Pará IND," dated July 12, 2017 (DC Silicio's Supplemental Questionnaire Response); *see also* Letter from the GOB, re: "Countervailing Duty Investigation of Silicon Metal from Brazil; Response to DoC's supplemental questionnaire for the GOB," dated July

20, 2017, the Department issued a second supplemental questionnaire to DC Silicio, which filed its responses on July 27, 2017 and August 1, 2017.[12]

On June 30, 2017, the petitioner filed two new subsidy allegations (NSA).[13] We initiated an investigation of both alleged programs[14] and issued questionnaires to DC Silicio and the GOB requesting additional information regarding the allegations on July 13, 2017.[15] The Department received questionnaire responses from the GOB and DC Silicio on July 24, 2017.

On July 10, 2017, the petitioner filed a request that the Department align the final determination of this CVD investigation with the companion AD investigations.[16]

B. Postponement of Preliminary Determination

On May 2, 2017, the petitioner requested an extension of the preliminary determination. On May 16, 2017, the Department fully extended the preliminary determination pursuant to section 703(c)(1)(A) of the Act and 19 CFR 351.205(b)(2).[17]

C. Period of Investigation

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

III. SCOPE COMMENTS

In accordance with the preamble to the Department's regulations,[18] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, *i.e.*, scope.[19] Certain interested parties commented on the scope of this investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to

20, 2017. (GOB's Supplemental Questionnaire Response).

[12] *See* Letter from DC Silicio, re: "Silicon Metal from Brazil: Response to Questions 1.a and 1.b of the Second Supplemental Questionnaires for Dow Corning Silicio do Brasil Indústria e Comércio Ltda. and Dow Corning Metais do Pará IND," dated July 27, 2017 (DC Silicio's Second Supplemental Questionnaire Response Part 1); *see also* Letter from DC Silicio, re: "Silicon Metal from Brazil: Response to Questions 1.c, 2.a., 2.b., and 3 of the Second Supplemental Questionnaires for Dow Corning Silicio do Brasil Indústria e Comércio Ltda. and Dow Corning Metais do Pará IND," dated August 1, 2017 (DC Silicio's Second Supplemental Questionnaire Response Part 2).

[13] *See* letter from the petitioner, "Silicon Metal from Brazil; Countervailing Duty Investigation; Additional Countervailable Subsidy Allegations," dated June 30, 2017 (NSA Submission).

[14] *See* Memorandum to Irene Darzenta Tzafolias, Director, Office VIII, Enforcement and Compliance, "New Subsidy Allegations," dated June 13, 2017 (NSA Initiation).

[15] *See* letter to DC Silicio, "Countervailing Duty Investigation of Silicon Metal from Brazil: New Subsidy Questionnaire," dated July 13, 2017; *see also* letter to the GOB, "Countervailing Duty Investigation of Silicon Metal from Brazil: Supplemental Questionnaire," dated July 13, 2017.

[16] *See* letter from the petitioner, "Silicon Metal from Australia, Brazil, and Kazakhstan; Countervailing Duty Investigations; Request for Alignment of Final Determinations," dated July 10, 2017 (Alignment Request).

[17] *See Silicon Metal from Australia, Brazil and Kazakhstan: Notice of Postponement of Preliminary Determinations of Countervailing Duty Investigations*, 82 FR 22490 (May 16, 2017).

[18] *See Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

[19] *See Initiation Notice*, 82 FR at 16357.

the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[20] We have evaluated the scope comments filed by the interested parties, and we are not preliminarily modifying the scope language as it appeared in the *Initiation Notice*.[21] In the Preliminary Scope Decision Memorandum, we set a separate briefing schedule on scope issues for interested parties and we will issue a final scope decision after considering any comments submitted in scope case and rebuttal briefs.

IV. ALIGNMENT

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioner's request,[22] we are aligning the final CVD determination in this investigation with the final determinations in the companion AD investigations of silicon metal from Australia, Brazil, and Norway. Consequently, the final CVD determination will be issued on the same date as the final AD determinations, which are currently scheduled to be issued no later than December 18, 2017, unless postponed.

V. INJURY TEST

Because Brazil is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the U.S. International Trade Commission (ITC) is required to determine whether imports of the subject merchandise from Brazil materially injure, or threaten material injury to, a U.S. industry. On April 27, 2017, the ITC determined that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of silicon metal from Australia, Brazil, Kazakhstan, and Norway.[23]

VI. USE OF FACTS OTHERWISE AVAILABLE

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) 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 the Department, 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.

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party

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[20] *See* Memorandum, "Silicon Metal from Australia, Brazil, Kazakhstan, and Norway: Scope Comments Decision Memorandum for the Preliminary Determinations," dated June 27, 2017 (Preliminary Scope Decision Memorandum).
[21] *Id*.
[22] *See* Alignment Request.
[23] *See* Silicon Metal from Australia, Brazil, Kazakhstan and Norway: Investigation Nos. 701-TA-567-569 and 731-TA-1343-1345 (May 2017) (Preliminary); *Silicon Metal from Australia, Brazil, Kazakhstan and Norway*, 82 FR 19383 (April 27, 2017).

submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

Under the Trade Preferences Extension Act (TPEA) of 2015, numerous amendments to the AD and CVD laws were made, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[24] The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[25]

Section 776(b) of the Act provides that the Department may use an adverse inference in applying 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. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[26] 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 countervailing duty investigation, a previous administrative review, or other information placed on the record.[27]

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[28] Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[29]

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a 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 countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.[30] The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable

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[24] *See* TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the International Trade Commission. *See Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*). The text of the TPEA may be found at https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl.

[25] *See Applicability Notice*, 80 FR at 46794-95.

[26] *See* section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

[27] *See also* 19 CFR 351.308(c).

[28] *See also* 19 CFR 351.308(d).

[29] *See* Statement of Administrative Action, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994) (SAA) at 870.

[30] *See* section 776(d)(1) of the Act; TPEA, section 502(3).

subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[31]

As discussed below, for the preliminary determination, we find the application of total adverse facts available (AFA) warranted with respect to LIASA, because it withdrew from participation in this investigation.

LIASA

As noted above, LIASA was initially selected as a mandatory respondent but did not respond to the Department's initial questionnaire and informed the Department that it would not be participating in the investigation.[32] As a result, we have relied on facts available, in accordance with section 776(a) of the Act, because necessary information is not available on the record and LIASA withheld necessary information requested by the Department, significantly impeding the investigation. Thus, we must rely on facts otherwise available in accordance with sections 776(a)(1) and 776(2)(A) and (C) of the Act.

In selecting from among the facts available, the Department determined that an adverse inference is warranted, pursuant to section 776(b) of the Act. LIASA refused to submit a response to the Department's initial CVD questionnaire, and filed a letter withdrawing from participating in this investigation. For these reasons, we find that LIASA failed to cooperate by not acting to the best of its ability to comply with the Department's request for information in this investigation, and as such, this preliminary determination with respect to LIASA is based on total AFA.

The GOB provided sufficient information concerning the countervailability of five programs used by DC Silicio, and, as explained below, the Department is preliminarily finding all of these programs to be countervailable in this investigation, and we have included these programs in the determination of the AFA rate. For those alleged programs under investigation but not used by DC Silicio, we note that the GOB also provided information on these programs.

Selection of the AFA Rate

When selecting AFA rates, section 776(d) of the Act provides that the Department 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 countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. It is the Department's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for a cooperating respondent in the same investigation, or, if not available, rates calculated in prior CVD cases involving the same

[31] *See* section 776(d)(3) of the Act; TPEA, section 502(3).
[32] *See* LIASA Letter.

country.[33] Specifically, the Department applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in a CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.[34]

In applying AFA to LIASA, we are guided by the statute and the Department's methodology detailed above. Because LIASA failed to act to the best of its ability in this investigation, as discussed above, we made an adverse inference that it used and benefitted from the programs appearing below.

First, we are applying the above-zero rates calculated for DC Silicio, the other mandatory respondent in this investigation, for the following programs:

- **Tax Incentives in the State of Pará (ICMS)**
- **Amazon Region Development Authority (SUDAM) and Northeast Region Development Authority (SUDENE)**
- **Reintegra**
- **Predominantly Exporting Companies (PEC) Program**
- **Forest Fee Reductions in Minas Gerais**

For programs for which we did not calculate an above-zero rate for the other mandatory respondent in this investigation, we are applying the highest subsidy rate calculated for the same or, if lacking such rate, for a similar program in a CVD investigation or administrative review involving Brazil. We are able to match based on program name, descriptions, and treatment of the benefit, the following programs to the same programs from other Brazilian CVD proceedings:

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[33] *See, e.g., Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum (IDM) at "Application of Facts Available, Including the Application of Adverse Inferences"); *see also Aluminum Extrusions from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011) (*Aluminum Extrusions from the PRC*), and accompanying IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

[34] *Id.; see also Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008) (*Thermal Paper from the PRC*), and accompanying IDM at "Selection of the Adverse Facts Available Rate."

- **Ex-Tarifário**[35]
- **Integrated Duty Drawback**[36]

Given the absence of a subsidy rate calculated for the same or a similar program, we applied the highest calculated subsidy rate for any program otherwise identified in a CVD case involving Brazil that could conceivably be used by LIASA for the following program:

- **Provision of Electricity for Less than Adequate Remuneration (LTAR)**[37]

In November 2015, the President of Brazil signed into law a measure enacted by the Brazilian National Congress (Law No. 13,182 of November 3, 2015) that is designed to provide favorable long-term electricity rates through government-owned suppliers to certain industrial consumers located in the Northeast, Southeast, and Center West regions—including the silicon metal producers with plants in Minas Gerais. In the case of the Southeast and Center West, the law directs a government-owned utility, Furnas Centrais Eletricas S.A. (Furnas), to enter into bilateral electricity supply contracts with certain end users (including the silicon metal producers) with industrial class consumption units located in the South East/Center West submarkets. The law directs Furnas to carry out the required contracting by holding an auction within 60 days of publication of the law.[38] The provision of electricity by an authority is a form of financial contribution under Section 771(5)(D)(iii) of the Act. The provision of electricity program is *de jure* specific under section 771(5A)(D)(i) of the Act, because eligibility to participate in the auctions under the law is limited to a select group of companies meeting the criteria specified in the law.[39]

Based on the above analysis, based on AFA, we determine the total countervailable subsidy rate for LIASA to be 52.07 percent *ad valorem*.

[35] *See Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Final Affirmative Determination*, 81 FR 49940 (July 29, 2016) *(Cold-Rolled Final),* and accompanying IDM at Section VI.A.2., where we determined the countervailable subsidy from Ex-Tarifário to be 3.93 percent *ad valorem* for both respondents.
[36] *See Cold-Rolled Final,* and accompanying IDM at Section VI.A.4., where we determined the countervailable subsidy from the Integrated Drawback Scheme to be 1.33 percent *ad valorem* for respondent CSN.
[37] *See Final Affirmative Countervailing Duty Determinations: Certain Steel Products from Brazil*, 58 FR 37295 (July 9, 1993), and accompanying IDM at Section A.1., where we determined a countervailable subsidy rate of 43.12 percent *ad valorem* for respondent COSIPA for the "Equity Infusions" program.
[38] *See* GOB's Questionnaire Response at 8.
[39] *Id.*, at 13-14.

Program	AFA Rate- LIASA	Export Subsidy
Provision of Electricity for Less than Adequate Remuneration (LTAR)	43.12 percent	No
Tax Incentives Provided by the Amazon Region Development Authority (SUDAM) and Northeast Region Development Authority (SUDENE)	0.63 percent	No
Tax Incentives in the State of Pará (ICMS)	2.50 percent	No
Reintegra	0.1 percent	Yes
Integrated Drawback Scheme	1.33 percent	Yes
Predominantly Exporting Companies (PEC) Program	0.44 percent	Yes
Forest Fee Reductions in Minas Gerais	0.02 percent	No
Ex-Tarifário	3.93 percent	No

Corroboration of AFA Rate

Section 776(c) of the Act provides that, in general, when the Department 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. 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."[40] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[41] The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[42]

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. Additionally, as stated above, we are applying subsidy rates which were calculated in this investigation or previous Brazil CVD investigations or administrative reviews. Additionally, no information has been presented which calls into question the reliability of these previously calculated subsidy rates that we are applying as AFA. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.[43]

[40] *See* SAA, at 870.
[41] *Id*.
[42] *Id.,* at 869-870.
[43] *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812 (February 22, 1996).

In the absence of record evidence from LIASA concerning the alleged programs due to its decision not to participate in the investigation, the Department reviewed the information concerning Brazilian subsidy programs in this and other cases. Where we have a program-type match, we find that, because these are the same or similar programs, they are relevant to the programs in this case. Additionally, the relevance of these rates is that they are actual calculated CVD rates for Brazilian programs, from which the non-cooperative respondent could receive a benefit. Due to the lack of participation by LIASA and the resulting lack of record information for LIASA concerning these programs, the Department has corroborated the rates it selected to use as AFA to the extent practicable for this preliminary determination.

VII. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.[44] The Department finds the AUL in this proceeding to be 14 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[45] The Department notified the respondents of the 14-year AUL in the initial questionnaire and requested data accordingly.[46] No party in this proceeding disputed this allocation period.

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) for the same year. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than across the AUL.

B. Attribution of Subsidies

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

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[44] *See* 19 CFR 351.524(b).

[45] *See* U.S. Internal Revenue Service Publication 946 (2008), "How to Depreciate Property," at Table B-2: Table of Class Lives and Recovery Periods.

[46] Although the POI is a recent period, we are investigating alleged subsidies received over a time period corresponding to the AUL. *See Final Results of Countervailing Duty Administrative Reviews: Low Enriched Uranium from Germany, the Netherlands, and the United Kingdom*, 70 FR 40000 (July 12, 2005), and accompanying IDM at Comment 4.

producing the subject merchandise that is sold through the trading company, regardless of affiliation.

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority voting interest between two corporations, or through common ownership of two (or more) corporations.[47] The Court of International Trade upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.[48]

Summary of Attribution of Subsidies to DC Silicio

DC Silicio responded to the Department's original and supplemental questionnaires on behalf of itself, DC Metais, and a cross-owned affiliate, Palmyra Recursos Naturais Exploração e Comércio Ltda. (Palmyra).[49] In its Affiliation Response, DC Silicio stated that DC Metais no longer exists as a legal entity, as it was merged into a new entity named DC Silicio prior to the POI.[50] DC Silicio and Palmyra are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) through DC Silicio's ownership of Palmyra.[51] DC Silicio is the producer of the merchandise under consideration during the POI. Therefore, we attributed subsidies that DC Silicio received to its sales, in accordance with the relevant provisions of 19 CFR 351.525(b). Palmyra supplied DC Silicio with charcoal and quartz used in the production of the subject merchandise during the POI. However, Palmyra received no attributable subsidies during the POI. [52]

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.,* to the respondent's export or total sales, in calculating the *ad valorem* subsidy rate. In the sections below, we describe the denominators we used to calculate the countervailable subsidy rates for the various subsidy programs. For a further discussion of the denominators used, see the Preliminary Calculation Memorandum.[53]

[47] *See, e.g., Countervailing Duties*, 63 FR 65348 at 65401 (November 25, 1998).
[48] *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).
[49] *See* DC Silicio's Affiliation Response, dated May 22, 2017.
[50] *Id.*
[51] *Id.*
[52] For the denominators used in the preliminary calculations, *see* Memorandum to the File from George Ayache, International Trade Compliance Analyst, "Countervailing Duty Investigation of Silicon Metal from Brazil: Preliminary Determination Calculations for Dow Corning Silicio do Brasil Indústria e Comércio Ltda.," dated concurrently with this memorandum (DC Silicio's Preliminary Calculation Memorandum).
[53] *See* DC Silicio's Preliminary Calculation Memorandum.

D. Loan Interest Rate Benchmarks and Discount Rates

Section 771(5)(E)(ii) of the Act states 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 on a comparable commercial loan that the recipient could actually obtain on the market," indicating that a benchmark should be a market-based rate. In addition, 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient "could actually obtain on the market" the Department will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans, the Department "may use a national average interest rate for comparable commercial loans," pursuant to 19 CFR 351.505(a)(3)(ii). Further, pursuant to 19 CFR 351.524(d)(3), when allocating non-recurring benefits over time, the Department will utilize a long-term discount rate based upon data for the year in which the government agreed to provide the subsidy.

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate for the year in which the government provided non-recurring subsidies. We calculated the discount rate by taking the average of the monthly federal funds rate reported by the GOB for the POI. The interest rate benchmarks and discount rates used in our preliminary calculations are provided in DC Silicio's Preliminary Calculation Memorandum.

VIII. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined to Be Countervailable

1. Tax Incentives Provided by the Amazon Region Development Authority (SUDAM) and Northeast Region Development Authority (SUDENE)

The SUDENE program was created to promote the development of the Northeast Region of Brazil. The SUDAM program is a similar program that promotes the development of the Amazonia Region of Brazil. Both programs are administered by the GOB and are linked to the Ministry of National Integration. Under these programs, companies can receive a partial tax exemption from the Brazilian corporate income tax, which is assessed at a rate of 15 percent. The tax exemption applies only to income from facilities operating in the designated regions, and are part of the designated priority sectors, including the metallic mineral mining industry. Companies can also receive a 30 percent income tax reinvestment incentive or an incentive for accelerated depreciation for income tax purposes.[54]

According to DC Silicio's initial questionnaire response, Camargo Correa Metais (CCM), the previous owner of DC Silicio's Pará plant, presented a technical project proposal to the *Agência de Desenvolvimento de Amazônia*, which regulated SUDAM, in 2005. Once its application and project were accepted, CCM filed a request with the *Secretaria da Receita Federal do Brasil*

[54] *See* DC Silicio's Questionnaire Response at 14.

(RFB), the Federal Revenue of Brazil, for approval of the tax reduction.[55] The tax reduction was granted to CCM, and subsequently passed on to DC Silicio, for 10 years, ending December 31, 2016. DC Silicio stated that it did not receive the 30 percent income tax reinvestment incentive or the incentive for accelerated depreciation for income tax purposes under the SUDAM benefits.[56] DC Silicio reported that it did not obtain benefits under SUDENE.[57]
A tax benefit is a financial contribution as described in section 771(5)(D)(ii) of the Act which provides a benefit to the recipient in the amount of the tax savings pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1). Moreover, the SUDAM and SUDENE programs are specific pursuant to sections 771(5A)(D)(i) and (iv) of the Act, because they are limited to companies operating in certain priority industries in designated geographical regions within the jurisdiction of the authority providing the subsidy. Based on this analysis, we are preliminarily finding this program countervailable. In calculating the benefit, consistent with 19 CFR 351.524(c)(1), we treated the tax savings as a recurring benefit and divided the tax savings received by DC Silicio during the POI by DC Silicio's total sales during the POI. On this basis, we preliminarily determine that a countervailable subsidy rate of 0.63 percent *ad valorem* exists for DC Silicio.[58]

2. *Tax Incentives in the State of Pará (ICMS)*

The Tax Incentives in the State of Pará (ICMS Pará) is a tax incentive program for investments in the stimulus and development of enterprises in the state of Pará. In Brazil, the *Imposto Sobre Operações Relativas à Circulação de Mercadorias e Serviços de Transporte Interestadual de Intermunicipal e de Comunicações* (ICMS) is a value-added tax (VAT) imposed at the state level. The GOB stated that the ICMS taxation in Pará is as follows: 17 percent for internal operations, 12 percent for interstate operations, and a tax exemption for export operations.[59]
The benefits of this program include, but are not limited to: a 60 percent reduction in the basis on which ICMS is calculated for electrical energy acquisition, a deferral of ICMS payments on purchases of quartz, coal, wood chips, and other raw materials and the intercity transportation and associated services for these raw materials, and a presumed tax credit of 92.5 percent towards taxes payable, which is calculated based on ICMS owed on the interstate sales of products made by the manufacturer.[60]

According to DC Silicio's initial questionnaire response, DC Silicio made reduced ICMS payments under this program during the POI. In order to qualify to receive the tax incentives, participants must submit a proposal for a project of technical, economic, and financial viability, presenting certain socioeconomic, technological, and environmental indicators to Pará's Secretary of Economic Development, Mining and Energy (SEDEME). The proposal must achieve a minimum score of 50 points out of 100 based on a list of objective criteria to be eligible. The criteria are:

[55] *Id.*, at 15.
[56] *Id.*, at 17.
[57] *Id.*, at 13.
[58] *See* DC Silicio's Preliminary Calculation Memorandum.
[59] *See* GOB's Questionnaire Response at 91 and 99.
[60] *See* DC Silicio's Questionnaire Response at 26.

- Value Added, which is calculated by the following: ((Gross Revenues – Total Value of Inputs)/Gross Revenues) x 100.
- Location, which is based on the Incentives Policy of promoting the socioeconomic integration of the State of Pará and the internalization of economic activity based on the Municipal Human Development Index (IDHM).
- Direct Jobs, which is based on the number of employees.
- Internal State of Pará Purchases, which is calculated by the following: (Total Purchases in the State of Pará / Total Purchases) x 100.
- Innovation, which is based on the number of innovation actions, including research and development, software acquisition, acquisition of machinery and equipment, and others.
- Sustainability, which is based on the number of sustainability indicators, including emission of harmful gases, solid waste management, risk reduction of contamination of the soil and water bodies by chemical products, and others.

DC Silicio stated that CCM, the previous owner of DC Silicio's Pará facility, began receiving this benefit in 2000. DC Silicio continued to receive these benefits during the POI, having received its most recent approval by SEDEME on January 26, 2016, the beginning of the POI.[61]

We preliminary determine that the ICMS Pará tax incentives are specific within the meaning of section 771(5A)(C) of the Act in the form of an import substitution subsidy because one of the criteria for eligibility is the purchase of domestic inputs for production.[62] Furthermore, a financial contribution exists in the form of government revenue foregone under section 771(5)(D)(ii) of the Act. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, as described in 19 CFR 351.510(a)(1). In calculating the benefit, consistent with 19 CFR 351.524(c)(1), we treated the tax savings as a recurring benefit and divided the tax savings received by DC Silicio during the POI by DC Silicio's total sales during the POI. On this basis, we preliminarily determine that DC Silicio received a countervailable subsidy rate of 2.50 percent *ad valorem* under this program.[63]

3. *Reintegra*

The Special Regime for the Reimbursement of Taxes for Exporters (Reintegra) program allows exporters of manufactured goods to eliminate or reduce the costs arising from VATs accumulated during the production chain that were not reimbursed through the normal refund or drawback process in relation to exported goods. Specifically, the program granted a credit of 0.1 percent of the value of exports manufactured in Brazil during 2016. This refund can be received either as a credit against federal tax liabilities, or as a cash payment.[64] Under Reintegra, manufactured goods must be included in the Table of Levy of the Tax on Industrialized Products,

[61] *Id.,* at 22-23.
[62] *See* GOB's Questionnaire Response at Exhibit B3D (explaining that DC Silicio's eligibility for the program was contingent on several criteria including the use of domestic inputs).
[63] *See* DC Silicio's Preliminary Calculation Memorandum.
[64] *See* DC Silicio's Questionnaire Response at 31-32.

and the manufacturer must provide supporting documentation demonstrating that the cost of the imported content of the good must not exceed 40 percent of the export price.[65]

To benefit from Reintegra, the exporting company requests a refund by filling out an electronic form, PER/DCOMP, every quarter. Companies provide the refund calculation by Export Registration for exports of eligible goods, basic information about the requesting entity, the Mercosur Common Nomenclature (NCM) of the product, and information for the relevant invoices that make up the total of eligible sales for the Reintegra reduction. Then, the RFB verifies the electronic submissions in SISCOMEX, the import/export database, and approves the refund claim, which can be used as a credit against tax liabilities or received as cash payment.[66]

We preliminarily determine that the tax rebates received under Reintegra constitute a financial contribution in the form of revenue foregone, as described under section 771(5)(D)(ii) of the Act. We further preliminarily determine that the tax rebates provided under this program, whether granted in cash or as credits applicable to other tax obligations, are specific under section 771(5A)(B) of the Act, as eligibility is contingent upon export performance.

To determine if the Reintegra program conferred a countervailable benefit, we examine whether the amount remitted or credited to the exporters exceeds the amount of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported product, making normal allowances for waste.[67] If the amount rebated exceeds the amount of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported product, the excess amount is found to be a benefit.[68]

However, 19 CFR 351.518(a)(4)(i)-(ii) provides an exception, and states that the Department will consider the entire amount of the tax rebate or remission to confer a benefit unless the Department finds that:

> (i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or
>
> (ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found not to be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts and which indirect taxes are imposed on the inputs.

[65] *See* GOB's Questionnaire Response at 115 and Exhibit C100D_2.
[66] *See* DC Silicio's Questionnaire Response at 32.
[67] *See* 19 CFR 351.518(a).
[68] *Id*.

The information submitted by the GOB does not demonstrate that the government had, or has, in place a system or set of procedures to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs. The GOB also failed to provide any evidence that it had carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product. Therefore, we find the entire amount of the rebate to constitute the benefit pursuant to 19 CFR 351.518(a)(4).

Because the amount of the Reintegra rebate is calculated as a percentage of the "free on board" (FOB) value of the exports, the percentage rebated serves as the subsidy rate. This is consistent with the Department's previous treatment of the identical program examined by the Department in *Cold-Rolled Final*.[69] In calculating the benefit, consistent with 19 CFR 351.525(b)(2), we treated the tax savings as a recurring benefit and divided the tax savings received by DC Silicio during the POI by DC Silicio's total export sales during the POI. Thus, we preliminary determine that Reintegra provided a countervailable subsidy at a rate of 0.1 percent *ad valorem* for DC Silicio.[70]

4. *Predominantly Exporting Companies (PEC) Program*

The Predominantly Exporting Companies (PEC) Program allows companies to suspend the Tax on Industrialized Products (IPI) and the Program for Social Integration/Contribution to Social Security Financing (PIS/COFINS) taxes on their purchases of raw materials, inputs, and packaging materials. The GOB states that the purpose of the PEC program is to avoid the structural accumulation of tax credits. Brazil has a VAT system along the production chain, which means that the taxes incurred in prior steps of the production chain may be used as credits, which are offset against the debits accumulated in subsequent steps of the production chain. Companies that are predominant exporters tend to accumulate credits along the production chain, as they are not subject to taxes at the final stages of production and export.[71]

Eligible companies must be predominant exporters that file a registration request with the RFB and are approved by the GOB, meeting or exceeding the threshold of 50 percent of their gross revenue coming from exports during the year prior to the registration. The approval of the suspension of IPI and PIS/COFINS taxes is published in an *Ato Delaratório Executivo* (Executive Declaratory Act) in the Brazilian Official Gazette. Companies must maintain the threshold level of exports, monitored by the GOB through tax returns, in order to continue to receive the benefit of IPI and PIS/COFINS suspensions.[72] According to DC Silicio's initial questionnaire response, DC Silicio suspended its VAT accumulation under this program during the POI. DC Silicio filed a registration request with the RFB to receive the IPI and PIS/COFINS suspensions.

We preliminarily determine that the PEC program constitutes a financial contribution in the form of revenue foregone, as described under section 771(5)(D)(ii) of the Act. We further

[69] *See Cold-Rolled Final*, and accompanying IDM at Section VI.A.5.
[70] *See* DC Silicio's Preliminary Calculation Memorandum.
[71] *See* GOB's Questionnaire Response at 151.
[72] *See* DC Silicio's Questionnaire Response at 44-45.

preliminarily determine that the tax suspensions, granted as credits applicable to other tax obligations, provided under this program are specific under section 771(5A)(B) of the Act, as eligibility is contingent upon export performance. To determine if the PEC program conferred a benefit, we examined whether the VAT suspension applied to inputs used in the production of both domestic and exported merchandise.[73] If the amount suspended exceeds the amount of prior-stage cumulative indirect taxes accrued on inputs that are consumed in the production of the exported product, the excess amount is found to be a benefit. The GOB stated that through the Public Digital Accounting System, it was possible to keep track of the program usage.[74] However, the GOB failed to provide any evidence that it had carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product. Therefore, we find the entire amount of the suspension to constitute the benefit pursuant to 19 CFR 351.518(a)(4). In calculating the benefit, consistent with 19 CFR 351.525(b)(2), we treated the tax savings as a recurring benefit and divided the tax savings received by DC Silicio during the POI by DC Silicio's total export sales during the POI. Thus, we preliminary determine that the PEC program provided a countervailable subsidy at a rate of 0.44 percent *ad valorem* for DC Silicio.[75]

5. *Forest Fee Reductions in Minas Gerais*

The Forest Fee Reductions in Minas Gerais program, administered by the state of Minas Gerais, allows purchasers of forestry products, including but not limited to wood chips and charcoal, to request up to a 50 percent reduction in the Forest Fee obligation on these purchases by submitting a request to the State Forestry Institute (IEF). The Forest Fee rates are 1.68 percent on the volume of charcoal purchased and 0.84 percent on the volume of wood chips purchased.[76] To participate in the Forest Fee Reductions, companies submit to the IEF a request for the fee reduction, demonstrating that they have invested in a relevant and strategic forestry project approved by the IEF. The GOB stated that the Forest Fee is intended for the maintenance of forest inspection and police services.[77] DC Silicio stated that the previous owner of the Minas Gerais plant, Companhia Brasileira Carbureto de Cálcio (CBCC), began applying for this program in 1995 and received its most recent approval from the state government in 2010.[78] DC Silicio stated and the GOB confirmed that it participated in the program during the POI.[79]

We preliminarily determine that the Forest Fee Reductions constitute a financial contribution in the form of revenue foregone, as described under section 771(5)(D)(ii) of the Act. We preliminary determine that these tax incentives are *de jure* specific within the meaning of section 771(5A)(D)(i) of the Act because eligibility is limited by law to only those industries which operate within the state of Minas Gerais that are invested in a relevant and strategic forestry project approved by the IEF.[80] The Department considers the forest fee to be an indirect tax

[73] *See* 19 CFR 351.518(a)(3) and (4).
[74] *See* GOB's Questionnaire Response at 153.
[75] *See* DC Silicio's Preliminary Calculation Memorandum.
[76] *See* DC Silicio's Questionnaire Response at 47.
[77] *See* GOB's Questionnaire Response at 115 and Exhibit C100D_2.
[78] *See* DC Silicio's Questionnaire Response at 48-49.
[79] *See* DC Silicio's Questionnaire Response at 51 and GOB's Questionnaire Response at 139.
[80] *See* GOB's Supplemental Questionnaire Response at Exhibit SQR 30_2. Further, we note that the Department

because it is a tax imposed on the value of the purchased goods. The benefit conferred on the recipient is the difference between the amount of taxes it paid and the amount of taxes that it would have paid in the absence of this program, as described in 19 CFR 351.510(a)(1). In calculating the benefit, consistent with 19 CFR 351.524(c)(1), we treated the tax savings as a recurring benefit and divided the tax savings received by DC Silicio during the POI by DC Silicio's total sales during the POI. Thus, we preliminary determine that the Forest Fee Reductions provided a countervailable subsidy at a rate of 0.02 percent *ad valorem* for DC Silicio.[81]

B. Programs Preliminarily Determined Not to Be Used

We preliminarily determine that the following programs were not used by DC Silicio or its cross-owned affiliates during the POI:

1. *Provision of Electricity for Less than Adequate Remuneration (LTAR)*
2. *Integrated Drawback Scheme*
3. *Ex-Tarifário*
4. *Real Estate Tax Exemption in the Municipality of Várzea da Palma for Rima Industrial S.A.*

IX. CONCLUSION

We recommend that you approve the preliminary findings described above.

☒	☐
Agree	Disagree

8/7/2017

X 

Signed by: CAROLE SHOWERS

Carole Showers
Executive Director, Office of Policy
performing the duties of
Deputy Assistant Secretary for Enforcement and Compliance

requested information from the GOB on two separate occasions regarding which industries and companies had benefitted from use of the program, but the GOB refused to respond on both occasions. *See* GOB's Questionnaire Response at 146 and GOB's Supplemental Questionnaire Response at 38.

[81] *See* DC Silicio's Preliminary Calculation Memorandum.