C-351-851
Investigation
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February 27, 2018

MEMORANDUM TO: Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance

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

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

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of silicon metal from Brazil, as provided in section 705 of the Tariff Act of 1930, as amended (the Act). Below is the complete list of issues in this investigation for which we received comments from interested parties.

Issues

Comment 1: Whether the Tax Incentives in the State of Pará (ICMS) Program is Countervailable
Comment 2: Whether the Predominantly Exporting Companies (PEC) Program is Countervailable
Comment 3: Whether Palmyra do Brasil Received Reintegra Benefits during the Period of Investigation (POI)
Comment 4: Whether the Forest Fee Reduction Program is Countervailable

II. BACKGROUND

A. Case History

On August 14, 2017, Commerce published its *Preliminary Determination*.[1] The selected mandatory respondents in this investigation are Ligas de Aluminio S.A. – LIASA (LIASA) and Palmyra do Brasil Indústria e Comércio de Silicio Metálico e Recursos Naturais Ltda. (Palmyra do Brasil),[2] formerly known as Dow Corning Silicio do Brasil Indústria e Comércio Ltda. (DC Silicio).[3] In the *Preliminary Determination,* in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we aligned the final countervailing duty (CVD) determination with the final antidumping duty (AD) determination. Between October 19, 2017, and October 24, 2017, we conducted verification of the Government of Brazil's (GOB) and Palmyra do Brasil's questionnaire responses and released the verification reports on December 7, 2017.[4]

Interested parties timely submitted case briefs concerning case-specific issues on December 14, 2017.[5] Parties submitted rebuttal briefs on December 20, 2017.[6] At the request of the petitioner[7] and Palmyra do Brasil, Commerce held a public hearing limited to issues raised in the case and rebuttal briefs on February 9, 2018.[8] Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. The revised deadline for the final determination of this investigation is now February 27, 2018.[9]

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[1] *See Silicon Metal from Brazil: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 82 FR 37841 (August 14, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] As discussed in the *Preliminary Determination,* Commerce found that the third selected mandatory respondent, Dow Corning Metais do Pará IND had merged with DC Silicio prior to the POI.

[3] On August 23, 2017, Palmyra do Brasil reported that it had changed its name from DC Silicio on June 30, 2017. *See* Palmyra do Brasil's letter, "Notification of Name Change," dated August 23, 2017. We verified this name change at verification. *See* Memorandum, "Verification of the Questionnaire Responses of Dow Corning Silicio do Brasil Indústria e Comércio Ltda." (Palmyra do Brasil Verification Report), dated December 7, 2017 at 4.

[4] *See* Memorandum, "Verification of the Questionnaire Responses of the Government of Brazil" (GOB Verification Report), dated December 7, 2017; *see also* Palmyra do Brasil Verification Report.

[5] *See* GOB's letter, "Silicon Metal from Brazil; Case Briefs" (GOB Case Brief); petitioner's letter, "Silicon Metal from Brazil; Countervailing Duty Investigation; Case Brief of Globe Specialty Metals, Inc." (Petitioner Case Brief); and Palmyra do Brasil's letter, "Silicon Metal from Brazil; Case Brief" (Palmyra do Brasil Case Brief), all dated December 14, 2017.

[6] *See* GOB's letter, "Silicon Metal from Brazil; Rebuttal case brief" (GOB Rebuttal Brief); petitioner's letter, "Silicon Metal from Brazil; Countervailing Duty Investigation; Rebuttal Brief of Globe Specialty Metals, Inc." (Petitioner Rebuttal Brief); and Palmyra do Brasil's letter, "Silicon Metal from Brazil: Dow's Rebuttal Brief" (Palmyra do Brasil Rebuttal Brief), all dated December 20, 2017.

[7] The petitioner is Globe Specialty Metals, Inc.

[8] *See* petitioner's letter, "Silicon Metal from Brazil; Countervailing Duty Investigation; Globe Specialty Metals Request for Hearing," dated September 13, 2017. *See also* Palmyra do Brasil's letter, "Silicon Metal from Brazil: Request for a Hearing," dated September 13, 2017.

[9] *See* Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government" (Tolling Memorandum), dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

For a summary of the product coverage comments and rebuttal responses submitted to the records of all concurrent silicon metal investigations, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum, which is incorporated by and hereby adopted by this final determination.[10]

B. Period of Investigation

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

III. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Act provides that, subject to section 782(d) of the Act, Commerce shall select from "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 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.

Where Commerce determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that Commerce will so inform the party 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, Commerce 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.[11] 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.[12]

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from 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, Commerce is not required to determine, or make any adjustments to, a countervailable subsidy rate based on

[10] *See* Memorandum, "Silicon Metal from Australia, Brazil, Kazakhstan, and Norway: Final Scope Comments Decision Memorandum," dated February 27, 2018 (Final Scope Decision Memorandum).
[11] *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, Commerce 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.
[12] *See Applicability Notice*, 80 FR at 46794-95.

any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[13] 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.[14]

Section 776(c) of the Act provides that, in general, when Commerce 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.[15] 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.[16]

Finally, under the new section 776(d) of the Act, when using an adverse inference when selecting from the facts otherwise available, Commerce 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 Commerce considers reasonable to use.[17] The TPEA also makes clear that, when selecting from the facts otherwise available with an adverse inference, Commerce is not required to estimate what the countervailable 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.[18]

As discussed below, for the final determination, we find it appropriate to, in part, use an adverse inference when selecting from the facts otherwise available (AFA) with respect to the GOB because it failed to provide requested information on the specificity of the Tax Incentives in the State of Pará (ICMS[19] Pará) program. Further, we continue to find it appropriate to use an adverse inference when selecting from the facts otherwise available to determine the estimated net countervailable subsidy rate for LIASA, because it withdrew from participation in this investigation.

Application of AFA: ICMS Pará Program is Specific

In the *Preliminary Determination,* Commerce found that the ICMS Pará program is an import substitution subsidy, specific pursuant to section 771(5A)(C) of the Act. However, as discussed below in Comment 1, "Whether the Tax Incentives in the State of Pará (ICMS) Program is Countervailable," given the information we learned at verification, we no longer find that the facts on the record of the investigation support this preliminary decision. We now find that the ICMS Pará program is specific based on the application of partial AFA. Section 776(a) of the

[13] *See* section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).
[14] *See also* 19 CFR 351.308(c).
[15] *See also* 19 CFR 351.308(d).
[16] *See* Statement of Administrative Action, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994) (SAA) at 870.
[17] *See* section 776(d)(1) of the Act; TPEA, section 502(3).
[18] *See* section 776(d)(3) of the Act; TPEA, section 502(3).
[19] *Imposto Sobre Operações Relativas à Circulação de Mercadorias e Serviços de Transporte Interestadual de Intermunicipal e de Comunicações* (ICMS).

Act provides that, subject to section 782(d) of the Act, Commerce shall use "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. In this case, the GOB failed to provide information requested for Commerce to make a determination with regards to *de facto* specificity. Specifically, in the initial questionnaire response, when questioned about: 1) the total number of companies that were approved for assistance, 2) the total number of companies that applied and were denied assistance, and 3) the total amount of assistance approved for the industry in which the mandatory respondents operate for the year the mandatory respondent company was approved for assistance, the GOB responded that the "…information {was} not available by the time of the response to this questionnaire."[20] In its supplemental questionnaire, Commerce reiterated these questions to the GOB. In response, the GOB stated that, "the amount per sector before 2016 cannot be reported, just the number of companies per sector" that were approved in 2017.[21] The GOB also reported that it did not keep a record of the total number of companies that applied for but were denied assistance under the ICMS Pará program.[22] Therefore, necessary information is missing from the record and the GOB failed to provide requested information by the deadline for submission pursuant to sections 776(a)(1) and (2)(B) of the Act. In selecting from among the facts otherwise available, we find that an adverse inference is warranted within the meaning of section 776(b) of the Act because we find that by not providing information requested or suggesting alternatives, the GOB did not act to the best of its ability in responding to our requests with regard to specificity for the ICMS Pará program. Accordingly, based on adverse facts available, we are finding the program *de facto* specific under section 771(5A)(D) of the Act.

Application of AFA: LIASA

As explained in the *Preliminary Determination*, LIASA was initially selected as a mandatory respondent but did not respond to Commerce's initial CVD questionnaire and informed Commerce that it would not participate in the investigation.[23] As a result, for the final determination, we continue to rely on facts otherwise available, in accordance with section 776(a) of the Act, because (1) necessary information is not available on the record, (2) LIASA withheld necessary information requested by Commerce, and (3) LIASA significantly impeded the investigation. Thus, we must rely on facts otherwise available in accordance with sections 776(a)(1) and 776(a)(2)(A) and (C) of the Act in determining the estimated net countervailable subsidy rate for LIASA.

In selecting from among the facts otherwise available, Commerce continues to determine that an adverse inference is warranted, pursuant to section 776(b) of the Act. LIASA refused to submit a response to Commerce'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 Commerce's request for information in this

[20] *See* GOB's letter, "Silicon Metal from Brazil; Response to DoC's Countervailing Duty Questionnaire for the GOB – Section II," dated June 14, 2017, at 97 (GOB Questionnaire Response).
[21] *See* GOB's letter, "Countervailing Duty Investigation of Silicon Metal from Brazil; Response to DoC's supplemental questionnaire for the GOB," dated July 20, 2017 at 22-23 (GOB Supplemental Questionnaire Response).
[22] *Id.* at 25.
[23] *See* LIASA's letter, "Silicon Metal from Brazil, C-351-851 and A-351-850," dated May 22, 2017.

investigation pursuant to section 776(b) of the Act, and as such, we are using an adverse inference when selecting from facts otherwise available in determining the estimated net countervailable subsidy rate for LIASA for this final determination.

The GOB provided sufficient information concerning the countervailability of five programs used by Palmyra do Brasil, and, as explained below, Commerce is continuing to find all of these programs to be countervailable in this investigation, and we have included these programs in the final determination of the AFA rate. For those alleged programs under investigation but not used by Palmyra do Brasil, we note that the GOB also provided information on these programs.

Selection of the AFA Rates

When selecting AFA rates, section 776(d) of the Act provides that 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 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 Commerce'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 country.[24] Specifically, Commerce selects 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, Commerce 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, Commerce 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, Commerce 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.[25]

In selecting from the facts otherwise available with an adverse inference relating to LIASA, we are guided by the statute and Commerce's methodology detailed above. Because LIASA failed to act to the best of its ability in this investigation, *see* "Application of AFA: LIASA" above, we

[24] *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."

[25] *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."

made an adverse inference in selecting from the facts otherwise available that it used and benefitted from the programs appearing below.

First, we are applying the above-zero rates calculated for Palmyra do Brasil, 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**
- **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 program, 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:

- **Ex-Tarifário**[26]
- **Integrated Duty Drawback**[27]

For this final determination, we are able to match based on program type and treatment of the benefit, the following program to the highest rate for a similar program from this investigation:

- **PEC Program**[28]

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)**[29]

In the *Preliminary Determination,* we found that the provision of electricity by an authority constitutes a form of financial contribution under Section 771(5)(D)(iii) of the Act. The

[26] *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.
[27] *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.
[28] We used the rate we calculated for the Tax Incentives in the State of Pará (ICMS) program, the tax program with the highest rate in this investigation, as the AFA rate for LIASA for the PEC program.
[29] *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.

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.[30] As we received no comments on this issue, we continue to find this program countervailable.

Based on the above analysis, using adverse inferences when selecting from the facts otherwise available, we determine the total countervailable subsidy rate for LIASA to be 52.51 percent *ad valorem*.

Program	**AFA Rate- LIASA**	**Export Subsidy**
Provision of Electricity for LTAR	43.12 percent	No
Tax Incentives Provided by SUDAM and SUDENE	0.63 percent	No
Tax Incentives in the State of Pará (ICMS)	1.69 percent	No
Reintegra	0.1 percent	Yes
Integrated Drawback Scheme	1.33 percent	Yes
PEC Program	1.69 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 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. 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."[31] The SAA provides that to "corroborate" secondary information, Commerce will satisfy itself that the secondary information to be used has probative value.[32] Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that Commerce need not prove that the selected facts available are the best alternative information.[33]

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. Further, no information has been presented which calls into question the reliability of these previously calculated subsidy rates that we are selecting as AFA. With respect to the relevance aspect of corroboration, Commerce will consider information reasonably

[30] *See Preliminary Determination* PDM at 8.
[31] *See* SAA, at 870.
[32] *Id.*
[33] *Id.* at 869-870.

at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.[34]

In the absence of record evidence from LIASA concerning the alleged programs due to its decision not to participate in the investigation, Commerce 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. 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, Commerce has corroborated the rates it selected to use as AFA to the extent practicable for this final determination.

IV. SUBSIDIES VALUATION

A. Allocation Period

Commerce made no changes to the allocation period, 14 years, and the allocation methodology used in the *Preliminary Determination*.[35] No issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology.

B. Attribution of Subsidies

Commerce made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies.[36]

C. Denominators

During verification, Palmyra do Brasil reported minor adjustments to its POI total sales of subject merchandise.[37] For the final determination, Commerce used these revised figures to calculate the countervailable subsidy rates for Palmyra do Brasil.[38]

D. Loan Interest Rate Benchmarks and Discount Rates

Commerce made no changes to the loan interest rate benchmarks and discount rates used in the *Preliminary Determination.*[39]

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[34] *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review,* 61 FR 6812 (February 22, 1996).
[35] *See Preliminary Determination* PDM at 10.
[36] *Id.* at 10-11.
[37] *See* Palmyra do Brasil Verification Report at 2.
[38] *See* Memorandum, "Countervailing Duty Investigation of Silicon Metal from Brazil: Final Determination Calculations for Palmyra do Brasil Indústria e Comércio de Silicio Metálico e Recursos Naturais Ltda.," dated concurrently with this memorandum (Palmyra do Brasil Final Calculation Memorandum).
[39] *See Preliminary Determination* PDM at 12.

V. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

We made no changes to our *Preliminary Determination* with respect to the methodology used to calculate the subsidy rates for the following programs, except where noted below and for the incorporation of revised denominators for Palmyra do Brasil, where appropriate.[40] For descriptions, analyses, and calculation methodologies for these programs, see the *Preliminary Determination*. Except where noted below, no issues were raised regarding these programs in the parties' case briefs. The final program rates are as follows:

1. *Tax Incentives Provided by SUDAM and SUDENE*

Commerce made no changes to its *Preliminary Determination* with regard to this program, except revising the denominator for its calculations, as mentioned above. The rate for Palmyra do Brasil continues to be 0.63 percent *ad valorem*.[41]

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

As discussed in Comment 1, "Whether the Tax Incentives in the State of Pará (ICMS) Program is Countervailable," Commerce determined that there is no benefit provided by the deferral of ICMS with respect to purchases of raw materials and freight under this program. In addition, Commerce recognized and corrected an error in calculating the 60 percent reduction in ICMS on electricity purchases by taking into account the difference between the book value ICMS full tax basis and the ICMS tax basis in the calculation of the benefit.[42] Therefore, the final subsidy rate for Palmyra do Brasil is now 1.69 percent *ad valorem.*

3. *Reintegra*

As discussed in Comment 3, Commerce made no changes to its *Preliminary Determination* with regard to this program. The final subsidy rate for Palmyra do Brasil continues to be 0.1 percent *ad valorem*.[43]

4. *Forest Fee Reductions in Minas Gerais*

As discussed in Comment 4, Commerce made no changes to its *Preliminary Determination* with regard to this program, except revising the denominator for its calculations, as mentioned above. The final subsidy rate for Palmyra do Brasil continues to be 0.02 percent *ad valorem*.[44]

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[40] *See* Section IV.C., above.
[41] For the description and analysis of this program, *see Preliminary Determination* PDM at 12. Commerce notes that the GOB restated facts on the record regarding this program in its case brief. *See* GOB Case Brief at 1-2.
[42] *See* Palmyra do Brasil Final Calculation Memorandum at 2.
[43] For the description and analysis of this program, *see Preliminary Determination* PDM at 14.
[44] *Id.* at 17.

B. Programs Determined Not to Confer a Benefit

1. *PEC Program*

As discussed in Comment 2, "Whether the Predominantly Exporting Companies (PEC) Program is Countervailable," Commerce determined that there was no benefit provided by the GOB to Palmyra do Brasil under this program during the POI.

C. Programs Determined Not to Be Used

Commerce made no changes to its *Preliminary Determination* with regard to programs determined not to be used by Palmyra do Brasil or its cross-owned affiliates during the POI:[45]

1. *Provision of Electricity for 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.*

VI. ANALYSIS OF COMMENTS

Comment 1: Whether the Tax Incentives in the State of Pará (ICMS) Program is Countervailable

Financial Contribution

Affirmative Case Brief Comments:

Palmyra do Brasil argues the following:

- In the *Preliminary Determination,* Commerce found that the Tax Incentives in the State of Pará (ICMS) (*i.e.,* ICMS Pará) Program is countervailable. However, Commerce ignored the fact that in a value-added tax (VAT) system the GOB does not lose revenue by providing deferrals, reductions, suspensions, or exemptions to intermediate producers as there is no tax liability otherwise due.[46]
- ICMS is a state VAT system where credits (ICMS payments to suppliers) are accumulated on input purchases and debits (ICMS collected from customers) are accrued on the sale of finished product.[47] The system's objective is to impose the final tax burden on the end-user in the full amount with no net impact upstream.[48]

[45] *Id.* at 18.
[46] *See* Palmyra do Brasil Case Brief at 6.
[47] *Id.* at 7 (citing *Certain-Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil: Final Results of the Countervailing Duty Administrative Review*, 76 FR 22868 (April 25, 2011) (*Brazil HRS 2011*), and accompanying IDM at 13).
[48] *Id.* (citing Palmyra do Brasil Verification Report at VE-8).

- For domestic sales, Palmyra do Brasil debits ICMS from its Brazilian customers and credits ICMS from its suppliers, paying the balance to the GOB. With the deferral of raw materials and freight and the electricity reduction, Palmyra do Brasil either records no credits from suppliers or records a partial credit for electricity, and records debits from ICMS collected from domestic customers, paying the balance to the GOB. As exports are ICMS-exempt, Palmyra do Brasil does not collect debits, but it does accumulate credits, which it reconciles with other debits or requests a refund from the GOB. These measures only allow Palmyra do Brasil to pay the ICMS at a later date.[49]
- Palmyra do Brasil does not have ICMS liability or incurred costs as it only acts as a conduit for collecting and transferring VATs, with the GOB collecting the same amount of ICMS with or without the program. In *Thai Shrimp,* Commerce found that "the net VAT incidence to the producer is ultimately zero both under the program and in absence of the program."[50]
- Regarding the 92.5 percent presumed credit, Palmyra do Brasil demonstrated at verification that it loses more credits otherwise available under the program than it gains through the use of the presumed credit, allowing the GOB to retain more revenue.[51]

The GOB argues the following:

- The ICMS Pará program does not constitute a tax remission by the GOB as the state revenue remains the same with or without the deferral. In the deferral, the company that sells the input does not collect ICMS while the producer collects the ICMS upon sale of the product.[52]

Rebuttal Brief Comments:

The petitioner argues the following:

- Palmyra do Brasil has not demonstrated how it remits only a small percentage on the deferral of raw materials and freight and electricity purchases to the GOB through the reconciliation process. No ICMS was collected from the purchaser and remitted to the GOB when Palmyra do Brasil made export sales. Palmyra do Brasil did not pay 92.5 percent of ICMS due on interstate sales through the presumed credit.[53]
- Palmyra do Brasil knew it would pay less ICMS through the program. Commerce found in *Trinidad and Tobago Melamine* that VAT exemptions are a countervailable subsidy in the form of government revenue forgone under section 771(5)(D)(ii) of the Act.[54]
- Palmyra do Brasil has not provided evidence of its requests for refunds of accumulated ICMS credits.[55]

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[49] *Id.* at 10-11.
[50] *Id.* at 7-8 (citing *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 13, 2013) (*Thai Shrimp*), and accompanying IDM at 54-55).
[51] *Id.* at 11-12 (citing Palmyra do Brasil Verification Report at VE-8).
[52] *See* GOB Case Brief at 2-3.
[53] *See* Petitioner Rebuttal Brief at 3-4.
[54] *Id.* at 4-5 (citing *Melamine from Trinidad and Tobago: Final Affirmative Countervailing Duty Determination*, 80 FR 68849 (November 6, 2015) (*Trinidad and Tobago Melamine*), and accompanying IDM at 7).
[55] *Id.* at 5-6.

The GOB argues the following:

- The state revenue stays the same with or without the ICMS Pará program as all Brazilian exports are ICMS-exempt, as authorized by footnote 1 of the Agreement on Subsidies and Countervailing Measures.[56]

Specificity

Affirmative Case Brief Comments:

Palmyra do Brasil argues the following:

- In the *Preliminary Determination,* Commerce found that the ICMS Pará program is specific because it is an import substitution subsidy. The ICMS Pará program is not conditional or dependent on the use of domestic over imported goods for participation in the program. Eligibility for participation is based on multiple criteria, including "local purchases," but none of the individual criteria define whether the project for participation will be approved or rejected. [57]
- As demonstrated at verification, "local purchases" include purchases of both imported and domestic goods which must be sold within the state of Pará. Companies that do not fulfill the "local purchases" criteria can still participate in the program if they score over 50 points in total through the other criteria. [58]
- The deferral of raw materials and freight is open to all companies in Pará, therefore it is not limited to a certain industry or enterprise.[59]

The GOB argues the following:

- None of the objective criteria in the ICMS Pará program define individually whether a project is approved, as applicants must score a minimum of 50 total points to be approved. The "domestic purchase" criterion is not related to production in Brazil but rather the sale of domestic or foreign goods within the state of Pará.[60]

Rebuttal Brief Comments:

The petitioner argues the following:

- Palmyra do Brasil's score for the "local purchases" criteria allowed it to obtain a higher overall score and greater tax benefit. Therefore, the program is an import substitution program, as it induces the enterprise to prioritize purchases in the domestic market.[61]
- Neither Palmyra do Brasil nor the GOB provided any documentation supporting the claim that the "local purchases" criteria can include imported products. The purpose of the ICMS Pará program is to increase production, which is not benefited by imports.[62]

[56] *See* GOB Rebuttal Brief at 1 (citing GOB Verification Report at 3).
[57] *See* Palmyra do Brasil Case Brief at 21-22 (citing GOB Verification Report at 4).
[58] *Id.* at 22-23 (citing Palmyra do Brasil Verification Report at 8 and VE-8).
[59] *Id.* at 23 (citing GOB Verification Report at 3).
[60] *See* GOB Case Brief at 2.
[61] *See* Petitioner Rebuttal Brief at 15-18.
[62] *Id.* at 18-20.

- Commerce should apply adverse facts available because the GOB failed twice to provide requested information on *de facto* specificity.[63]

Benefit

Affirmative Case Brief Comments:

The petitioner argues the following:

- In the *Preliminary Determination,* Commerce treated the deferral of raw materials and freight as a time value of money calculation, which underestimates Palmyra do Brasil's benefit. The deferral of raw materials and freight is not a postponement of Palmyra do Brasil's obligation to pay ICMS to the GOB, but rather an exemption because the ICMS was never paid to the GOB.[64]
- Palmyra do Brasil did not pay its suppliers the ICMS otherwise payable on raw materials and freight under the ICMS Pará program. Palmyra do Brasil has not identified when or how it pays the "deferred" ICMS to the GOB other than the monthly reconciliation process.[65]
- Palmyra do Brasil pays no ICMS to the GOB on its export sales while for domestic sales, Palmyra do Brasil does not have to pay 92.5 percent of the ICMS paid by the customer to the GOB.[66]

Palmyra do Brasil argues the following:

- Commerce found in *Thai Shrimp*, pursuant to 19 CFR 351.510(a)(l), that a VAT does not confer a benefit because "the net VAT incidence to the producer is ultimately zero both under the program and in absence of the program." The deferral and reductions do not reduce or remove Palmyra do Brasil's obligation to pay ICMS, but rather only allow it to pay ICMS at a later date.[67]
- Regarding the deferral of raw materials and freight, the state of Pará provides all purchasers of charcoal, wood, and wood chips with an automatic deferral of ICMS, with or without the program. With regards to the 92.5 percent presumed credit, Palmyra do Brasil demonstrated at verification that it loses more credits using the program, paying more ICMS to the GOB.[68]
- In the *Preliminary Determination,* Commerce treated the benefit of the deferral of raw materials and freight as a time value of money calculation (*i.e.* a twelve-month short-term loan). In *Indonesia Shrimp,* Commerce found that "a waiting period of up to a year for a VAT rebate is not significant as to give rise to a 'time value of money' when VAT is

[63] *Id.* at 20-21.
[64] *See* Petitioner Case Brief at 2.
[65] *Id.* at 3-4 (citing Palmyra do Brasil Verification Report at 7).
[66] *Id.* at 4-5.
[67] *See* Palmyra do Brasil Case Brief at 13-14 (citing *Thai Shrimp* at 55 and Palmyra do Brasil Verification Report at VE-8).
[68] *Id.* at 14 -15 (citing Palmyra do Brasil Verification Report at VE-8).

exempted." The reconciliation process for ICMS is a one-month period, inconsistent with a twelve-month short-term loan.[69]

- In the *Preliminary Determination,* Commerce applied the entire amount of ICMS reduced under the 60 percent electricity reduction. Instead, Commerce should adjust the tax base to account for the applicable tax rate based on the fact that the GOB "taxes the tax rate for electricity" in calculating the ICMS, as found during verification. Commerce should treat this program in the same manner as the deferral of raw materials and freight, which incurs a one-month reconciliation period.[70]
- Regarding all ICMS programs, Palmyra do Brasil is exempted on indirect taxes up-front rather than receiving an ICMS rebate when the subject merchandise is exported. As in *Brazil HRS,* Commerce should find that there is no benefit under 19 CFR 351.517(a) because "there are no additional credits granted upon export."[71]
- The ICMS Pará program is specifically tied to domestic sales because Palmyra do Brasil only receives debits on sales in Brazil as exports are exempt of ICMS.[72]

Rebuttal Brief Comments:

The petitioner argues the following:

- The suspension of wood and wood chips in the state of Pará under Decree 4676 applies to the first internal operation conducted by the forest extractor. Palmyra do Brasil has not provided evidence of purchases from the forest extractor or receipt of the ICMS suspension under the decree. Palmyra do Brasil requested, and the GOB approved, a request for ICMS deferral on purchases of charcoal, wood, and wood chips despite already being able to receive it.[73]
- Commerce should treat the ICMS deferral on raw materials and freight and the 60 percent reduction in electricity purchases as tax exemptions. The ICMS deferred in both operations is exempted up-front and never paid to the GOB.[74]
- 19 CFR 351.517 does not apply to the ICMS Pará program because it is not tied to export sales.[75]
- The benefits of the Pará ICMS program apply to both domestic and export sales, as the deferral and reduction go towards all subject merchandise production. The incentives are countervailable regardless of export sales.[76]

Palmyra do Brasil argues the following:

- The petitioner's arguments are unsupported by previous Commerce determinations. In *Thai Shrimp,* Commerce found that normal VAT reconciliations do not constitute a

[69] *Id.* at 16 (citing *Certain Frozen Warmwater Shrimp from the Republic of Indonesia: Final Negative Countervailing Duty Determination,* 78 FR 50303 (August 19, 2013) (*Indonesia Shrimp*), and accompanying IDM at 29).
[70] *Id.* at 17-18 (citing Palmyra do Brasil Verification Report at VE-1).
[71] *Id.* at 18-19 (citing *Brazil HRS 2011* IDM at 15).
[72] *Id.* at 20.
[73] *See* Petitioner Rebuttal Brief at 8-9.
[74] *Id.* at 11-12.
[75] *Id.* at 12-13.
[76] *Id.* at 14-15.

benefit under 351.510(a). This applies to the ICMS deferral, which does not reduce or remove Palmyra do Brasil's tax liability of zero with or without the program.[77]

- The petitioner misinterprets how a VAT system functions because it argues that Palmyra do Brasil did not pay its suppliers the ICMS otherwise payable and claims that the deferral is not paid through the monthly reconciliation process. In the absence of the program, Palmyra do Brasil offsets debits from customers with credits from suppliers for domestic sales. For ICMS-exempt exports, it obtains a credit refund for its purchases of inputs as no debit is recorded. With the deferral, Palmyra do Brasil still remits the ICMS debits from domestic sales to the GOB. The result is no tax liability in both scenarios as the ICMS deferral is up-front, not at the time of export.[78]
- The 92.5 percent presumed credit excludes the use of any other ICMS credits and is not included in the calculations of the deferral of raw materials and inputs. Commerce would be double-counting the benefit from the presumed credit if it countervailed it for the ICMS deferral as well.[79]
- Palmyra do Brasil would obtain ICMS credits for raw materials and freight in the absence of the program, as it would accumulate credits from its exports and request a refund from the GOB. The deferral removes the fully recoverable ICMS credits Palmyra do Brasil accumulates and makes it liable to pay ICMS on domestic sales only.[80]
- Palmyra do Brasil determines the tax balance that it must pay to the GOB by reconciling credits and debits on a monthly basis through the ICMS Tax Book. Palmyra do Brasil pays the GOB the ICMS debits from domestic customers as it defers the credits on the purchase of raw materials.[81]
- All companies in Pará that purchase charcoal, wood, and wood chips are allowed to defer payments of ICMS.[82]

Commerce's Position: The ICMS Pará program is a state tax incentive program for investments in the stimulus and development of enterprises in the state of Pará. In Brazil, the ICMS is a VAT imposed at the state level. ICMS taxation in the state of Pará is as follows: 17 percent for internal operations, 12 percent for interstate operations, and a tax exemption for export operations.[83]

In the *Preliminary Determination,* Commerce found that the ICMS Pará Program constitutes a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, confers a benefit in the form of a tax suspension under 19 CFR 351.510(a)(1), and is specific based on import substitution under section 771(5A)(C) of the Act. For this final determination, we agree with the petitioner that the ICMS Pará program constitutes a financial contribution in the form of revenue forgone, as the program offers companies a 60 percent reduction of ICMS on the purchases of electricity for production and a 92.5 percent presumed credit (*i.e.,* a reduction) on the 12 percent ICMS due on interstate sales of the final product, and the deferral

[77] *See* Palmyra do Brasil Rebuttal Brief at 2-3 and 10-11 (citing *Thai Shrimp* IDM at 55).
[78] *Id.* at 4-6.
[79] *Id.* at 6-7.
[80] *Id.* at 7-8.
[81] *Id.* at 9-10 (citing Palmyra do Brasil Verification Report at 7).
[82] *Id.* at 10.
[83] *See Preliminary Determination* PDM at 13.

(*i.e.,* suspension) of ICMS on the purchases of raw materials and freight. In this case, we note that a financial contribution by the GOB did take place in the form of revenue forgone, as Palmyra do Brasil received reductions in the ICMS effectively paid on its electricity purchases and its interstate sales of the final product, and the deferral of ICMS on purchases of raw materials and freight.

As the ICMS Pará program allows for the deferral of ICMS on the purchases of raw materials and freight in the state of Pará (*i.e.,* a suspension of ICMS payments), Commerce considers the ICMS Pará program to be a suspension program. Without the program, exporters in Pará would have to pay ICMS on their purchases of raw materials and freight, regardless of whether they were allowed to request a refund for accumulated tax credits on a monthly basis.[84] Therefore, Commerce considers that the deferral of ICMS on raw materials and freight used for production to be a financial contribution from the GOB in the form of revenue forgone.

Regarding specificity, for this final determination, we no longer find it appropriate to base our finding of specificity on the classification of the ICMS Pará program as an import substitution subsidy. Participation in the ICMS Pará program is limited to companies that submit and receive approval for projects that comply with the state of Pará's strategic objectives. The submitted projects are scored on a points system which is based on six criteria, including value, location, direct job creation, local (in-state) purchases, innovation, and sustainability.[85] For each criterion, there is a weight assigned which corresponds to the degree of relevance to the strategic objectives set out by the government. At verification, the GOB demonstrated that the "local (in-state) purchases" criterion, on which we based our *Preliminary Determination*, did not limit the scope of purchases to locally-*produced* inputs.[86] The "local purchases" criterion allowed for the purchase of both imported and domestic inputs, as long as any input was purchased from sellers located in the state of Pará.[87] Therefore, we no longer find that the facts on the record of the investigation support a finding that the ICMS Pará program is an import substitution subsidy under section 771(5A)(C) of the Act. As discussed above, the GOB did not provide information in response to Commerce's multiple requests regarding the specificity of the program. Accordingly, we find that the program is *de facto* specific under section 771(5A)(D) of the Act.

Regarding the benefit calculation, we continue to find that the ICMS Pará program conferred a benefit through the 92.5 percent ICMS reduction in interstate sales and the 60 percent ICMS reduction in electricity purchases. We calculated the benefit conferred to Palmyra do Brasil though the 92.5 percent ICMS reduction based on the difference between the amount of taxes it

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[84] Under Pará Decree N. 4676/2006, Article 502 provides that exporting companies must reconcile the credits and debits on a monthly basis using Pará's Tax Book system, Pará's state electronic tax system. *See* Palmyra do Brasil's letter to Commerce: "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, at Exhibit ICMS-S7 (Palmyra do Brasil Supplemental Questionnaire Response); *see also* Palmyra do Brasil's Verification Report at 7 and Exhibit VE-8.

[85] *See* GOB Verification Report at 4.

[86] *Id.* The GOB explained that in order to receive approval, the submitted projects for eligibility must reach a minimum of 50 points, regardless of whether they fulfill all six criteria, and that none of the individual criteria define whether a project will be approved or rejected.

[87] *Id.*

actually paid and the amount of taxes that it would have paid in the absence of this program, as described in under 19 CFR 351.510(a)(1). With respect to the 60 percent reduction of ICMS on the purchases of electricity for production, we clarified at verification that there is a difference between the ICMS tax basis, which includes the 60 percent reduction, and the book value of the ICMS full tax basis (*i.e.,* the ICMS tax basis which includes a 25 percent tax).[88] Therefore, based on the information on the record, which was clarified during verification, we have changed our calculation of the 60 percent ICMS reduction in electricity purchases to include the difference between the ICMS tax basis and the ICMS full tax basis. Further explanation on the calculation of this program is outlined in Palmyra do Brasil's Final Calculation Memorandum.[89]

For the deferral of ICMS on raw materials and freight, we agree with Palmyra do Brasil that in *Thai Shrimp,* we found that in a VAT system:

> The producer merely conveys the tax forward and the ultimate tax burden is borne by the final (non-producing) consumer. This is achieved through a reconciliation mechanism in which the input VAT paid is offset against the output VAT collected. Any excess output VAT is remitted by the producer to the government. Any excess input VAT is refunded back to the producer by the government or credited to the producer to offset against future input VAT, as the case may be. Under this mechanism, the producer ultimately keeps no surplus output VAT and pays no excess input VAT. Thus, the net VAT incidence to the producer is ultimately zero, with the actual VAT burden conveyed forward to the final, non-producing consumer.[90]

We note that this assessment by Commerce in *Thai Shrimp* of the VAT system refers specifically to the benefit conferred by VAT exemptions of indirect taxes under 19 CFR 351.510. For the final determination, we find that with respect to Palmyra do Brasil's participation in this part of the ICMS program during the POI, there is no benefit conferred. As Palmyra do Brasil further explained at verification, its tax liability to the GOB on raw materials and freight is zero both with and without the program.[91] If it did not participate in the ICMS program, Palmyra do Brasil would accumulate credits from the payment of ICMS to its suppliers on purchases of inputs that it must reconcile monthly with the debits collected from the sales of final products. Because Palmyra do Brasil's final sales are predominantly exported, it accumulates excess ICMS credits because exports are tax-exempt. Therefore, without the use of the program, Palmyra do Brasil would apply those accumulated ICMS credits to other ICMS debits collected or be required to request a refund from the GOB.[92] Under the ICMS Pará program, Palmyra do Brasil is allowed to suspend the payment of ICMS on the purchase of inputs and freight and avoids the accumulation of ICMS credits because there is no ICMS debit collected on ICMS-exempt export sales. With respect to its domestic sales, Palmyra do Brasil stated, and we verified, that it remits the entire amount of the ICMS collected upon the sales of its final product to the GOB, because

[88] *See* Palmyra do Brasil Verification Report at 9.
[89] *See* Palmyra do Brasil Final Calculation Memorandum at 2.
[90] *See Thai Shrimp* IDM at 54.
[91] *See* Palmyra do Brasil Verification Report at 7; *see also* Palmyra do Brasil Case Brief at 14.
[92] *See* Palmyra do Brasil Verification Report at 8; *see also* Palmyra do Brasil Case Brief at 5.

it does not have any credits to offset the ICMS debit collected through the sale of the finished product.[93]

While the petitioner argues that there is no evidence on the record regarding the deferral of ICMS on raw materials and freight without the ICMS Pará program, we note that Pará Decree 4676/2001, Section 716A provides for the deferral of ICMS for wood, wood chips, and charcoal.[94] This deferral was available to Palmyra do Brasil before the ICMS Pará program.[95] As Palmyra do Brasil stated, the ICMS Pará program provides for a "deferral on all purchases of raw materials, not only on purchases of charcoal, wood and wood chips."[96] At verification, we observed that in Palmyra do Brasil's Tax Book, prior to the ICMS Pará program, Palmyra do Brasil accumulated credits that it would offset with other debits as described in Article 73 of Decree 4676/2001.[97] Once Palmyra do Brasil was approved for the ICMS Pará program, we noted that it was no longer a credit accumulator, as it suspended the ICMS normally paid on all of its raw materials and freight and would no longer need to request a refund or offset its ICMS credits with other debits.[98] Therefore, we find in this case, that Palmyra do Brasil is in fact only a conduit for the imposition of the ICMS burden collected from the final customer for domestic sales for its purchases of raw materials and related freight charges. Similar to *Thai Shrimp*, the facts on the record support finding that the tax incidence on the producer is ultimately zero in the ICMS (*i.e.,* VAT) reconciliation program, resulting in no benefit conferred upon the company under 19 CFR 351.510(a)(1) for the purchases of raw materials and freight.

Comment 2: Whether the Predominantly Exporting Companies (PEC) Program is Countervailable

Financial Contribution

Affirmative Case Brief Comments:

Palmyra do Brasil argues the following:

- In the *Preliminary Determination,* Commerce erroneously found that the PEC program provided a financial contribution as revenue forgone. Palmyra do Brasil is not liable for the indirect taxes (*i.e.*, Program for Social Integration/Contribution to Social Security Financing (PIS/COFINS) and Tax on Industrialized Products (IPI)), which function in a VAT system of credits from purchases and debits from sales, so there is no revenue forgone with or without the PEC program.[99]
- Under the PEC program, Palmyra do Brasil's indirect taxes on inputs are suspended. For domestic sales, Palmyra do Brasil must remit the full amount of tax debits to the GOB as it has no credit to offset. Because exports are tax-exempt, Palmyra do Brasil does not remit any VAT to the GOB as there is no liability. When a company collects more IPI,

[93] *See* Palmyra do Brasil Verification Report at 7 and VE-8; *see also* Palmyra do Brasil Case Brief at 10.
[94] *See* Palmyra do Brasil Supplemental Questionnaire Response at Exhibit ICMS-S2.
[95] *Id.*
[96] *See* Palmyra do Brasil Supplemental Questionnaire Response at 10.
[97] *See* Palmyra do Brasil Verification Report at 7 and Exhibit VE-8.
[98] *Id.*
[99] *See* Palmyra do Brasil Case Brief at 24.

PIS or COFINS than its credits, it must pay the GOB the difference, with a net effect of zero tax liability.[100]

- The PEC program does not provide any tax savings, as the VAT suspension exists to prevent companies that structurally accumulate credits from the administrative burden of requesting refunds from the GOB.[101]

The GOB argues the following:

- The PEC program allows PECs to suspend indirect tax credits that they tend to accumulate on low-tax sales or tax-free exports in order to avoid the administrative burden of numerous refund request for both the companies and the GOB.[102]

Rebuttal Brief Comments:

The petitioner argues the following:

- Palmyra do Brasil is a structural credit accumulator of IPI, PIS, and COFINS taxes because of its large amount of export sales, causing it not to collect sufficient taxes on its home market sales to offset the taxes it pays on inputs.[103]
- Neither Palmyra do Brasil nor the GOB have demonstrated that structural tax credit accumulators can obtain refunds under the four limited conditions outlined by the GOB or that Palmyra do Brasil has qualified, has applied for, been approved, or received a refund for its tax credits without the PEC program.[104]

Specificity

Affirmative Case Brief Comments:

Palmyra do Brasil argues the following:

- The VAT suspensions under the PEC program are available not only to PECs, but also to predominant manufacturers of products under a wide variety of tariff codes in industries that have a structural accumulation of tax credits. Therefore, the suspensions are not contingent upon export performance, as stated in the *Preliminary Determination,* but rather on the low or zero rates of IPI, PIS, and COFINS on product sales.[105]
- Palmyra do Brasil qualifies for the PEC program based on its use of inputs subject to IPI in the manufacture of silicon metal, whether for domestic or export sales.[106]

The GOB argues the following:

- PECs naturally accumulate indirect tax credits as exports are tax-free. The 50 percent revenue from exports threshold for participation in the PEC program follows the

[100] *Id.* at 25 (citing *Brazil HRS 2011* IDM at 15).
[101] *Id.* at 26-27.
[102] *See* GOB Case Brief at 4.
[103] *See* Petitioner Rebuttal Brief at 22.
[104] *Id.* at 22-23.
[105] *See* Palmyra do Brasil Case Brief at 34-35 (citing Palmyra do Brasil Verification Report at VE-9).
[106] *Id.* at 36.

Brazilian Federal Revenue's (RFB) calculation that companies begin to accumulate more tax credits than what they owe the GOB at that level.[107]

Rebuttal Brief Comments:

The petitioner argues the following:

- Only PECs with greater than or equal to 50 percent of total revenue coming from exports have qualified and received tax suspensions under the PEC program. Therefore, receipt of the subsidy is contingent upon export performance in accordance with section 771(5A)(B) of the Act and 19 CFR 351.514.[108]

Benefit

Affirmative Case Brief Comments:

Palmyra do Brasil argues the following:

- In the *Preliminary Determination,* Commerce provided no factual or legal basis to support treating IPI, PIS and COFINS (normal VATs with a credit mechanism) as prior-stage cumulative indirect taxes because benefits under 19 CFR 351.518 do not apply to VAT systems. In *Brazil HRS 2011,* Commerce found that PIS and COFINS operate like a standard VAT system.[109]
- Commerce should apply 19 CFR 351.517(a), which concern VAT export programs, for the benefit analysis of the PEC program, as in *Indonesia Shrimp*.[110]
- Palmyra do Brasil is exempted from indirect taxes up-front rather than as a rebate at the time of export so the exempted VATs cannot exceed the amount levied with respect to the production and distribution of the final domestic product. Thus, PEC confers no benefit, consistent with *Turkey Wire Rod* and *Zenith Radio Corp. v. United States.*[111]
- The only conceivable PEC benefit is the temporary deferral of payment on IPI, PIS and COFINS taxes for domestic sales as exports are tax-exempt. In the *Preliminary Determination,* Commerce treated the benefit as a time value of money and calculated it as a twelve-month short-term loan. However, the benefit should be calculated as a three-month short-term loan because Palmyra do Brasil must compensate its accumulated taxes with other debits or request a cash refund on a quarterly basis, as stated in Article 27 of Normative Instruction No. 1300/2012.[112]

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[107] *See* GOB Case Brief at 4.
[108] *See* Petitioner Rebuttal Brief at 28-29.
[109] *See* Palmyra do Brasil Case Brief at 27-28 (citing the Agreement on Subsidies and Countervailing Measures (SCM) at Annex I(h), n.60; *Brazil HRS 2011* IDM at 15).
[110] *Id.* at 29-30 (citing *Indonesia Shrimp* IDM at 31-32).
[111] *Id.* at 31-32 (citing *Final Negative Countervailing Duty Determination: Carbon and Certain Alloy Steel Wire Rod from Turkey*, 67 FR 55815 (August 30, 2002) (*Turkey Wire Rod*), and accompanying IDM at Comment 5; *Zenith Radio Corp. v. United States*, 437 U.S. 443, 444 (1978) (*Zenith Radio Corp. v. United States*).
[112] *Id.* at 33-34 (citing Palmyra do Brasil Verification Report at 11).

The GOB argues the following:

- Companies that suspend indirect tax credits on raw materials must pay the GOB the debits accrued from domestic sales of subject merchandise. Therefore, there is no benefit for PECs in the domestic market.[113]

Rebuttal Brief Comments:

The petitioner argues the following:

- Commerce should apply 19 CFR 351.518 to the PEC program, as IPI, PIS and COFINS are prior-stage cumulative indirect taxes, because the tax credits are exempted upon purchase of inputs, not upon export. [114]
- The benefits of the program are therefore not tied to only home market sales. The suspension of IPI, PIS and COFINS applies to inputs in both domestic and exported merchandise. Neither the GOB nor Palmyra do Brasil has demonstrated that the GOB can differentiate which inputs, and in what amounts, are used in the production of exported merchandise, or that the GOB carried out an examination of Palmyra do Brasil to confirm these facts.[115]
- The time value of money benefit under PEC is the full amount for the entire POI because companies are required to submit quarterly refund requests for IPI, not PIS and COFINS. Palmyra do Brasil has not demonstrated that it applies, is approved, and receives the refund under the PEC program within three months.[116]

Commerce's Position: In the *Preliminary Determination,* Commerce found that the PEC program constitutes a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act, confers a benefit in the form of a tax suspension under 19 CFR 351.518(a)(4), and is specific based on export contingency under section 771(5A)(B) of the Act.

For this final determination, we continue to find that the PEC program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act. The PEC program allows companies to suspend payments of the IPI and PIS/COFINS taxes on their purchases of raw materials, inputs, and packing materials. The IPI, PIS and COFINS are indirect taxes that function in a standard VAT system of debits and credits.[117] Brazil has a VAT system along the production chain, which means that these indirect taxes which are incurred in prior stages of the production chain may be used as credits, which are offset against the debits accumulated in subsequent stages of the production chain.[118] Predominant exporters in Brazil accumulate credits along the production chain because there is no tax on exports, for which they must subsequently file for a refund.[119] While Palmyra do Brasil argues that predominant manufacturers of products can qualify for the program, we note that information on the record

[113] *See* GOB Case Brief at 4-5.
[114] *See* Petitioner Rebuttal Brief at 24-25.
[115] *Id.* at 26.
[116] *Id.* at 27.
[117] *See Brazil HRS 2011* IDM at 13-15; *see also* Palmyra do Brasil Verification Report at 11.
[118] *See Preliminary Determination* PDM at 16.
[119] *Id.*; *see also* Palmyra do Brasil Verification Report at 11.

demonstrates that only predominant *exporters* (*i.e.,* companies who have 50 percent or more of their total gross revenue attributed to export sales) are eligible to participate in the PEC program.[120] Under the PEC program, participants suspend the accumulation of credits during purchases from suppliers, regardless of the final product sold for export or in the domestic market.[121]

We agree with petitioners that the PEC program provides a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act. As the PEC program allows for the suspension of IPI, PIS, and COFINS taxes on the purchases of inputs for production, Commerce considers PEC to be a suspension program. Without the program, predominant exporters would have to pay the IPI, PIS, and COFINS taxes on their purchases of inputs, regardless of whether they were allowed to request a refund for accumulated tax credits at a later time. Therefore, Commerce considers that the suspension of these three VAT taxes on inputs used for production to be a financial contribution from the GOB in the form of revenue forgone.

Regarding specificity, we also continue to find that the PEC program is specific because eligibility in the program is contingent upon export performance. According to the GOB, the purpose of this program is to eliminate the administrative burden on predominant exporters which would otherwise be required to constantly request numerous rebates from their accumulated production credits.[122] The GOB explained at verification that large companies, regardless of industry, whose export sales constitute 50 percent or more of their total gross revenue, are eligible to apply for the program because they would consistently accumulate production tax credits. Participating companies will receive a declaratory act from the RFB to present to their production chain suppliers in order to suspend the IPI, PIS, and COFINS taxes on inputs. The GOB stated that the suspension of the indirect taxes is tracked by the RFB through electronic invoices issued along the production chain.[123] If a company reports or is found through a spontaneous audit conducted by the RFB to have under 50 percent of their gross revenue from exports during the previous fiscal year, it will be removed from the program through a declaratory act.[124] Therefore, we continue to find the PEC program to be contingent on export performance and, thus, specific under section 771(5A)(B) of the Act and 19 CFR 351.514.

However, regarding the benefit conferred under the PEC program, we agree with Palmyra do Brasil's claim that it did not receive a benefit under the program during the POI. When a company has paid more in indirect VATs (*i.e.,* IPI, PIS, and COFINS) on its input purchases than it collects on its sales of final product, the company is due the difference. When a company collects more in indirect VATs on its final product sales than it pays on its input purchases, the company remits the difference to the GOB. In this case, without usage of the PEC program, Palmyra do Brasil would reconcile the VAT debits collected from its final sales with the VAT

[120] *See* GOB Verification Report at 6-7.
[121] *See* Palmyra do Brasil Verification Report at 11.
[122] *See* GOB Verification Report at 6-7.
[123] *Id.*
[124] *Id.*

credits accumulated from its purchases from suppliers.[125] As Palmyra do Brasil exports the majority of its final product sales, it would accumulate more credits than debits and must apply to the RFB for a cash refund or federal contributions in credit on a quarterly basis.[126] However, in Palmyra do Brasil's case, participation in the PEC program allows it to suspend the payment of IPI, PIS, and COFINS on its purchases of inputs from suppliers and eliminate the accumulation of credits. Because Palmyra do Brasil is a predominant exporter, the company would not have enough debits to reconcile the accumulated credits because exports are tax-exempt. While the petitioner argues and Commerce agrees that the record does not contain evidence of quarterly refunds with respect to these taxes, Palmyra do Brasil suspended these taxes during the POI, alleviating the need for such refund procedures, which is the purpose of the program. The PEC program allows Palmyra do Brasil to avoid the administrative burden of requesting a refund from accumulated credits from the GOB because it does not have enough debits to reconcile the accumulated credits. As we previously found in *Brazil HRS 2011,* PIS and COFINS operate like a standard VAT system, not as a cumulative indirect tax.[127] Regarding IPI, as discussed below, we confirmed that this federal tax on industrialized products operates as a standard VAT. Therefore, we agree with Palmyra do Brasil that an analysis of the program under 19 CFR 351.518 is no longer appropriate. Given the information on the record as well as the additional clarification provided by Palmyra do Brasil and the GOB at verification, we have reexamined whether any remittance or rebate received under this program is excessive within the meaning of 19 CFR 351.517, consistent with findings in *Brazil HRS 2011*.[128] Under 19 CFR 351.517, which addresses the exemption or remission upon export of indirect taxes, a benefit exists to the extent that the amount remitted or exempted exceeds the amount levied with respect to the production and distribution of like products when sold for domestic consumption. For Palmyra do Brasil, the record demonstrates, and the results of verification confirm, that the credits accumulated under IPI, PIS, and COFINS are based on the actual amount of taxes suspended by Palmyra do Brasil on its input purchases, and there are no additional credits granted upon export. Thus, there is no benefit to Palmyra do Brasil as defined under the provisions of 19 CFR 351.517(a), which define a benefit as the amount by which the credit upon export exceeds the taxes levied on the production and distribution of like products sold for domestic consumption. In Palmyra do Brasil's case, the tax liability due to the GOB for exports is zero both with and without the program. For the domestic market, Palmyra do Brasil remits to the GOB the full amount of the IPI, PIS, and COFINS collected at the time of the sale of the final product. Therefore, in Palmyra do Brasil's case, it does not receive a benefit from the PEC program under 19 CFR 351.517(a). We therefore find that the PEC program did not confer a benefit on Palmyra do Brasil during the POI.

[125] *See* Palmyra do Brasil Verification Report at 11.
[126] *Id.*
[127] *See Brazil HRS 2011* IDM at 15.
[128] *Id.*

Comment 3: Whether Palmyra do Brasil Received Reintegra Benefits during the POI

Palmyra do Brasil's Affirmative Brief Comments

- Palmyra do Brasil demonstrated at verification that it has not received cash refunds under Reintegra since 2013. Therefore, there was no financial contribution from the GOB or benefit to Palmyra do Brasil during the POI.[129]

GOB's Affirmative Brief Comments

- Reintegra helps producers avoid the accumulation of indirect tax residue along the production chain because of tax-free exports. The Reintegra refund rate is subject to the GOB's annual budgetary constraints.[130]

Petitioner's Rebuttal Brief Comments

- Palmyra do Brasil reported that the Reintegra rebates are automatic and recorded as an asset under accounts receivable in its financial statements. In *Brazil Hot-Rolled Steel*, Commerce found that the time of the receipt of the Reintegra benefit is at the time of export as it is recognized for accounting purposes.[131]

Commerce's Position: Palmyra do Brasil claims that because it has not received cash refunds under Reintegra since 2013, it did not receive a financial contribution from the GOB or a benefit. We disagree that Palmyra do Brasil did not receive a financial contribution because Palmyra do Brasil accounts for the potential refund from the GOB in its accounting records.[132] As in the *Preliminary Determination,* we continue to find that the Reintegra program is a financial contribution in the form of revenue forgone pursuant to Section 771(5)(D)(ii) of the Act in the form of a tax refund. According to 19 CFR 351.518(b)(2), the time of receipt of benefit from exemption or remission of prior-stage cumulative indirect tax remissions normally is as of the date of exportation. Specifically, it is at the time of exportation that the exporter knows the amount of the benefit to be received. Therefore, consistent with our position on this issue in *Brazil Hot-Rolled Steel*, the timing of the submission to the government of the Reintegra claim is immaterial, especially when the value of the rebate has already been recognized for accounting purposes.[133] Furthermore, Palmyra do Brasil is incorrect in its assertion that at verification the company demonstrated that it did not receive any benefit under Reintegra during the POI.[134] Rather, at verification, company officials confirmed that the refund credited to Palmyra do Brasil for 2016 is reflected in the company's 2016 financial statements and in its tax receivables account in the SAP system for 2016.[135] This is because at the time of exportation, based on the Reintegra law in effect, Palmyra do Brasil knew that it would receive a rebate and the rate at which the rebate would be granted and, thus, Palmyra do Brasil knew the amount of the credit. Under the regulations, the time of application for, or use of, the benefit is not relevant when the

[129] *See* Palmyra do Brasil Case Brief at 37.
[130] *See* GOB Case Brief at 3.
[131] *See* Petitioner Rebuttal Brief at 29-31 (citing *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil: Final Affirmative Determination, and Final Determination of Critical Circumstances, in Part,* 81 FR 53416 (August 12, 2016) (*Brazil Hot-Rolled Steel*), and accompanying IDM at 51).
[132] *See* Palmyra do Brasil Verification Report at 11 and VE-6.
[133] *See Brazil Hot-Rolled Steel* IDM at 51.
[134] *See* Palmyra do Brasil Case Brief at 37.
[135] *See* Palmyra do Brasil Verification Report at 11 and VE-6.

benefit amount was known on the date of export. Accordingly, and as stated above, we are making no changes to our *Preliminary Determination* with regard to this program.

Comment 4: Whether the Forest Fee Reduction Program is Countervailable

GOB's Affirmative Brief Comments

- The Forest Fee Reduction program creates an environmental compensation mechanism for companies that invest in forest preservation projects. Therefore, the financial cost to the company is the same with or without the program.[136]
- The only difference is the resource allocation, whether through the financial cost of the project or the GOB's forest fee. The GOB receives no financial contribution from the forest fees because they are all allocated to environmental protection.[137]

Petitioner's Rebuttal Brief Comments

- The GOB's claim that the financial cost for companies is the same with or without the forest fee reductions, incurring no financial contribution, is unsupported and should be rejected. If Palmyra do Brasil, currently qualified under the program, is not given further approval in the future, it must repay the forest fee reductions plus interest for the time period since the last approval. This constitutes a financial contribution in the form of revenue forgone by the GOB.[138]
- The Forest Fee Reductions program is also *de facto* specific because only nine companies out of 102,405 persons paying the forest fee have been approved for the program.[139]

Commerce's Position: In the *Preliminary Determination,* we determined the Forest Fee Reduction program to be a 25 percent reduction of an indirect tax imposed on the value of wood chips and charcoal. We found that the Forest Fee Reduction program constitutes a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act because the GOB provides to participating companies a 25 percent reduction in forest fees on wood chips and charcoal.

The GOB claims that the forest fee reductions do not provide a financial contribution because the financial cost of any company's forest preservation project, such as that of Palmyra do Brasil, is the same amount as the forest fee levied on purchases of wood chips and charcoal, which are allocated to environmental protection in the state of Minas Gerais.[140] This argument implies that the 25 percent reduction in forest fees to companies that have a forest preservation project is an offset of the company's costs of the forest preservation project rather than revenue forgone by the GOB. However, we agree with the petitioner that the GOB's position on this issue is not supported by facts on the record because Palmyra do Brasil no longer has to pay the full amount

[136] *See* GOB Case Brief at 5.
[137] *Id.*
[138] *See* Petitioner Rebuttal Brief at 31-32 (citing GOB Verification Report at 8 and VE-6).
[139] *Id*. at 32 (citing GOB Verification Report at 8).
[140] *See* GOB Case Brief at 5.

of the forest fee.[141] At verification, we noted that companies like Palmyra do Brasil last received approval for the reduction in 2010. If any of the nine companies which received the reductions during the POI are no longer approved to participate in the program, then they would be required to repay the amount of the reduction plus interest since their approval in 2010.[142] Accordingly, we find the program to be a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act.

In the *Preliminary Determination,* we found that the forest fee reduction program is *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 State Forestry Institute (IEF). To participate in the Forest Fee Reduction program, companies must 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. We continue to make that same finding for this final determination.

In the *Preliminary Determination*, we found that the Forest Fee Reduction program confers a benefit on the recipient through 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). We made no changes to our *Preliminary Determination* with regard to the benefit conferred by this program.

VII. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these positions are accepted, we will publish the final determination

[141] *See* Palmyra do Brasil's letter to Commerce: "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, at Exhibit Forest Fee-3.
[142] *See* GOB Verification Report at 8.

in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

☒	☐
Agree	Disagree

2/27/2018

X

Signed by: CHRISTIAN MARSH
Christian Marsh
Deputy Assistant Secretary
for Enforcement and Compliance