



C-351-855
Investigation
POI: 01/01/2019 – 12/31/2019
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E&C/OIII: Team

August 7, 2020

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

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

SUBJECT: Decision Memorandum for the Preliminary Affirmative
Determination in the Countervailing Duty Investigation of
Common Alloy Aluminum Sheet from Brazil

I. SUMMARY

The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of common alloy aluminum sheet (aluminum sheet) from Brazil, as provided in section 703(b)(1) of the Tariff Act of 1930, as amended (the Act).

II. BACKGROUND

A. Initiation and Case History

On March 9, 2020, Commerce received an antidumping duty (AD) and countervailing duty (CVD) petition concerning imports of aluminum sheet from Bahrain, Brazil, India, and the Republic of Turkey, filed in proper form, on behalf of the Aluminum Association Common Alloy Aluminum Sheet Working Group and its individual members, Aleris Rolled Products, Inc., Arconic, Inc., Constellium Rolled Products Ravenswood, LLC, JW Aluminum Company, Novelis Corporation, and Texarkana Aluminum, Inc. (collectively, the petitioners).¹ Pursuant to section 702(b)(4)(A)(ii) of the Act, we invited representatives of the Government of Brazil

¹ See Petitioners' Letter, "Common Alloy Aluminum Sheet from Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, Taiwan, and Turkey for the Imposition of Antidumping and Countervailing Duties," dated March 9, 2020 (Petition).

(GBR) for consultations with respect to the Petition.² On March 27, 2020, we held consultations with the GBR.³

On March 24, 2020, we released the U.S. Customs and Border Protection (CBP) data for entries of subject merchandise under the appropriate subheading of the Harmonized Tariff Schedule of the United States (HTSUS), as listed in the scope, and invited interested parties to submit comments on the CBP data as well as respondent selection.⁴ On March 30, 2020, we initiated the CVD investigation of aluminum sheet from Brazil.⁵ On April 10, 2020, the petitioners and Novelis Brasil do Brasil Ltda. (Novelis Brasil) submitted comments on the CBP data and respondent selection.⁶

We stated in the *Initiation Notice* that, if appropriate, we intended to base the selection of mandatory respondents on U.S. Customs and Border Protection (CBP) entry data for U.S. imports of aluminum sheet from Brazil during the period of investigation (POI) under the HTSUS subheadings listed in the scope of the investigation.⁷

On April 15, 2020, pursuant to section 777A(e)(2) of the Act and 19 CFR 351.204(c)(2), we selected Companhia Brasileira de Alumínio (CBA) and Novelis Brasil as the mandatory respondents.⁸ On April 15, 2020, we also issued the initial CVD questionnaire to the GBR with instructions to forward the questionnaire to CBA and Novelis Brasil.⁹ On April 26 and May 6, 2020, we received Novelis Brasil and CBA's company affiliation responses.¹⁰ On May 14 and 26, 2020, we issued supplemental questionnaires to CBA and Novelis Brasil regarding their company affiliation responses.¹¹ On May 28, 2020, we received timely affiliation supplemental

² See Commerce's Letter, "Invitation for Consultations to Discuss the Countervailing Duty Petition," dated March 10, 2020.

³ See Memorandum, "Consultations with the Government of Brazil," dated March 27, 2020. The GBR also filed written comments. See GBR's Letter, "Consultations between Brazil and the US under article 13.1 of the Agreement on Subsidies and Countervailing Measures. Common Alloy Aluminum Sheets. Written submission of Brazil.," filed March 29, 2020.

⁴ See Memorandum, "Release of U.S. Customs and Border Protection Data," dated March 24, 2020.

⁵ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey: Initiation of Countervailing Duty Investigations*, 85 FR 19449 (April 7, 2020) (*Initiation Notice*); see also *Initiation Checklist*, dated March 30, 2020.

⁶ See Petitioners' Letter, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil – Petitioners' Comments on CBP Data and Respondent Selection," dated April 10, 2020; see also Novelis Brasil's Letter, "Common Alloy Aluminum Sheet from Brazil: Comments On CBP Data," dated April 10, 2020.

⁷ See *Initiation Notice*, 85 FR at 19452-19453.

⁸ See Memorandum, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil: Respondent Selection," dated April 15, 2020.

⁹ See Commerce's Letter, "Petition for the Imposition of Countervailing Duties on Imports of Common Alloy Aluminum Sheet from Brazil: Countervailing Duty Questionnaire," dated April 15, 2020 (Initial Questionnaire).

¹⁰ See Novelis Brasil's Letter, "Common Alloy Aluminum Sheet from Brazil: Response to Section III Regarding Affiliated Companies and Cross-Owned Affiliates for Novelis Brasil do Brasil Ltda.," dated April 29, 2020; see also CBA's Letter, "Common Alloy Aluminum Sheet from Brazil: Response to Affiliated Party Questions in the Department's Questionnaire," dated May 6, 2020 (CBA's Section III Affiliation QR).

¹¹ See Commerce's Letters, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil: Affiliated Companies Supplemental Questionnaire," dated May 14, 2020; and "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil: Affiliated Companies Supplemental Questionnaire," dated May 26, 2020.

questionnaire responses from CBA¹² and Novelis Brasil.¹³ Between June 1 and June 18, 2020, we received initial questionnaire responses from the GBR,¹⁴ Novelis Brasil,¹⁵ and CBA.¹⁶

Between June 22 and July 20, 2020, we issued supplemental questionnaires to the GBR,¹⁷ CBA,¹⁸ and Novelis Brasil,¹⁹ and between June 29, 2020 and July 30, 2020, we received timely responses from the GBR,²⁰ Novelis Brasil,²¹ and CBA.²² On July 8, 2020, the petitioners filed

¹² See CBA's Letters, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil: Response to the Affiliated Companies Supplemental Questionnaire," dated May 28, 2020 (CBA's Section III Affiliation SQR); and "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil: Response to the Affiliated Companies Supplemental Questionnaire," dated June 1, 2020.

¹³ See Novelis Brasil's Letter, "Common Alloy Aluminum Sheet from Brazil: Novelis Brasil do Brasil Response to First Supplemental Affiliation Questionnaire," dated May 28, 2020.

¹⁴ See GBR's Letter, "Common Alloy Aluminum Sheets from Brazil; Response to the DoC's questionnaire for the GBR – Section II.," dated June 13, 2020 (GBR IQR).

¹⁵ See Novelis Brasil's Letters, "Common Alloy Aluminum Sheet from Brazil: Response to Remainder of Section III of the Countervailing Duty Questionnaire," dated June 1, 2020; and "Common Alloy Aluminum Sheet from Brazil: Response to Questions Regarding the Ex-Tarifario Program in Section III of the Countervailing Duty Questionnaire," dated June 11, 2020 (Novelis Brasil's Ex-Tarifario Response).

¹⁶ See CBA's Letter, "Antidumping Duties on Imports of Common Alloy Aluminum Sheet from Brazil: CBA's Response to Section III of the Department's Questionnaire," dated June 18, 2020 (CBA's Section III IQR).

¹⁷ See Commerce's Letters, "Countervailing Duty (CVD) Investigation of Common Alloy Aluminum Sheet from Brazil: Request for Additional Information," dated July 9, 2020; and "Countervailing Duty (CVD) Investigation of Common Alloy Aluminum Sheet from Brazil: Second Supplemental Questionnaire for the Government of Brazil," dated July 15, 2020.

¹⁸ See Commerce's Letters, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil: Supplemental Questionnaire for Companhia Brasileira De Alumínio," dated June 29, 2020; "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil: Second Supplemental Questionnaire for Companhia Brasileira De Alumínio," dated July 8, 2020; "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil: Third Supplemental Questionnaire for Companhia Brasileira De Alumínio," dated July 15, 2020; and "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil: Fourth Supplemental Questionnaire for Companhia Brasileira De Alumínio," dated July 20, 2020.

¹⁹ See Commerce's Letters, "Countervailing Duty (CVD) Investigation of Common Alloy Aluminum Sheet from Brazil: Supplemental Questionnaire," dated June 22, 2020; "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil: Ranged Value Supplemental Questionnaire," dated July 15, 2020; and "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil: Supplemental Questionnaire," dated July 20, 2020.

²⁰ See GBR's Letters, "Countervailing Duty (CVD) Investigation of Common Alloy Aluminum Sheet from Brazil: Response to Supplemental Questionnaire," dated July 26/27, 2020 (GBR SQR); and "Countervailing Duty (CVD) Investigation of Common Alloy Aluminum Sheet from Brazil: Response to Supplemental Questionnaire Question on ICMS," dated July 28, 2020.

²¹ See Novelis Brasil's Letters, "Common Alloy Aluminum Sheet from Brazil: Novelis do Brasil Response to First Supplemental Section III Questionnaire," dated June 29, 2020; "Common Alloy Aluminum Sheet from Brazil: Novelis do Brasil Response to Questions General-4 and FINAME BNDES 1-3 in the First Supplemental Section III Questionnaire," dated July 6, 2020 (Novelis Brasil SQR1 Part II); "Common Alloy Aluminum Sheet from Brazil: Submission of Ranged Data of Novelis do Brasil," dated July 22, 2020; "Common Alloy Aluminum Sheet from Brazil: Novelis do Brasil Response to Supplemental Questionnaire - Sales Data in BRL," dated July 24, 2020; and "Common Alloy Aluminum Sheet from Brazil: Novelis do Brasil Response to Supplemental Questionnaire - Sales Data in BRL – Part 2," dated July 30, 2020.

²² See CBA's Letters, "Common Alloy Aluminum Sheet from Brazil: CBA's Supplemental Section III of the Department's Questionnaire," dated July 17, 2020 (CBA SQR1); "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil: Deadline to Submit Exhibit," dated July 23, 2020; "Common Alloy Aluminum Sheet from Brazil: CBA's Partial Response to the Department's Second Supplemental Questionnaire," dated July

comments on Novelis Brasil's purchases of electricity and use of the Agency for Machinery and Equipment Financing (FINAME) program under the Brazilian Economic and Social Development Bank (BNDES).²³

On April 30, 2020, the U.S. International Trade Commission (ITC) notified Commerce of its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil.²⁴ On April 29, 2020, the ITC published in the *Federal Register* a notice of its preliminary determination.²⁵

On July 7, 2020, the petitioners filed a new subsidy allegation with regard to CBA and Novelis Brasil.²⁶ We will address the petitioners' NSA Submission after the issuance of the preliminary determination.

On July 17, 2020, the petitioners requested that we align the final CVD determination in this investigation with the final determination in the companion AD investigation of aluminum sheet from Brazil.²⁷

The petitioners filed pre-preliminary comments on July 28 and 30, 2020 and Novelis Brasil filed pre-preliminary comments on July 30, 2020.²⁸

B. Postponement of Preliminary Determination

On May 19, 2020, we postponed the deadline for this preliminary determination until no later than 130 days after the initiation of the investigation, based on a request from the petitioners.²⁹

24, 2020; "Common Alloy Aluminum Sheet from Brazil: CBA's Partial Response to the Department's Second Supplemental Questionnaire," dated July 28, 2020; "Common Alloy Aluminum Sheet from Brazil: CBA's Third Supplemental Response of the Department's Questionnaire," dated July 22, 2020; "Common Alloy Aluminum Sheet from Brazil: CBA's Fourth Supplemental Response of the Department's Questionnaire," dated July 22, 2020; and "Common Alloy Aluminum Sheet from Brazil: CBA's Clarification on Second and Fourth Supplemental Questionnaires," dated July 27, 2020.

²³ See Petitioners' Letter, "Countervailing Duty Investigation of Common Alloy Aluminum Sheet from Brazil – Petitioners' Benchmark Submission and Additional Deficiency Comments," dated July 8, 2020.

²⁴ See Letter from the ITC, dated April 30, 2020.

²⁵ See *Common Alloy Aluminum Sheet From Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and Turkey*, 85 FR 23842 (April 29, 2020) (*ITC Preliminary Determination*); see also ITC Publication 5049.

²⁶ See Petitioners' Letter, "Countervailing Duty Investigations Concerning Common Alloy Aluminum Sheet From Brazil – Petitioners' New Subsidy Allegation," dated July 7, 2020 (NSA Submission).

²⁷ See Petitioners' Letter, "Countervailing Duty Investigations of Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey – Petitioners' Request to Align Final Countervailing Duty Determinations with the Companion Antidumping Duty Final Determinations," dated July 17, 2020 (Request for Alignment).

²⁸ See Petitioners' Letter, "Countervailing Duty Investigations Concerning Common Alloy Aluminum Sheet From Brazil – Petitioners' Pre-Preliminary Comments," dated July 28, 2020; see also Petitioners' Letter, "Countervailing Duty Investigations Concerning Common Alloy Aluminum Sheet From Brazil – Petitioners' Pre-Preliminary Comments on the Provision of Electricity for LTAR and New Factual Information to Rebut, Clarify or Correct the Government of Brazil's July 26th SQR," dated July 30, 2020; and Novelis Brasil's Letter, "Common Alloy Aluminum Sheet from Brazil: Pre-Preliminary Comments of Novelis do Brasil," dated July 29, 2020.

²⁹ See *Common Alloy Aluminum Sheet from Bahrain, Brazil, India, and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations*, 85 FR 29930 (May 19, 2020) (CVD

As such, we postponed the preliminary determination until August 7, 2020,³⁰ in accordance with sections 703(c)(1) and (2) of the Act and 19 CFR 351.205(f)(1).

C. Period of Investigation

The POI is January 1, 2019 through December 31, 2019.

D. Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i), and based on the petitioners' request,³¹ we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigation of aluminum sheet from Brazil. Consequently, the final CVD determination will be signed on the same date as the final AD determination, which is currently scheduled to be due no later than December 21, 2020, unless postponed.³²

E. Injury Test

Because Brazil is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the 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 29, 2020, the ITC preliminarily determined that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of aluminum sheet from Brazil that are alleged to be sold at less than fair value and subsidized by the GBR.³³

III. SCOPE COMMENTS

In accordance with the *Preamble* to Commerce's regulations,³⁴ we set aside a period of time, as stated in the *Initiation Notice*, for parties to raise issues regarding product coverage (*i.e.*, scope).³⁵ We received several comments concerning the scope of the AD and CVD investigations of aluminum sheet as it appeared in the *Initiation Notice*. We are currently evaluating the scope comments filed by the interested parties. We intend to issue our preliminary decision regarding the scope of the AD and CVD investigations in the preliminary

Preliminary Determination Postponement); see also Petitioners' Letter, "Countervailing Duty Investigations Concerning Common Alloy Aluminum Sheet From Bahrain, Brazil, India, and the Republic of Turkey – Petitioners' Request to Postpone Preliminary Determinations," dated May 6, 2020.

³⁰ See *CVD Preliminary Determination Postponement*.

³¹ See Request for Alignment.

³² The actual due date falls on December 20, 2020, which is a Sunday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended*, 70 FR 24533 (May 10, 2005). Therefore, the AD final determination is currently due for signature no later than December 21, 2020.

³³ See *ITC Preliminary Determination*, 85 FR at 23843; see also ITC Publication 5049.

³⁴ See *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

³⁵ See *Initiation Notice*, 85 FR at 19450.

determinations of the companion AD investigations, the deadline for which is October 6, 2020.³⁶ We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation after considering any relevant comments submitted in scope case and rebuttal briefs.³⁷

IV. SCOPE OF THE INVESTIGATION

The merchandise covered by this investigation is aluminum common alloy sheet (aluminum sheet), which is a flat-rolled aluminum product having a thickness of 6.3 mm or less, but greater than 0.2 mm, in coils or cut-to-length, regardless of width. Aluminum sheet within the scope of this investigation includes both not clad aluminum sheet, as well as multi-alloy, clad aluminum sheet. With respect to not clad aluminum sheet, aluminum sheet is manufactured from a 1XXX-, 3XXX-, or 5XXX-series alloy as designated by the Aluminum Association. With respect to multi-alloy, clad aluminum sheet, aluminum sheet is produced from a 3XXX-series core, to which cladding layers are applied to either one or both sides of the core.

Aluminum sheet may be made to ASTM specification B209-14 – but can also be made to other specifications. Regardless of specification, however, all aluminum sheet meeting the scope description is included in the scope. Subject merchandise includes aluminum sheet that has been further processed in a third country, including but not limited to annealing, tempering, painting, varnishing, trimming, cutting, punching, and/or slitting, or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the aluminum sheet.

Excluded from the scope of this investigation is aluminum can stock, which is suitable for use in the manufacture of aluminum beverage cans, lids of such cans, or tabs used to open such cans. Aluminum can stock is produced to gauges that range from 0.200 mm to 0.292 mm, and has an H-19, H-41, H-48, or H-391 temper. In addition, aluminum can stock has a lubricant applied to the flat surfaces of the can stock to facilitate its movement through machines used in the manufacture of beverage cans. Aluminum can stock is properly classified under HTSUS subheadings 7606.12.3045 and 7606.12.3055.

Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set for the above.

Aluminum sheet is currently classifiable under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.9.6095, 7606.92.3035, and 7606.92.6095. Further, merchandise that falls within the scope of this investigation may also be entered into the United States under HTSUS subheadings 7606.11.3030, 7606.12.3015,

³⁶ See *Common Alloy Aluminum Sheet From Bahrain, Brazil, Croatia, Egypt, Germany, Greece, India, Indonesia, Italy, Republic of Korea, Oman, Romania, Serbia, Slovenia, South Africa, Spain, Taiwan, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 85 FR 45576, 45577 (July 29, 2020).

³⁷ The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

7606.12.3025, 7606.12.3035, 7606.12.3091, 7606.91.3055, 7606.91.6055, 7606.92.3025, 7606.92.6055, 7607.11.9090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

V. SUBSIDIES VALUATION

A. Allocation Period

Commerce normally allocates the benefits from non-recurring subsidies over the average useful life (AUL) of renewable physical assets used in the production of subject merchandise.³⁸ In Commerce's initial questionnaires to the GBR and the mandatory respondents, we notified the respondents to this proceeding that the AUL period would be 14 years, on the basis of U.S. Internal Revenue (IRS) Service's Depreciation Range System for the CA aluminum sheet AS industry.³⁹ The 14-year period corresponds to IRS Pub. 946 asset class, under "34 Manufacture Fabricated Metal Products." Novelis Brasil challenged the proposed AUL period in its IQR response, and we issued a memorandum stating that we preliminarily determine that a 14-year period is appropriate to allocate benefits from non-recurring subsidies.⁴⁰

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 year in which the assistance was approved. If the amount of the subsidies is less than 0.5 percent of the relevant sales value, then the benefits are allocated to the year of receipt rather than over the AUL.

B. Attribution of Subsidies

In accordance with 19 CFR 351.525(b)(6)(i), Commerce normally attributes "a subsidy to the products produced by the company that received the subsidy." However, 19 CFR 351.525(b)(6)(ii)-(v) provide 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.

According to 19 CFR 351.525(b)(6)(vi), "cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of the other corporation(s) in essentially the same ways it can use its own assets." This section of Commerce's regulations states that this standard will normally be met where there is a majority voting ownership interest between two corporations or through common ownership of two (or

³⁸ See 19 CFR 351.524(b).

³⁹ See U.S. Internal Revenue Service Publication 946 (2016), "How to Depreciate Property" at Table B-2: Table of Class Lives and Recovery Periods; see also Initial Questionnaire at 15.

⁴⁰ See Novelis Brasil's Section III IQR at 9-12; see also Memorandum, "Countervailing Duty (CVD) Investigation of Common Alloy Aluminum Sheet (Aluminum Sheet) from Brazil: Questionnaire Average Useful Life (AUL)," dated July 27, 2020.

more) corporations. The preamble to Commerce’s regulations further clarifies Commerce’s cross-ownership standard. According to the *CVD Preamble*, relationships captured by the cross-ownership definition include those where:

{T}he interests of two corporations have merged to such a degree that one corporation can use or direct the individual assets (or subsidy benefits) of the other corporation in essentially the same way it can use its own assets (or subsidy benefits) Cross-ownership does not require one corporation to own 100 percent of the other corporation. Normally, cross-ownership will exist where there is a majority voting ownership interest between two corporations or through common ownership of two (or more) corporations. In certain circumstances, a large minority voting interest (for example, 40 percent) or a “golden share” may also result in cross-ownership.⁴¹

Thus, Commerce’s regulations make clear that the agency must look at the facts presented in each case in determining whether cross-ownership exists. The U.S. Court of International Trade (CIT) upheld Commerce’s authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same way it could use its own subsidy benefits.⁴²

1. CBA

As discussed above, we selected CBA as a mandatory respondent. CBA reported that it is a producer and exporter of subject merchandise.⁴³ CBA reported that, during the POI, it was a wholly-owned direct subsidiary of Votorantim S.A. (Votorantim), an investment holding company, which itself is owned by a holding company.⁴⁴ Certain administrative and support functions of CBA are outsourced to Votorantim.⁴⁵ CBA also reported that it purchased electricity from Votorantim Comercializadora de Energia Ltda. (Votener), an energy trading company.⁴⁶ Votener is wholly-owned by Votorantim and thus is cross-owned with CBA.⁴⁷ According to CBA, Votener acts as a trader on behalf of CBA by buying and selling energy and charging CBA a fixed price and/or a fixed percentage of the transaction.⁴⁸

CBA Machadinho Geração de Energia Ltda. (CBA Machadinho) is a limited liability company established by CBA to participate in the consortia for the Machadinho hydroelectric power plant. CBA and CBA Machadinho entered into a contract for the purchase of energy by CBA from CBA Machadinho.⁴⁹ CBA indicated in its questionnaire response that it was cross-owned with

⁴¹ See *Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998) (*CVD Preamble*).

⁴² See *Fabrique de Fer de Charleroi, SA v. United States*, 166 F. Supp. 2d 593, 600-604 (CIT 2001).

⁴³ See CBA’s Section III Affiliation QR at 4.

⁴⁴ *Id.* at 2-4.

⁴⁵ *Id.* at 2; see also CBA’s Section III Affiliation SQR at 10.

⁴⁶ See CBA IQR at 5.

⁴⁷ See CBA’s Section III Affiliation SQR at 11.

⁴⁸ *Id.* at 9.

⁴⁹ *Id.* at 7; see also CBA IQR at 5.

CBA Machadinho during the POI.⁵⁰

CBA Energia Participações S.A. (CBA Energia) is a limited liability joint stock corporation established in Brazil. During the POI, CBA Energia purchased electricity from an affiliated power producer, Energética Barra Grande S.A., and sold it to CBA to use in the production of subject merchandise.⁵¹ CBA indicated in its questionnaire response that it was cross-owned with CBA Energia.⁵²

At Commerce's instruction, CBA submitted a complete response on behalf of Votorantim, Votener, the holding company that owns Votorantim, CBA Machadinho, and CBA Energia.⁵³

We preliminarily determine that Votorantim, as the parent company of CBA, is cross-owned with CBA in accordance with 19 CFR 351.525(b)(6)(iii). We also preliminarily determine that Votener, CBA Machadinho, and CBA Energia are cross-owned input suppliers of CBA, in accordance with 19 CFR 351.525(iv). However, information in the questionnaire responses of Votorantim, Votener, CBA Machadinho, and CBA Energia indicate that they did not use or receive any subsidies during the POI. Therefore, we have not included these firms' sales in the sales denominators used to determine subsidies that are attributable to CBA.

Therefore, based on CBA's responses and our analysis below, we are preliminarily attributing subsidies received by CBA to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

2. Novelis Brasil

As discussed above, we selected Novelis Brasil as a mandatory respondent. Novelis Brasil reported that it is a producer and exporter of subject merchandise.⁵⁴ Novelis Brasil indicates that during the POI it was majority-owned by Novelis Inc., a Canadian company.⁵⁵

Based on Novelis Brasil's responses and our analysis below, we are preliminarily attributing subsidies received by Novelis Brasil to its own sales, in accordance with 19 CFR 351.525(b)(6)(i).

C. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), Commerce considers the basis for the respondents' receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondents' export or total sales, or portions thereof. As discussed in the "Programs Preliminarily Determined to Be Countervailable" section and in the respondents' preliminary calculations memoranda, where a program is found to be countervailable as a domestic subsidy,

⁵⁰ See CBA's Section III Affiliation QR at Exhibits 2 and 7; *see also* CBA's Section III Affiliation SQR at 7 and Exhibit Supp-2.

⁵¹ See CBA's Section III Affiliation SQR at 8.

⁵² See CBA's Section III Affiliation QR at Exhibit 7; *see also* CBA's Section III Affiliation SQR at 8 and Exhibit Supp-2.

⁵³ See CBA's Section III Affiliation SQR at 7-8; *see also* CBA's Section III IQR at 1.

⁵⁴ See Novelis Brasil's Section III Affiliation IQR at 2.

⁵⁵ *Id.* at 6.

we used total product sales as the denominator.⁵⁶ Where a program is found to be contingent upon export activities, we used total export sales, net of deemed exports, *i.e.*, the good supplied does not physically leave the country, as the denominator. All sales used in the net subsidy rate calculations are net of inter-company sales. For a further discussion of the denominators used, see the respondents' preliminary calculation memoranda.⁵⁷

VI. BENCHMARKS AND INTEREST RATES

Section 771(5)(E)(ii) of the Act provides that the benefit for a loan 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 must 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,” Commerce will normally rely on actual loans obtained by the firm. However, when there are no comparable commercial loans during the period, Commerce “may use a national average interest rate for comparable commercial loans,” pursuant to 19 CFR 351.505(a)(3)(ii).

Additionally, 19 CFR 351.505(a)(2)(ii) states that Commerce will not consider a loan provided by a government-owned special-purpose bank for purposes of calculating benchmark rates. In the absence of reported long-term loan interest rates, we use the above-discussed interest rates as discount rates for purposes of allocating non-recurring benefits over time pursuant to 19 CFR 351.524(d)(3)(i)(B).

A. Long-Term Real-Denominated Loans

During the POI, CBA submitted information indicating the interest rates, along with the underlying data, that it paid on non-government provided long-term commercial loans. We determine that these loans meet the definition of a “comparable commercial loan” under 19 CFR 351.505(a)(2). Accordingly, for subsidy programs used by CBA that require the use of a long-term benchmark interest rate or long-term discount rate, we have used the interest rates CBA reported in connection with its long-term commercial loans. Regarding Novelis Brasil, it reported using a subsidy program that requires the use of a long-term discount rate.⁵⁸ However, Novelis Brasil did not report any comparable commercial financing that could be used as a long-term discount rate in connection with this subsidy program. Therefore, in the absence of reported interest rates on comparable, commercial loans, we use the national average interest rates from the International Monetary Fund's (IMF) *International Financial Statistics* (IFS) as discount rates for Novelis Brasil, pursuant to 19 CFR 351.524(d)(3)(i)(B).⁵⁹

⁵⁶ See, e.g., *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the Republic of Korea: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35310 (June 2, 2016), and accompanying Issues and Decision Memorandum (IDM) at 6.

⁵⁷ See Memorandum, “Preliminary Determination Calculations for Companhia Brasileira De Alumínio,” dated concurrently with this memorandum; see also Memorandum, “Preliminary Determination Calculations for Novelis do Brasil Ltd.,” dated concurrently with this memorandum.

⁵⁸ See Novelis Brasil's Ex-Tarifario Response at Exhibit Ex-Tarifario-4.

⁵⁹ Our approach in this regard is consistent with Commerce's practice. See, e.g., *Carbon and Alloy Steel Threaded Rod from India: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Determination*

B. Discount Rates

Consistent with 19 CFR 351.524(d)(3)(i)(A), we used, as our discount rate, the long-term interest rate calculated according to the methodology described above for the year in which the government provided non-recurring subsidies. The interest rate benchmarks and discount rates used in our preliminary calculations are provided in the CBA Preliminary Calculation Memorandum and Novelis Brasil Preliminary Calculation Memorandum.

C. Benchmarks for Government Provision of Electricity at Less Than Adequate Remuneration

We selected benchmarks for determining the benefit from the provision of electricity in accordance with 19 CFR 351.511. Under 19 CFR 351.511(a)(2), Commerce sets forth the basis for identifying comparative benchmarks for determining whether a government good or service is provided for less than adequate remuneration (LTAR). These potential benchmarks are listed in hierarchical order by preference: (1) market prices from actual transactions within the country under investigation (*e.g.*, actual sales, actual imports or competitively run government auctions) (tier one); (2) world market prices that would be available to purchasers in the country under investigation (tier two); or (3) an assessment of whether the government price is consistent with market principles (tier three).⁶⁰ As discussed in the section titled “Electricity for LTAR,” pursuant to 19 CFR 351.511(a)(2)(1), based on the record and the information currently available, we are relying on the electricity prices that Companhia Energética de Minas Gerais S.A. (CEMIG), a state-owned power company, charged to Votener during the POI as the benchmark for measuring whether CBA purchased electricity from Furnas Centrais Eletricas S.A. (Furnas), a GBR entity, for LTAR.

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from among the facts otherwise available (AFA) when a party fails to cooperate by not acting to

with Final Antidumping Duty Determination, 84 FR 36570 (July 29, 2019), and accompanying Preliminary Decision Memorandum (PDM) at 19, unchanged in *Carbon and Alloy Steel Threaded Rod From India: Final Affirmative Countervailing Duty Determination*, 85 FR 8828 (February 18, 2020).

⁶⁰ See 19 CFR 351.511(a)(2).

the best of its ability to comply with a request for information. Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. Additionally, when resorting to the use of AFA, Commerce's practice also ensures "that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁶¹

Section 776(c) of the Act provides that, when Commerce "relies on secondary information rather than on information obtained in the course of an investigation or review," it shall, "to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal." Secondary information is "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."⁶² It is Commerce's practice to consider information to be corroborated if it has probative value.⁶³ In analyzing whether information has probative value, it is Commerce's practice to examine the reliability and relevance of the information to be used.⁶⁴ However, the SAA emphasizes that Commerce need not prove that the selected facts are the best alternative information.⁶⁵ Furthermore, Commerce is not required to corroborate any countervailing subsidy rate applied in a separate segment of the same proceeding.⁶⁶

Finally, Commerce is not required for purposes of section 776(c) of the Act, or any other purpose, to estimate what the countervailing subsidy rate would have been if the interested party had cooperated or to demonstrate that the countervailing subsidy rate reflects an "alleged commercial reality" of the interested party.⁶⁷

For purposes of this preliminary determination, based on the GBR's failure to cooperate to the best of its ability in responding to Commerce's requests for information, we are using AFA to make our specificity determinations for certain programs, as discussed below.

⁶¹ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA) at 870.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 869.

⁶⁵ *Id.* at 869-870.

⁶⁶ See section 776(c)(2) of the Act.

⁶⁷ See section 776(d)(3) of the Act.

B. Application of AFA: Ex-Tarifário

In the second part of its initial questionnaire response, submitted on June 11, 2020, Novelis Brasil reported that it reduced duties on certain products imported to Brazil through the Ex-Tarifario program.⁶⁸ This program allows Brazilian importers to apply to reduce the tariff rate on capital and information technology goods to zero if a specific good is not available domestically; once granted, the benefit can be received by any importer.⁶⁹

The GBR provided estimated benefit amounts received by different sectors of Brazil's economy under the program.⁷⁰ However, the GBR did not submit the requested data on the number of recipients in each year.⁷¹ Commerce requires information concerning the total number of benefit recipients in each year in order to determine whether subsidy benefits were limited, in fact, under section 771(5A)(D)(iii)(I) of the Act. As justification for the omission, the GBR cited to Article 5 of Brazil's Constitution, which states that, "the privacy, private life, honor, and image of persons are inviolable and the right to compensation for property or moral damages from their violations is ensured;" and Article 198 the Brazilian Tax Code and Article 2 of Brazilian Federal Revenue Ordinance No. 2,344, both of which forbid disclosure of information obtained for tax purposes.⁷²

However, we note that Ordinance No. 2,344 lists four exceptions to tax secrecy, one of which is for "aggregated data, which does not identify the taxpayer{.}"⁷³ The GBR submitted this ordinance in its initial questionnaire response and also in response to a supplemental questionnaire to Commerce asking the GBR to justify its rationale for not reporting the number of companies benefiting from tax programs.⁷⁴ Neither in the initial questionnaire response nor the supplemental response did the GBR provide any explanation of why Ordinance No. 2,344 would not exempt aggregated usage data from tax secrecy requirements.⁷⁵ Therefore, we preliminarily determine, pursuant to sections 776(a)(1) and (2)(A) and (C) of the Act, that necessary information is not available on the record, that the GBR withheld information requested by Commerce, and that the GBR has impeded Commerce from examining the number of users of the Ex-Tarifario program. Further, for the reasons discussed above and pursuant to section 776(b) of the Act, we preliminarily determine the GBR has not fully cooperated to the best of its ability, and as AFA, that the Ex-Tarifario program is *de facto* specific to a limited number of enterprises, as described under section 771(5A)(D)(iii)(I) of the Act.⁷⁶

C. Application of AFA: Lei do Bem

In its initial questionnaire response, submitted on June 1, 2020, Novelis Brasil self-reported that it received tax deductions through provisions of Law No. 11,196, dated November 21, 2005

⁶⁸ See Novelis Brasil's Ex-Tarifario Response at Exhibit Ex-Tarifario-4.

⁶⁹ See GBR IQR at 10 and 20.

⁷⁰ See GBR SQR at Exhibit A_2_A.

⁷¹ See GBR IQR at 20.

⁷² *Id.* at Exhibit A_1_F.

⁷³ *Id.*

⁷⁴ See GBR IQR at 20; see also GBR SQR at 7-10.

⁷⁵ *Id.*; see also GBR SQR at 7-10.

⁷⁶ See GBR IQR at 19-20; see also GBR SQR at 7-13.

(henceforth the Lei do Bem program), that provides various incentives for companies that perform research and development (R&D) related to technological innovation during the POI.⁷⁷ Novelis Brasil stated in its response, “Novelis do Brasil has conferred with the GBR regarding Novelis’ use of this program and understands that the GBR will be providing the requisite information regarding this program in its questionnaire response.”⁷⁸

However, in the GBR’s initial questionnaire response, submitted on June 15, 2020, the GBR simply noted that it was “gathering further information on the program with relevant agencies, to be provided as the DOC deems necessary,” without presenting any information that would allow Commerce to analyze the program.⁷⁹ On July 27, 2020, after receiving multiple extensions from Commerce, the GBR submitted responses to the Standard Questions and Tax Program Appendices.⁸⁰

In this supplemental questionnaire response, the GBR provided certain information on Lei do Bem usage disaggregated by industry sector.⁸¹ However, in response to other questions, such as the number of the program’s users, which is needed to conduct a complete specificity analysis under section 771(5A)(D)(iii)(I) of the Act, the GBR claimed that “[t]he analysis of the years 2016, 2017, and 2018 is not complete. Therefore, the numbers are not available.”⁸²

Given that the GBR was able to provide data disaggregated by industry, we do not find this explanation alone sufficient, as disaggregating data by industry would necessarily require information on the number of program users by industry. Additionally, the GBR’s unilateral decision to include only minimal information on the Lei do Bem program in its initial questionnaire response and that it only provided further information “as the DOC deems necessary” significantly hindered Commerce’s ability to analyze the GBR’s response on the program, as well as interested parties’ ability to comment. Therefore, we preliminarily determine, pursuant to sections 776(a)(1) and (2)(C) of the Act, that necessary information is missing from the record and that the GBR has impeded Commerce’s examination of the number of users of the Lei do Bem program by not providing information within the deadlines established. Further, for the reasons discussed above and pursuant to section 776(b) of the Act, we preliminarily determine that GBR has not fully cooperated to the best of its ability, and as AFA, that the Lei do Bem program is *de facto* specific to a limited number enterprises, as described under section 771(5A)(D)(iii)(I) of the Act.⁸³ We will continue to examine whether this program is specific in fact under section 771(5A)(D)(iii) of the Act.

⁷⁷ See Novelis Brasil’s Section III IQR at 39.

⁷⁸ *Id.*

⁷⁹ See GBR IQR at 165.

⁸⁰ See GBR SQR at 21.

⁸¹ See GBR SQR at Exhibit A_5_L_2.

⁸² *Id.* at 28.

⁸³ *Id.*

VIII. ANALYSIS OF PROGRAMS

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

A. Programs Preliminarily Determined to Be Countervailable

1. Ex-Tarifário Program

According to the GBR, the Ex-Tarifário program reduces import tariffs on capital goods and information technology products that are not produced in Brazil from 14 percent to as low as zero percent.⁸⁴ The program is governed by Ordinance No. 309 and Ordinance No. 324, dated June 24, 2019 and August 29, 2019, respectively, and is administered by the Ministry of Economy.⁸⁵ Importers must apply for tariff reductions under this program with the Secretariat for the Development of Industry, Commerce, Services and Innovation (SDIC), of the Special Secretariat for Productivity, Employment and Competitiveness (SEPEC), of the Ministry of Economy (ME).⁸⁶ The SDIC examines whether there is domestic production of similar goods and publishes information about the imported good under consideration for public comment.⁸⁷ If approved, the tariff rate is reduced for the particular product and any company that imports the product benefits from the tariff reduction.⁸⁸ CBA and Novelis Brasil reported receiving benefits during the POI as well as in certain years during the AUL period.⁸⁹

CBA and Novelis Brasil reported having used this program.⁹⁰ Although the GBR, CBA, and Novelis Brasil assert that Ex-Tarifário is not a countervailable program,⁹¹ we solicited, and the GBR provided, information enabling our analysis of this program.

Based on the information on the record, Commerce preliminarily determines that the reduced tariff rates provided under the program constitute a financial contribution in the form of revenue forgone under section 771(5)(D)(ii) of the Act. Concerning specificity, any company intending to import capital goods or information technology products to Brazil can apply to have a good exempted from import duties under the program. Thus, given the broad eligibility criteria afforded under the program, we preliminarily determine the program is not limited, by law, to certain enterprises or industries under section 771(5A)(D)(i) of the Act. Our approach in this regard is consistent with Commerce's finding in *HRS from Brazil (2016)*.⁹² Therefore, we next examined whether the program is specific as a matter of fact under section 771(5A)(D)(iii) of the

⁸⁴ See GBR IQR at 10 and 20.

⁸⁵ *Id.*

⁸⁶ *Id.* at 11 and 16-17.

⁸⁷ *Id.* at 12 and 17.

⁸⁸ *Id.* at 10-11, 14, and 17-20.

⁸⁹ See CBA IQR at Exhibit Ex-Tarifario-Table 1; see also Novelis Brasil's Ex-Tarifario Response at Exhibit Ex-Tarifario-4.

⁹⁰ See CBA IQR at 12; see also Novelis Brasil's Ex-Tarifario Response at 1-6; and GBR IQR at 14.

⁹¹ See CBA IQR at Attachment A at 2-3; see also Novelis Brasil's Ex-Tarifario Response at 1-2; and GBR IQR at 10-11.

⁹² See *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) (*HRS from Brazil (2016)*), and accompanying IDM at Comment 4.

Act. In response to our questionnaire, the GBR provided certain information on Ex-Tarifario usage disaggregated by sector.⁹³ However, the GBR refused to provide the number of companies that used the program in each year. As described above in Section IX, “Use of Facts Otherwise Available and Adverse Inferences,” we preliminarily determine that, pursuant to sections 776(a)(1) and (2)(A) and (C) of the Act, by not providing the annual number of firms that used the program, necessary information is not available on the record, the GBR has withheld information requested by Commerce, and the GBR significantly impeded the proceeding. The GBR failed to act to the best of its ability, thereby warranting the application of AFA under section 776(b) of the Act. Thus, pursuant to section 776(b) of the Act, we preliminarily determine, as AFA, that the program is *de facto* specific to a limited number of users as described under section 771(5A)(D)(iii)(I) of the Act.⁹⁴ Further, as discussed below, we preliminarily determine that the program confers a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1) in the amount of import duty otherwise due in the absence of the program.

Import duty exemptions under this program are approved for the purchase of capital equipment. The *CVD Preamble* states that, if a government provides an import duty exemption tied to major equipment purchases, “it may be reasonable to conclude that, because these duty exemptions are tied to capital assets, the benefits from such duty exemptions should be considered non-recurring.”⁹⁵ Thus, in accordance with 19 CFR 351.524(c)(2)(iii), the *CVD Preamble*, and past practice, we are treating these import duty exemptions on capital equipment as non-recurring benefits.⁹⁶ Therefore, to calculate the benefit for CBA and Novelis Brasil, we determined the amount of import duty exemptions received during the POI and during each year of the AUL for which CBA and Novelis Brasil reported receiving benefits. Then, for each year in which benefits were received, we performed the “0.5 percent test” using the firms’ total sales in the relevant years as the denominator. Both respondents had certain years during the AUL period, where benefits did not pass the “0.5 percent test,” and we allocated the benefits to the year of receipt. Both respondents also had certain years during the AUL period where the benefits did pass the “0.5 percent test,” and we added together the benefits that were allocated to the POI with the benefits that were received during the POI, and we divided this amount by each respondent’s total sales during the POI. Thus, the countervailable subsidy rates for CBA and Novelis Brasil are **0.11** and **0.03** percent *ad valorem*, respectively.

2. Electricity for LTAR

In November 2015, the GBR enacted a program under Law No. 13,182, which provided for the negotiation of energy supplied by Furnas Auctions, and Law No. 13,299, dated June 21, 2016.⁹⁷ Commerce has previously found that Law 13,182 is designed to provide favorable long-term electricity rates through government-owned suppliers to certain industrial consumers located in

⁹³ See GBR SQR at 11-13 and Exhibit A_2_A.

⁹⁴ See GBR IQR at 19-20; see also GBR SQR at 7-13.

⁹⁵ See *CVD Preamble*, 63 FR at 65393.

⁹⁶ See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From Brazil: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 2168 (January 15, 2016) (*Preliminary HRS from Brazil (2016)*), and accompanying PDM at 23, unchanged in *HRS from Brazil (2016)* IDM at 6-8.

⁹⁷ See GBR IQR at 141 and 145.

the Southeast and Mid-West regions.⁹⁸

According to the GBR, Furnas is a subsidiary of Centrais Elétricas Brasileiras S.A. (ELETROBRAS), a state-owned company that is controlled by the federal administration under the ministerial supervision of the Ministry of Mines and Energy.⁹⁹ In April 2020, the GBR held 42.57 percent of total shares and 51.82 percent of the voting rights in Furnas, BNDES/BNDESPAR held 16.14 percent of total shares and 16.78 percent of the voting rights, and the remaining shares and voting rights were held by various funds or were free floating shares.¹⁰⁰

According to the GBR, Furnas is authorized to participate in the Southeast and Central-West Energy Fund – FESC, with the purpose of providing funds for the implementation of generation projects and transmission of electric energy. Furnas is also authorized to provide energy through auctions to consumers of the Southeast and Midwest regions of Brazil to consumers in the ferroalloy, metallic silicon, and magnesium sectors.¹⁰¹

Law No. 13,182 states that producers of ferroalloys, metallic silicon, or magnesium, regardless of the load factor, are eligible for the Furnas Auctions, as well as industrial consumers located in the Southeast/Midwest submarket who require a voltage of 13.8 kV or higher and a load of 500 kW or higher, with a load factor of at least 0.8, regardless of their industry or sector.¹⁰² The GBR explained that the purpose of these limiting factors was that electricity contracts for certain consumers were set to expire and that “industrial units would be harmed by the end of the concession contract” and that these industrial units “account for a significant portion of the economy of these municipalities, generating income and employment for the local population.”¹⁰³

To participate in the Furnas Auction, CBA had to comply with bidding rules and submit proposals with certain minimum volume requirements. Each bidder was free to bid different prices. Furnas compiled and processed the bids and allocated energy contracts to bidders that met certain minimum volume and price requirements determined internally by Furnas.¹⁰⁴

During the POI, CBA purchased electricity during the POI from UHE Itambiara, a hydroelectric power plant controlled by Furnas, a government-owned entity, through a long-term contract signed in January 2019 through an auction process (Furnas Auction).¹⁰⁵ Therefore, as discussed below, we have examined whether Furnas sold electricity to CBA for LTAR. Information from

⁹⁸ See Petition at Vol. XXI at 50 (citing *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), and accompanying PDM at 8, unchanged in *Silicon Metal from Brazil: Final Affirmative Countervailing Duty Determination*, 83 FR 9838 (March 8, 2018), and accompanying IDM).

⁹⁹ See GBR IQR at 142, 146, and 156.

¹⁰⁰ *Id.* at 142.

¹⁰¹ *Id.* at 163.

¹⁰² See GBR IQR at 150.

¹⁰³ See GBR SQR at 19.

¹⁰⁴ See CBA IQR at Attachment E at 4-5.

¹⁰⁵ See CBA IQR at Attachment E at 3 and 7.

Novelis Brasil indicates that it did not purchase any electricity from Furnas during the POI.¹⁰⁶ Further, we preliminarily determine there is no record information indicating that the entities who sold electricity to Novelis Brasil during the POI fell under the provisions of Law No. 13,182 that govern sales of electricity to producers of ferroalloys, metallic silicon, or magnesium located in Brazil's Southeast/Midwest submarket. Therefore, we preliminarily determine that Novelis Brasil did not use this program during the POI.

Because Furnas is majority-owned/controlled by the GBR and its electricity sales under the program are governed by Law No. 13,182, we preliminarily determine that it is a government authority under section 771(5)(B) of the Act that provides a financial contribution within the meaning section 771(5)(D)(iii) of the Act. Because this program is limited to electricity consumers in the ferroalloy, metallic silicon, and magnesium sectors who are located in the Southeast/Midwest regions of Brazil, we preliminarily determine that the program is *de jure* specific under sections 771(5A)(D)(i) and (iv) of the Act. We also preliminarily determine that the program confers a benefit under section 771(5)(E)(iv) of the Act and 19 CFR 351.511(a)(1) to the extent that the price paid for the government-provided good is provided for LTAR.

With respect to benefit, as discussed above, Commerce determines whether electricity is provided for LTAR by comparing, in order of preference: (i) the government price to a market determined price for actual transactions within the country (tier one); (ii) the government price to a world market price where it would be reasonable to conclude that such a world market price is available to electricity consumers in the country in question (tier two); or (iii) if no world market price is available, then Commerce will measure the adequacy of remuneration by assessing whether the government price is consistent with market principles (tier three). When considering whether there is distortion in a market and thus usable tier one prices, the *CVD Preamble* states that "such distortion will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market."¹⁰⁷

The GBR describes the electricity market in Brazil as split into the following distinct parts: (1) the Regulated Market (ACR); (2) the Free Contracting Environment (ACL); and (3) the Spot Market, for the settlement of short-term market differences.¹⁰⁸ The GBR notes that the program created by Law 13,182 involves the sale of electric power in the Free Contracting Market, or ACL.¹⁰⁹ In the auctions under Law 13,182, the government sets the minimum price, but according to the GBR, there is no control on how much prices may rise through the mechanism of free competition between market participants, and there is no government-set maximum selling price.¹¹⁰ In the broader ACL market, the GBR states that "generators, self-producers, traders and importers freely negotiate with free consumers the contracting of electrical energy through bilateral contracts."¹¹¹ The GBR goes on to state that in the ACL, "there is no government regulation on prices, terms, and amount of energy contracted by consumers."¹¹² Finally, the GBR provided information demonstrating that less than 30 percent of electricity sold

¹⁰⁶ See Novelis Brasil's Section III IQR at 32-35 and Exhibit Electricity-2.

¹⁰⁷ See *CVD Preamble*, 63 FR at 65377.

¹⁰⁸ See GBR IQR at 159-160; see also GBR SQR at 33-34.

¹⁰⁹ See GBR IQR at 141.

¹¹⁰ *Id.*

¹¹¹ See GBR SQR at 33.

¹¹² *Id.* at 34.

in the ACL is accounted for by majority-government-owned entities.¹¹³ Therefore, based on the current record information, we preliminarily determine that the relevant market is not distorted by government involvement, and that tier one prices are usable as benchmarks. However, Commerce will continue to request additional information and further analyze this program after the preliminary determination.

As discussed above in the “Benchmarks for Government Provision of Electricity at Less Than Adequate Remuneration” section, based on the record information that is currently available and pursuant to 19 CFR 351.511(a)(2)(1), we are relying on the electricity prices that CEMIG charged to Votener, which is cross-owned with CBA, during the POI as the benchmark for measuring whether CBA purchased electricity from Furnas for LTAR. Thus, to measure whether CBA received a benefit, we compared the unit price that CBA paid to Furnas to the unit price that Votener paid to CEMIG. In months where CEMIG’s unit price exceeded the unit price of Furnas, we multiplied the difference by the quantity of electricity CBA purchased from Furnas during the month. We then summed the benefits received in each month to derive the total benefit under the program.

To calculate the net subsidy rate attributable to CBA, we divided the benefit by the company’s total sales during the POI. On this basis, we preliminarily determine a net countervailable subsidy rate of **0.06** percent *ad valorem*.

3. Integrated Drawback Program

According to the GBR, the Integrated Drawback Program, established in 1966 under Article 78, Law No. 37, allows exporting companies to purchase raw materials, parts, and components exempt from import duties and domestic Value Added Tax (VAT), whether the raw materials are imported or purchased from domestic suppliers, when the inputs are used to produce products that are exported.¹¹⁴

Companies that are “licensed as foreign trade agent{s}”¹¹⁵ may apply to receive a “Drawback Concession Act” by submitting an application through an online platform known as the Brazilian Integrated System of Foreign Trade (SISCOMEX).¹¹⁶ The GBR uses SISCOMEX to track all Brazilian imports and exports, analyze drawback applications, process drawback concessions, and monitor the purchases of imported and domestic products under the integrated drawback program and tie them to the subsequent exports.¹¹⁷

Companies must register the purchases that are eligible for the integrated drawback in SISCOMEX by submitting data such as products to be exported and imported, products purchased in the domestic market, estimates of values and quantities for each, and import freight/insurance information.¹¹⁸ If the data submitted are within the parameters established by

¹¹³ *Id.* at 35-36.

¹¹⁴ *See* GBR IQR at 30 and Exhibit A-4-D at 1; *see also* CBA IQR at Attachment B at 2-3.

¹¹⁵ *See* GBR IQR at 37-38.

¹¹⁶ *Id.* at 31-32 and 36-37.

¹¹⁷ *Id.* at 31-32 and 34.

¹¹⁸ *See* GBR IQR at 30 and 37.

the application, the application is automatically approved by the system. If not, it will be manually reviewed by the Secretariat of Foreign Trade (SECEX).¹¹⁹ Companies then have one year to fulfill their obligations, *i.e.*, buy raw materials, parts and components, produce the product to be exported, and export it. This period can be extended one additional year.¹²⁰

There are three different types of duty exemptions under this program: Exemption Drawback, Suspension Drawback, and Refund Drawback.¹²¹ A company may receive an Exemption Drawback on import duties or domestic taxes when it purchases materials domestically or imports materials which are used as inputs to manufacture final goods for export.¹²² A Suspension Drawback allows a company to import or purchase raw materials, parts or components domestically that will be used to manufacture goods for export, and suspend the payment of taxes on those inputs. Once the goods are exported, the suspension of taxes becomes an exemption of taxes on the inputs used to produce the exported good.¹²³ The Refund Drawback, which is rarely used, provides a refund of the import duties and domestic taxes on inputs after the final goods that are produced using those inputs are exported.¹²⁴

CBA reported receiving benefits only under the Exemption Drawback during the POI.¹²⁵ The Exemption Drawback is regulated by Articles No. 31, 32 and 33 of Law No. 12.350, dated December 20, 2010.¹²⁶ A company may receive an Exemption Drawback when it purchases domestically or imports materials, without the application of the relevant taxes, to resupply inputs consumed in manufacturing products that have already been exported.¹²⁷ Specifically, the Exemption Drawback provides relief from the following taxes: Import Tax (II), Manufacturing Tax (IPI), the Social Integration Program/Social Security Financial Contribution Tax (PIS/COFINS), and domestic VAT.¹²⁸

CBA reported that it registers transactions that are eligible for the integrated drawback in the SISCOMEX Portal, and the SISCOMEX system automatically controls transactions in connection with the specific Concession Act.¹²⁹ Once the volume of the inputs CBA has purchased reaches the cap authorized under the Concession Act, the SISCOMEX system blocks CBA from registering import declarations to receive integrated drawback exemptions.¹³⁰ Novelis Brasil reported that it did not use the program during the POI.¹³¹

We preliminarily determine that the exemptions constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act. Further, because the duty

¹¹⁹ *Id.* at 34.

¹²⁰ *Id.* at 30 and 36-37

¹²¹ *Id.* at 31.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ See CBA IQR at Attachment B at 3; *see also* CBA SQR1 at 9.

¹²⁶ See CBA IQR at 31.

¹²⁷ See GBR IQR at 31.

¹²⁸ *Id.* at 31, 37, and 49; *see also* GBR SQR at 5; and CBA IQR at Attachment B at 3 and 9.

¹²⁹ See GBR IQR at 34; *see also* CBA SQR1 at 11.

¹³⁰ See CBA SQR1 at 11.

¹³¹ See Novelis Brasil's Section III IQR at 14.

exemptions on raw materials are contingent upon export performance, we preliminarily determine that they are specific in accordance with sections 771(5A)(A) and (B) of the Act.

As stated in 19 CFR 351.519(a), “{t}he term ‘remission or drawback’ includes full or partial exemptions and deferrals of import charges.” Under 19 CFR 351.519(a)(1)(ii), in the case of exemptions of import charges upon export, “a benefit exists to the extent that the exemption extends to inputs that are not consumed in the production of the exported product, making normal allowance for waste...” Under 19 CFR 351.519(a)(4)(i), the entire amount of such exemptions will confer a benefit, unless Commerce determines that “{t}he 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 the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export.”

In response to our questions regarding the system or procedure administered by the GBR, the GBR explained there is a system administered by the customs authority to track raw materials through import declaration invoices and export licenses, and that these are matched with the products, quantities, and values authorized for the exporter.¹³² Moreover, their system relies on technical reports to identify and account for the allowable waste.¹³³ According to the GBR, companies must first apply for a “Concession Act” before they can register the purchase of inputs that are eligible for a drawback under this program.¹³⁴ The Secretariat of Foreign Trade oversees compliance with this program’s regulations and verifies a company’s invoices and technical reports, which document the quantity of inputs required to produce a given quantity of a finished good for export.¹³⁵

Therefore, based on record information, we find that with regard to import duty exemptions provided under the program the GBR 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, 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,” as provided under 19 CFR 351.519(a)(4)(i). Therefore, we preliminarily determine that with regard to import duty exemptions import charges, the Integrated Drawback Program meets the requirements for a duty drawback program. Our finding in this regard is consistent with Commerce’s practice.¹³⁶

However, the GBR also explained that companies are entitled to receive exemptions or suspensions of domestic taxes on domestic purchases of inputs.¹³⁷ Regarding this aspect of the program, the GBR stated that “{t}he suspension or exemption {of domestic taxes} is not linked to the item imported or the merchandise exported under the program.”¹³⁸ The GBR further stated that “{t}he suspension or exemption of taxes on inputs acquired in the domestic market is not linked to the concomitant importation of the same inputs (imported with the payment or deferral

¹³² See GBR IQR at 34, 36-37 and 49-56; see also CBA SQR1 at 10-11.

¹³³ See GBR IQR at 37, 50.

¹³⁴ *Id.* at 34.

¹³⁵ *Id.* at 34, 36-37 and 49-50; see also CBA SQR1 at 10-11.

¹³⁶ See *HRS from Brazil (2016)* IDM at Comment 10.

¹³⁷ *Id.*; see also GBR IQR at 30, 34, and 37.

¹³⁸ See GBR IQR at 56.

of taxes).”¹³⁹ Thus, based on this information, we preliminarily determine that the program allows for the rebate of domestic taxes otherwise due on imported or domestically sourced inputs that are excessive. Specifically, we preliminarily determine that there is no evidence on the record to establish that the exemptions of domestic taxes on domestically-sourced inputs function as a substitution drawback, and we find there has been no explanation or documentation that, in order to receive an exemption of taxes paid on domestic inputs, an exporter has to demonstrate a concomitant import of the same input and the payment, or deferral, of all of the relevant taxes. Therefore, we preliminarily determine these tax exemptions confer a benefit under section 771(5)(E) and 19 CFR 351.519(a)(2)(ii). Our finding in this regard is consistent with our finding in *HRS from Brazil (2016)*.¹⁴⁰

To calculate the benefit, we summed the amount of domestic tax savings that CBA reported for the POI (*e.g.*, tax saving for the following domestic taxes: IPI, PIS, COFINS, and ICMS). To calculate the net subsidy rate, we divided the total tax savings received during the POI by CBA’s total sales. On this basis, we calculated a net subsidy rate of **1.08** percent for CBA.

4. Reintegra

The Special Regime for the Reintegration of Tax Values for Exporting Companies (Reintegra) program was first established in 2011 and allows exporters of manufactured goods to recover residual indirect tax costs levied on inputs acquired in the domestic market, used in the production of goods for export.¹⁴¹ The version of the Reintegra program in place during the POI was established under Decree No. 8,415 on February 27, 2015.¹⁴² During the POI, the Reintegra tax credit rate was 0.1 percent of the value of the exported merchandise.¹⁴³ The GBR reported that Reintegra-generated credits may be reimbursed in cash or used to offset the exporter’s federal government tax liabilities.¹⁴⁴

According to the GBR, to qualify for a Reintegra benefit, the exported merchandise: (1) must have been manufactured in Brazil; (2) must be listed as an approved product in the annex to Decree No. 8,415; and (3) the cost of imported content must be no greater than 40 percent of the export price.¹⁴⁵ To benefit from Reintegra, the exporting company adds up to 0.1 percent of value of export revenue on eligible products (*i.e.*, products listed in the annex to Decree No. 8,415) and can claim that amount as a refund or be used to offset taxes payable when filing its taxes.¹⁴⁶ Both CBA and Novelis Brasil reported using Reintegra-generated credits to offset federal taxes during the POI.¹⁴⁷

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

¹³⁹ See GBR SQR at 5.

¹⁴⁰ See *HRS from Brazil (2016)* IDM at Comment 10.

¹⁴¹ See GBR IQR at 59.

¹⁴² *Id.*

¹⁴³ *Id.* at 60, 64, and Exhibit A_5_D at 2 (Article 2, paragraph 7, subparagraph IV of Decree No. 8,415).

¹⁴⁴ *Id.* at 60.

¹⁴⁵ *Id.* at 59-60, 62-64, and Exhibit A_5_D.

¹⁴⁶ See GBR IQR at 67; see also CBA IQR at Attachment C at 3-4.

¹⁴⁷ See CBA IQR at 14 and Attachment C at 3; see also Novelis Brasil’s Section III IQR at 14-20.

determine that the tax rebates, whether granted in cash or as credits applicable to other tax obligations, provided under this program are specific under sections 771(5A)(A) and (B) of the Act, as eligibility is contingent upon export performance.¹⁴⁸

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.¹⁴⁹ 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.

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

The GBR stated that for a company to receive a credit under the Reintegra program, a company does not need to submit an application form and only needs to declare that the goods are included in the list under Decree No. 8,415, dated February 27, 2015, the goods are manufactured domestically, and that the goods' imported inputs are no greater than 40 percent of the export price.¹⁵⁰ The GBR did not 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. Rather, the GBR explained in its questionnaire responses that the credit is a "very simple" calculation based on "the value of export revenue, {to which} the company applies a tax rate of 0.1 {percent}."¹⁵¹ Thus, the record demonstrates that the GBR implemented the Reintegra program with a single tax rebate rate across all eligible products (essentially, all exports). Therefore, we preliminarily find that the requirements for non-countervailability provided for in 19 CFR 351.518(a)(4)(i) and (ii) have not been met and, thus, that a benefit has

¹⁴⁸ See GBR IQR at 59. "The purpose of the program is to partially refund exporters for the tax residue derived from the supply chain of exported goods."

¹⁴⁹ See 19 CFR 351.518(a).

¹⁵⁰ See GBR IQR at 61-63.

¹⁵¹ See GBR IQR at 67.

been conferred under section 771(5)(E) of the Act. Our approach is consistent with our finding in *Preliminary HRS from Brazil (2016)*.¹⁵²

Our practice is to treat exemptions from indirect taxes and import charges on raw materials as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate the benefits to the year in which they were received. Thus, to calculate the countervailable subsidy rate for CBA and Novelis Brasil, we divided the amount of CBA and Novelis Brasil's credits obtained under this program by each respective company's total exports during the POI. On this basis, we preliminarily determine a net countervailable subsidy rate of **0.07** and **0.10** percent *ad valorem* for CBA and Novelis Brasil, respectively.

5. Lei do Bem R&D Salaries Tax Deduction Program

In its initial questionnaire response, Novelis Brasil self-reported that it benefited during the POI from provisions of Law No. 11,196, dated November 21, 2005 (henceforth the Lei do Bem) that provides various incentives for companies that perform R&D related to technological innovation.¹⁵³ The tax incentives provided by the law include deductions for R&D expenses from corporate income (IRPJ) and social contribution on net profit (CSL) taxes, deductions from IPI for machinery and equipment used in R&D, and accelerated depreciation and amortization of R&D assets.¹⁵⁴ Novelis Brasil used the tax deduction from IRPJ and CSL taxes for R&D expenses and did not use the program's other incentives.¹⁵⁵ CBA did not use the program during the POI.¹⁵⁶

To receive the tax deduction for R&D expenses, companies must pay taxes using the "real profit" method, have a tax profit, maintain fiscal compliance, and invest in R&D.¹⁵⁷ Decree No. 7,798, dated June 7, 2006, describes basic research, applied research, experimental development, basic industrial technology and technical support services as activities eligible to receive benefits under the law.¹⁵⁸ A company can claim between 60 and 80 percent of the salaries of R&D personnel for the deduction depending on the growth rate of the company's employment of R&D personnel. During the POI, Novelis Brasil claimed 60 percent of the costs incurred from its employment of R&D personnel.¹⁵⁹

Companies are not required to submit separate application forms to receive the tax deduction; rather, they claim the deduction on their tax return and submit annual reports to the Ministry of Science Technology, Innovations and Communications on their R&D and innovation

¹⁵² See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 2168 (January 15, 2016) (*Preliminary HRS from Brazil (2016)*), and accompanying PDM at 30, unchanged in *HRS from Brazil (2016)*.

¹⁵³ See Novelis Brasil's Section III IQR at 39.

¹⁵⁴ *Id.* at 40; see also GBR SQR at 21-22.

¹⁵⁵ See Novelis Brasil's Section III IQR at 41.

¹⁵⁶ See CBA IQR at 23.

¹⁵⁷ See Novelis Brasil's Section III IQR at Exhibit Lei do Bem-1.

¹⁵⁸ *Id.* at 41.

¹⁵⁹ *Id.* at Exhibit Lei do Bem-1.

programs.¹⁶⁰ During the POI, Novelis Brasil claimed a tax deduction amount under the program based on its accounting of the total amount spent by the company on the salaries of employees dedicated to R&D.¹⁶¹

We preliminarily determine that the tax deductions taken under the Lei do Bem constitute a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act. We further preliminarily determine the program is not limited, by law, to certain enterprises or industries under section 771(5A)(D)(i) of the Act. Therefore, we next examined whether the program is specific as a matter of fact under section 771(5A)(D)(iii) of the Act.

In response to a supplemental questionnaire, the GBR provided certain information on Lei do Bem usage disaggregated by sector.¹⁶² However, the GBR did not provide the number of companies that used the program. As described above in Section IX. “Use of Facts Otherwise Available and Adverse Inferences,” we preliminarily determine that by not providing the annual number of firms that used the program, the GBR has failed to act to the best of its ability thereby warranting the application of AFA under section 776(b) of the Act. Thus, pursuant to section 776(b) of the Act, we preliminarily determine that the program is *de facto* specific to a limited number of users as described under section 771(5A)(D)(iii)(I) of the Act.¹⁶³

Our practice is to treat exemptions from direct taxes as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate the benefits to the year in which they were received. Thus, to calculate the countervailable subsidy rate for Novelis Brasil, we divided the reduction in Novelis Brasil’s corporate tax payments obtained under this program by the company’s total sales during the POI. On this basis, we preliminarily determine a net countervailable subsidy rate of **0.02** percent for Novelis Brasil.

6. Espírito Santo ICMS Reduction

On July 6, 2020, Novelis Brasil self-reported that a Novelis Brasil distribution center in Espírito Santo state had used a program that reduces the amount of ICMS, a tax on the physical movement of merchandise and inter-state and inter-municipal transport, that Novelis Brasil owed to Espírito Santo state during the POI.¹⁶⁴ Novelis Brasil noted that it received a net tax benefit under this program. Under Law No. 10,568, companies across a wide variety of sectors can sign “competitiveness contracts” with the Espírito Santo state government that lower their effective tax burdens if they meet certain conditions.¹⁶⁵ Novelis Brasil signed a competitiveness contract under Article 16 of Law No. 10,568, which reduces the ICMS rate for sales from wholesale distribution centers to destinations within Brazil, but outside Espírito Santo from 12 to 1.1 percent.

In order to qualify for the program, Novelis Brasil submitted an application form and attested

¹⁶⁰ *Id.* at 42.

¹⁶¹ *Id.* at 43.

¹⁶² See GBR SQR at Exhibit A_5_L_2.

¹⁶³ See GBR SQR at Exhibit A_5_L_2.

¹⁶⁴ See Novelis Brasil SQR1 Part II at 4-7.

¹⁶⁵ *Id.* at Exhibits ICMS/ES-1 and ICMS/ES-3.

that the distribution center it was opening would create employment.¹⁶⁶ Novelis Brasil must annually report on the distribution center's operations and employment to the Espirito Santo state government to continue receiving the reduced ICMS rate.¹⁶⁷

We preliminarily determine that the Espirito Santo ICMS reduction constitutes a financial contribution in the form of revenue forgone, as described under section 771(5)(D)(ii) of the Act. We further note that the program contains six separate exclusions listing types of wholesale operations that do not qualify for the program. The exclusions cover types of goods, for example, “{operations} with coffee, electricity, lubricants, liquids or gaseous fuels,” as well as modes of distribution, for example, “{operations} that send goods to individual customers.”¹⁶⁸

Based on these eligibility restrictions, we preliminarily determine the program is limited, by law, to certain enterprises or industries and is therefore specific under section 771(5A)(D)(i) of the Act.

Our practice is to treat exemptions from indirect taxes as recurring benefits, consistent with 19 CFR 351.524(c)(1), and allocate the benefits to the year in which they were received. Thus, to calculate the countervailable subsidy rate for Novelis Brasil, we divided the amount by which Novelis Brasil's ICMS payments were reduced under this program by the company's total sales during the POI. On this basis, we preliminarily determine a net countervailable subsidy rate of **0.61** percent *ad valorem* for Novelis Brasil.

B. Programs Preliminarily Determined to Not be Countervailable

1. BNDES FINAME

BNDES is the main financing agent for development in Brazil and has two integral subsidiaries: FINAME and BNDESPAR.¹⁶⁹ BNDES was founded in 1952 and carries out the GBR's medium- and long-term investment credit policies in support of economic growth in Brazil. According to the GBR, BNDES is the primary source of long-term financing in Brazil, and there is no relevant private market for such loans.¹⁷⁰ FINAME was established in 1966 to provide financing for acquisition of machinery and equipment.¹⁷¹ Resources are earmarked for financing purchase and sales operations and exports of Brazilian machinery and equipment, as well as imports of goods of the same nature produced overseas. Its activities are developed in conjunction with BNDES. According to the GBR, FINAME resources are available to companies across all business sectors and geographical regions in Brazil.¹⁷²

¹⁶⁶ *Id.* at 7 and Exhibit ICMS/ES-2.

¹⁶⁷ *Id.* at 9 and Exhibit ICMS/ES-6.

¹⁶⁸ *Id.* at Exhibit ICMS/ES-3.

¹⁶⁹ See GBR IQR at 95 and Exhibit A_BNDES_D.

¹⁷⁰ *Id.* at 112.

¹⁷¹ *Id.* at 97.

¹⁷² *Id.* at 95.

BNDES administers FINAME credit lines along with agent banks, which are the financial institutions responsible for servicing the loans.¹⁷³ These financial institutions analyze the financing requests, and negotiate the terms and guarantees with borrowers, pursuant to BNDES rules. The GBR claims that eligibility for BNDES financing is neither contingent on export performance or the use of domestic rather than imported inputs nor sector or region specific.¹⁷⁴

Each FINAME contract clearly defines the specific equipment subject to financing. It also establishes the amount financed, the interest rate (including the financial fee), the terms and conditions for payment. The actual equipment must match its description in the invoice. The program was modified in 2018 to reduce loan terms and provide more competitive spreads.

CBA received loans under the program that were outstanding during the POI.¹⁷⁵ However, during the POI, CBA's cross-owned affiliates did not.¹⁷⁶ CBA was required to meet the criteria set forth in the FINAME regulations to receive FINAME funds. CBA has nine current FINAME contracts signed, respectively in 2011, in 2014 and in 2016.¹⁷⁷ CBA submitted separate applications for each product acquisition under FINAME; the applications specify the merchandise for which FINAME funds were to be provided. Not all contracts are related to the subject merchandise. CBA does not have to file anything with the government to continue receiving benefits under FINAME.¹⁷⁸

In *Preliminary HRS from Brazil (2016)*, Commerce found that the BNDES FINAME program was not *de jure* specific under section 771(5A)(D)(i) of the Act as an import-substitution subsidy.¹⁷⁹ We find the current record of this investigation preliminarily supports making that same determination in this investigation and further supports that the program is not otherwise *de jure* specific under section 771(5A)(D)(i) of the Act.¹⁸⁰ In *Preliminary HRS from Brazil (2016)*, Commerce found that the program was specific on a *de facto* basis using facts available, with an adverse inference, after the GBR failed to provide sufficient information for Commerce to conduct an analysis of whether the program was *de facto* specific.¹⁸¹ In the current investigation, the GBR has provided us with sufficient information to analyze the program's *de facto* specificity.¹⁸² Based on this information, we conclude that the program is not *de facto* specific under any of the four factors enumerated in section 775(5A)(D)(iii) of the Act and thus is not countervailable.¹⁸³

¹⁷³ *Id.* at 96 and 99-103.

¹⁷⁴ *Id.* at 105-106.

¹⁷⁵ See CBA IQR at 18 and Attachment D.

¹⁷⁶ *Id.* at 18.

¹⁷⁷ *Id.* at Attachment D at 5.

¹⁷⁸ *Id.* at Attachment D at 7.

¹⁷⁹ See *Preliminary HRS from Brazil (2016)* PDM at 24-26, unchanged in *HRS from Brazil (2016)*.

¹⁸⁰ See GBR IQR at 95-113.

¹⁸¹ See *Preliminary HRS from Brazil (2016)* PDM at 24-26, unchanged in *HRS from Brazil (2016)*.

¹⁸² See GBR IQR at 108-109.

¹⁸³ See Memorandum, "Preliminary FINAME Specificity Analysis," dated concurrently with this memorandum.

C. Program Preliminarily Determined Not to Confer a Measurable Benefit

The GBR and CBA self-reported one program, FINEP's Plano Estrategico de Inovação.¹⁸⁴ Based on the record evidence, we preliminarily determine that the benefit from this program is less than 0.005 percent *ad valorem* when attributed to the CBA's applicable sales as discussed in the "Attribution of Subsidies" section above. Consistent with Commerce's practice,¹⁸⁵ we have not included this program in our preliminary subsidy rate calculation for CBA.

1. FINEP's Plano Estrategico de Inovação

D. Programs Preliminarily Determined to Be Not Used

1. Amazon Region Development Authority and Northeast Region Development Authority Tax Incentives
2. Exemption of Payroll Taxes
3. Pernambuco Development Program
4. BNDES Giro/PROGEREN
5. BNDES ExIm Pre-and Post-Shipment Loans
6. BNDESPAR LOANS
7. Automatic BNDES
8. Research and Development Incentives INOVA Brasil Program
9. Export Financing from Banco do Brasil – PROEX
10. Export Promotion and Marketing Assistance
11. Export Guarantee Fund
12. Export Credit Insurance and Guarantees Through Seguradora Brasileira Credito a Exportacao (SCBE)
13. Special Regime for the Acquisition of Capital Goods for Export Companies (RECAP)

IX. CALCULATION OF THE ALL-OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act state that in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. This rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any zero and *de minimis* rates and any rates based entirely under section 776 of the Act. In this investigation, CBA is the sole

¹⁸⁴ See CBA SQR1 at 12-14 and Exhibit FINEP SIP-7; see also GBR IQR at 79-91.

¹⁸⁵ See, e.g., *CFS Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007), and accompanying IDM at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE"; see also *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Affirmative Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying IDM at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District"; *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014), and accompanying IDM at "Programs Used By the Alnan Companies"; and *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from the Russian Federation: Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination*, 81 FR 49935 (July 29, 2016), and accompanying IDM at "Tax Deduction for Research and Development Expenses."

mandatory respondent with a net subsidy rate that is above *de minimis*. Therefore, in accordance with sections 703(d) and 705(c)(5)(A) of the Act, the all others rate is equal to the net subsidy rate calculated for CBA.


X. CONCLUSION

We recommend that you approve the preliminary findings described above.

Agree

Disagree

8/7/2020

X  _____

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