C-475-833
Investigation
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DATE: May 24, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM: Christian Marsh
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Countervailing Duty Investigation of Certain Corrosion Resistant Steel Products from Italy: Issues and Decision Memorandum for the Final Affirmative Determination

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I. SUMMARY

The Department of Commerce (the "Department") determines that countervailable subsidies are being provided above the *de minimis* level to producers and exporters of certain corrosion resistant steel products ("corrosion-resistant steel") from Italy, as provided for in section 705 of the Tariff Act of 1930, as amended (the "Act").

II. BACKGROUND

A. Case History

On November 6, 2015, we published the *Preliminary Determination*[1] for this investigation and on November 5, 2015, we published the *Preliminary Critical Circumstances Determination.*[2] In the *Preliminary Determination*, we calculated *de minimis* rates for Arvedi[3] and Marcegaglia.[4] For Ilva S.p.A. ("Ilva"), a non-cooperative mandatory respondent, we applied a rate based on adverse facts available ("AFA"). The all-others rate was calculated using a simple average of rates for these

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[1] *See Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products From Italy: Preliminary Affirmative Determination*, 80 FR 68839 (November 6, 2015) ("*Preliminary Determination*") and accompanying Preliminary Decision Memorandum ("PDM").

[2] *See Antidumping and Countervailing Duty Investigations of Corrosion-Resistant Steel Products From India, Italy, the People's Republic of China, the Republic of Korea, and Taiwan: Preliminary Determinations of Critical Circumstances*, 80 FR 68504 (November 5, 2015) ("*Preliminary Critical Circumstances*").

[3] Acciaieria Arvedi S.p.A. ("Arvedi"), Finarvedi S.p.A., Arvedi Tubi Acciaio S.p.A., Euro-Trade S.p.A., and Siderurgica Triestina Srl., collectively, the Arvedi Group.

[4] Marcegaglia S.p.A. and Marfin S.p.A., the Marcegaglia Group.

companies. On April 13, 2016, we issued a post-preliminary analysis memorandum.[5] We conducted verifications of the questionnaire responses submitted by Arvedi, Marcegaglia, and the Government of Italy ("GOI"), between March 14 and 18, 2016.[6] We received a case brief from Petitioners[7] on April 22, 2016.[8] On April 27, 2016, we received rebuttal briefs from Arvedi and the GOI.[9] On May 10, 2015, we held a public hearing limited to issues raised in case and rebuttal briefs.

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department has exercised its discretion to toll all administrative deadlines due to the closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now May 24, 2016.[10]

Subsequent to the *Preliminary Determination*, the Department received comments regarding the scope of the investigation. On February 9, 2016, Baoshan Iron & Steel Co., Ltd and Baosteel America, Inc. (collectively "Baosteel") submitted scope comments on the Department's preliminary scope determination regarding its prior requested scope exclusion for certain hot dipped galvanized steel products.[11] On February 16, 2016, Petitioners submitted their scope rebuttal in support of the Department's preliminary scope decision.[12] On March 29, 2016, the Department rejected an improper filing of scope exclusion request by a Wisconsin-based importer, AmeriLux International Co., Ltd. ("AmeriLux International") and filed our rejection letter and e-mail correspondence memo on the record of this investigation.[13] Based on the reasons provided in the rejection letter, the

[5] *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, re: "Post-Preliminary Analysis of Countervailing Duty Investigation: Certain Corrosion Resistant Steel from Italy," dated April 13, 2016 ("Post-Preliminary Memo").
[6] *See* Memoranda to the File, through Catherine Bertrand, Program Manager, Office V, from Bob Palmer, Irene Gorelik and Kathleen Marksberry, International Trade Analysts, re: "Verification of the Questionnaire Responses of Acciaieria Arvedi S.p.A. ("Arvedi")," ("Arvedi Verification Report") and "Countervailing Duty Investigation of Certain Corrosion Resistant Steel Products from Italy: Verification of Information Submitted by the Government of Italy," ("GOI Verification Report") and "Verification of the Questionnaire Responses of Marcegaglia SpA," dated April 7, 2016.
[7] United States Steel Corporation, Nucor Corporation, Steel Dynamics Inc., California Steel Industries, ArcelorMittal USA LLC, and AK Steel Corporation (collectively, "Petitioners").
[8] *See* Letter to The Honorable Penny Pritzker, "Certain Corrosion Resistant Steel Products from Italy/Petitioners' Case Brief," dated April 22, 2016 ("Petitioners' Case Brief").
[9] *See* Letter to The Honorable Penny Pritzker, re: "Investigation-Certain Corrosion-Resistant Steel Products from Italy. GOI Rebuttal Brief," dated April 27, 2016 ("GOI Rebuttal Brief") and Letter to The Honorable Penny Pritzker, re: "Corrosion-Resistant Steel Products from Italy, Case No. C-475-833: Rebuttal Brief," dated April 27, 2016 ("Arvedi Rebuttal Brief").
[10] *See* Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.
[11] *See* Letter from Baosteel, "Certain Corrosion-Resistant Steel Products from the People's Republic of China: Post Preliminary Comments on Scope," dated February 9, 2016. *See also Scope Correction Notice*.
[12] *See* Letter from Petitioners, entitled, "Corrosion-Resistant Steel Products from the People's Republic of China, India, Italy, the Republic of Korea, and Taiwan: Petitioners' Scope Rebuttal Brief," dated February 16, 2016 ("Petitioners' Scope Rebuttal").
[13] *See* Letter to AmeriLux International, "Antidumping and Countervailing Duty Investigations of Certain Corrosion-Resistant Steel Products from the People's Republic of China, India, Italy, the Republic of Korea and Taiwan: Rejection of AmeriLux International's November 30, 2015, Scope Exclusion Request," dated March 29, 2016. *See also*

Department is not considering the AmeriLux International's comments for the final determination. For a summary of the product coverage comments and rebuttal responses submitted to the record of this final determination, 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.[14]

B. Period of Investigation

The period of investigation ("POI") is January 1, 2014, through December 31, 2014.

III. FINAL DETERMINATION OF CRITICAL CIRCUMSTANCES, IN PART

The Department preliminarily determined that critical circumstances existed for imports of the merchandise under consideration from Ilva.[15] Based our examination of the data on the record; we are not changing our critical circumstances determination. We continue to determine that critical circumstances exist for Ilva, but do not exist for all-other producers/exporters of corrosion-resistant steel from Italy.

As discussed in the "Use of Facts Otherwise Available and Adverse Inferences" section below, Ilva did not cooperate at any stage of this investigation. Thus, we continue to base our critical circumstances determination with respect to Ilva on AFA, in accordance with sections 776(a) and (b) of the Act, and 19 CFR 351.308(c). For the reasons described in *Preliminary Critical Circumstances*, we find that exports of subject merchandise from Ilva were massive over a relatively short period of time and that Ilva received subsidies that are inconsistent with the Subsidies Agreement. We therefore continue to find that critical circumstances exist with respect to Ilva.

IV. SCOPE OF THE INVESTIGATION

The products covered by this investigation are certain flat-rolled steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished, laminated, or coated with plastics or other non-metallic substances in addition to the metallic coating. The products covered include coils that have a width of 12.7 mm or greater, regardless of form of coil (*e.g.*, in successively superimposed layers, spirally oscillating, etc.). The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness less than 4.75 mm and a width that is 12.7 mm or greater and that measures at least 10 times the thickness. The products covered also include products not in coils (*e.g.*, in straight lengths) of a thickness of 4.75 mm or more and a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular, or other shape and include products of either rectangular or non-

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Memorandum to the File, "Email Correspondence Regarding Scope Exclusion," filed concurrently with the rejection letter.

[14] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, "Scope Comments Decision Memorandum for the Final Determinations," dated concurrently with this notice ("Final Scope Decision Memorandum").

[15] *See* PDM at 6.

rectangular cross-section where such cross-section is achieved subsequent to the rolling process, i.e., products which have been "worked after rolling" (*e.g.*, products which have been beveled or rounded at the edges). For purposes of the width and thickness requirements referenced above:

(1) 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 forth above, and

(2) where the width and thickness vary for a specific product (*e.g.*, the thickness of certain products with non-rectangular cross-section, the width of certain products with non-rectangular shape, etc.), the measurement at its greatest width or thickness applies.

Steel products included in the scope of this investigation are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.00 percent of nickel, or
- 0.30 percent of tungsten (also called wolfram), or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium

Unless specifically excluded, products are included in this scope regardless of levels of boron and titanium.

For example, specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels and high strength low alloy (HSLA) steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Furthermore, this scope also includes Advanced High Strength Steels (AHSS) and Ultra High Strength Steels (UHSS), both of which are considered high tensile strength and high elongation steels.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products are outside of and/or specifically excluded from the scope of this investigation:

- Flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin free steel"), whether or not painted, varnished or coated with plastics or other non-metallic substances in addition to the metallic coating;

- Clad products in straight lengths of 4.7625 mm or more in composite thickness and of a width which exceeds 150 mm and measures at least twice the thickness; and

- Certain clad stainless flat-rolled products, which are three-layered corrosion-resistant flat-rolled steel products less than 4.75 mm in composite thickness that consist of a flat-rolled steel product clad on both sides with stainless steel in a 20%-60%-20% ratio.

The products subject to the investigation are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0091, 7210.49.0095, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, and 7212.60.0000.

The products subject to the investigation may also enter under the following HTSUS item numbers: 7210.90.1000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090, 7225.91.0000, 7225.92.0000, 7225.99.0090, 7226.99.0110, 7226.99.0130, 7226.99.0180, 7228.60.6000, 7228.60.8000, and 7229.90.1000.

The HTSUS subheadings above are provided for convenience and customs purposes only. The written description of the scope of the investigation is dispositive.

V. LIST OF ISSUES

The "Subsidies Valuation" and "Analysis of Programs" sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Additionally, we have analyzed the comments submitted by interested parties in their case and rebuttal briefs in the "Analysis of Comments" section below, which contains the Department's responses to the issues raised in these briefs. Based on the comments received, and our verification findings, we have made certain modifications to the *Preliminary Determination*, which are discussed below under each relevant program. Below is a complete list of the issues in this investigation for which we have received comments from the parties.

Comment 1: Whether White Certificates are Countervailable

Comment 2: Whether the Program to Purchase Ferriera Di Servola is Not Countervailable or Not Used During the POI

Comment 3: Whether To Include Countervailable Programs From the Post-Preliminary Memo in Ilva's AFA Rate

VI. SUBSIDIES VALUATION

A. Allocation Period

The Department normally allocates the benefits from non-recurring subsidies over the average useful life ("AUL") of renewable physical assets used in the production of subject merchandise. The Department finds the AUL in this proceeding to be 15 years, pursuant to 19 CFR 351.524(d)(2) and the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System.[16] The Department notified the respondents of the AUL in the initial questionnaire and requested data accordingly.[17] No party in this proceeding disputed this allocation period.

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

Attribution of Subsidies

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

According to 19 CFR 351.525(b)(6)(vi), cross-ownership exists between two or more corporations where one corporation can use or direct the individual assets of another corporation in essentially the same ways it can use its own assets. This standard will normally be met where there is a majority

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

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

voting interest between two corporations, or through common ownership of two (or more) corporations.[18] In certain circumstances, a large minority voting interest (for example, 40 percent) may also result in cross-ownership.[19] The Court of International Trade upheld the Department's authority to attribute subsidies based on whether a company could use or direct the subsidy benefits of another company in essentially the same ways it could use its own subsidy benefits.[20]

Summary of Attribution of Subsidies to Acciaieria Arvedi S.p.A.

Arvedi responded to the Department's original and supplemental questionnaires on behalf of itself, its parent and holding company, Finarvedi S.p.A. ("Finarvedi"), and three affiliated input suppliers: Arvedi Tubi Acciaio S.p.A. ("Tubi"); Euro-Trade S.p.A. ("Euro-Trade"), and; Siderurgica Triestina Srl. ("Siderurgica") (collectively, the "Arvedi Group").[21] These companies are cross-owned within the meaning of 19 CFR 351.525(b)(6)(vi) through Finarvedi's 100% ownership of Arvedi, Tubi, and Siderurgica and common-ownership between Finarvedi and Euro-Trade.[22] Arvedi is the producer of the merchandise under consideration during the POI. Therefore, we attributed subsidies that Arvedi received to its sales, in accordance with the relevant provisions of 19 CFR 351.525(b). Tubi and Euro-Trade supplied Arvedi with scrap metal used in the production of the merchandise under consideration while Siderurgica supplied Arvedi with pig iron during the POI. These companies were cross-owned during the POI within the meaning of 19 CFR 351.525(b)(6)(vi). Because Tubi, Euro-Trade and Siderurgica are input producers that supplied inputs to Arvedi that are primarily dedicated to the production of the downstream product pursuant to 19 CFR 341.525(b)(6)(iv), we are attributing all subsidies received by Tubi, Euro-Trade and Siderurgica to the combined sales of the input producers and Arvedi (net of intercompany sales).[23]

Summary of Attribution of Subsidies to Marcegaglia S.p.A.

Marcegaglia is the producer of the merchandise under consideration during the POI. Marcegaglia responded to the Department's original and supplemental questionnaires on behalf of itself, and its

[18] *See, e.g., Countervailing Duties, Part III; Final Rule*, 63 FR 65348, 65401 (November 25, 1998).
[19] *Id*.
[20] *See Fabrique de Fer de Charleroi v. United States*, 166 F. Supp. 2d 593, 600-04 (CIT 2001).
[21] *See* Arvedi's Affiliation Response, dated August 11, 2015 at Exhibit 1; *see also*, Arvedi's PQR and Arvedi's Supplemental Questionnaire Response, dated October 9, 2015, ("SQR") at Exhibit 39.
[22] *Id*.
[23] For the denominators used, *see* Memorandum to the File, through Catherine Bertrand, Program Manager, from Bob Palmer, Senior International Trade Compliance Analyst, re: "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy: Acciaieria Arvedi S.p.A. ("Arvedi") Preliminary Calculation Memorandum," dated November 2, 2015 ("Arvedi Prelim Calculation Memo"); Memorandum to the File, through Catherine Bertrand, Program Manager, from Irene Gorelik, Senior International Trade Compliance Analyst, re: "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy: Marecegaglia S.p.A. ("Marcegaglia") Preliminary Calculation Memorandum," ("Marcegaglia Prelim Calculation Memo") dated November 2, 2015; *see also* Memorandum to the File, through Catherine Bertrand, Program Manager, from Bob Palmer, Senior International Trade Compliance Analyst, re: "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy: Acciaieria Arvedi S.p.A. ("Arvedi") Preliminary Calculation Memorandum," dated April 13, 2016 ("Arvedi Post-Prelim Calculation Memo") and Memorandum to the File, through Catherine Bertrand, Program Manager, from Irene Gorelik, Senior International Trade Compliance Analyst, re: "Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy: Marecegaglia S.p.A. ("Marcegaglia") Post-Preliminary Calculation Memorandum," ("Marcegaglia Post-Prelim Calculation Memo") dated April 13, 2016, (collectively, "Calculation Memoranda").

affiliated holding company, Marfin S.p.A. ("Marfin").[24] Based on Marcegaglia's responses, Marcegaglia and Marfin are cross-owned companies within the meaning of 19 CFR 351.525(b)(6)(iii), through Marfin's status as a holding company.[25] To the extent that any subsidies were provided to Marfin, we are attributing the subsidy to the consolidated sales of the holding company and its subsidiaries in accordance with 19 CFR 351.525(b)(6)(iii).

B. Denominators

In accordance with 19 CFR 351.525(b)(1)-(5), the Department considers the basis for the respondent's receipt of benefits under each program when attributing subsidies, *e.g.*, to the respondent's export or total sales. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in each relevant section below.

C. Benchmarks and Discount Rates

Section 771(5)(E)(ii) of the Act provides that the benefit for loans is the "difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market." Normally, the Department uses comparable commercial loans reported by the company as a benchmark. 19 CFR 351.505(a)(3)(i) stipulates that when selecting a comparable commercial loan that the recipient could actually obtain on the market, the Department will normally rely on actual short-term and long-term loans obtained by the firm. If the firm did not have any comparable commercial loans during the period, 19 CFR 351.505(a)(3)(ii) provides that we "may use a national average interest rate for comparable commercial loans." In addition, 19 CFR 351.505(a)(2)(ii) states that the Department will not consider a loan provided by a government-owned special purpose bank for purposes of calculating benchmark rates.[26] Also, 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).[27]

Long-Term Euro Denominated Loans

Based on the Arvedi Group's responses, we determine that the Arvedi Group obtained comparable Euro-denominated long-term loans from commercial banks in the years for which we must calculate benchmark and discount rates.[28] Because these long-term commercial loans originated in the same year the subsidy was provided and have similar maturity periods, we will use these commercial loans pursuant to 19 CFR 351.505(a)(2) to calculate the benefit from long-terms loans.

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[24] *See* Marcegaglia's Questionnaire Response dated August 18, 2015, at Exhibit 1 and Supplemental Questionnaire Response dated October 13, 2015, at pages 1-16. *See also* Marcegaglia's PQR dated September 14, 2015, at Exhibit 16.
[25] For proprietary details regarding the relationship and nature of affiliation and cross-ownership between Marcegaglia and Marfin, *see* Marcegaglia Prelim Calculation Memo.
[26] *See, e.g., Certain Frozen Warmwater Shrimp from India: Final Affirmative Countervailing Duty Determination*, 78 FR 50385 (August 19, 2013) ("*Shrimp from India*"), and accompanying IDM, at "Benchmark and Discount Rates" section.
[27] *See Certain Pasta From Italy: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11172 (March 2, 2015) ("*Pasta 2012*") and accompanying IDM at C. "Loan Benchmarks and Discount Rates."
[28] *See* Arvedi's Primary Questionnaire Response, dated September 14, 2015, ("Arvedi's PQR") at Exhibits 21 and 23.

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 final calculations are provided in Arvedi's Final Calculation Memo.

VII. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 ("TPEA"), which made numerous amendments to the antidumping and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.[29] The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.[30]

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.[31] Further, section 776(b)(2) of the Act states that an

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

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

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

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.[32]

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[33] 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.[34]

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.[35] The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department 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.[36]

As discussed below, we find the application of partial AFA is warranted with respect to the GOI's failure to respond to questions regarding the alleged provisions of Industrial Development Grants Under Law 488/92, Technological Innovation Grants and Loans Under Law 46/82, Certain Social Security Reductions and Exemptions ("Sgravi" Benefits), and the Equalization Fund. For further explanation of the Department's decisions to apply AFA with respect to the GOI's responses with respect to the first three of the aforementioned programs, *see* the *Preliminary Determination* and accompanying PDM. Our decision to apply AFA with respect to the GOI's responses for the Equalization Fund is described below. In addition, we find the application of total AFA warranted with respect to Ilva, who withdrew from participation in this investigation.

A. GOI

When the government fails to provide requested information concerning whether or not an alleged subsidy program exists, and the nature and details of that program, it is the Department's practice, as AFA, to determine that a financial contribution exists absent that requested information, in accordance with section 771(5)(D) of the Act.[37] Furthermore, when the Department requests information which addresses the universe of enterprises or industries which can benefit from a subsidy, and the government fails to provide the requested information, it is also the Department's

[32] *See also* 19 CFR 351.308(c).
[33] *See also* 19 CFR 351.308(d).
[34] *See* SAA at 870 (1994).
[35] *See* section 776(d)(1) of the Act; TPEA, section 502(3).
[36] *See* section 776(d)(3) of the Act; TPEA, section 502(3).
[37] *See, e.g., Hardwood and Decorative Plywood from the People's Republic of China: Final Affirmative Countervailing Duty Determination; 2011*, 78 FR 58283 (September 23, 2013), and accompanying IDM at Comment 3, "Provision of Electricity."

practice, as AFA, to find that the subsidy is specific, in accordance with section 771(5A) of the Act.[38] However, where possible, the Department will normally rely on the foreign producer's or exporter's records to determine the existence and amount of the benefit to the extent that such information is useable and verifiable.

Consistent with our practice, as described below, because the GOI failed to provide information concerning certain subsidies identified below, the Department, as AFA pursuant to sections 776(a) and (b) of the Act, has determined that a financial contribution is conferred under the following programs pursuant to section 771(5)(D) of the Act, and/or that the programs are specific pursuant to section 771(5A) of the Act.

As Arvedi and Marcegaglia have fully cooperated in this investigation we will rely on the information provided by Arvedi and Marcegaglia in order to determine whether and to what extent a benefit exists for each program. *See* "Analysis of Programs" section, below.

a. Certain Social Security Reductions and Exemptions ("Sgravi" Benefits)

The Department has made no changes to the Sgravi Benefits partial AFA determination used in the *Preliminary Determination* and no issues were raised by interested parties in case briefs regarding this program; nor was any new factual information provided that would lead us to reconsider our preliminary determination. In the *Preliminary Determination*, we found that the reduced tax revenue due to the GOI under the relevant laws constitute financial contributions within the meaning of section 771(5)(D)(ii) of the Act as revenue forgone. We also find, as AFA, that Laws 53/2000 and 167/2011 are *de facto* specific in accordance with 771(5A)(iii) of the Act, consistent with our determinations in *Pasta 2012*.[39] Furthermore, in accordance with our determination in *Pasta 2005*,[40] as AFA, we find that Law 223/91 is regionally specific, in accordance with section 771(5A)(D)(iv).[41]

b. Industrial Development Grants Under Law 488/92 and Technological Innovation Grants and Loans Under Law 46/82

The Department has made no changes to the partial AFA determinations applied to the Industrial Development Grants Under Law 488/92 and Technological Innovation Grants and Loans Under Law 46/82 in the *Preliminary Determination*. No issues were raised by interested parties in case briefs with respect to these programs, nor was any new factual information provided that would lead us to reconsider our preliminary determination. In the *Preliminary Determination*, we found, as AFA, that the Industrial Development Grants Under Law 488/92 is regionally specific, pursuant to section 771(5A)(D)(iv) of the Act, and that the Technological Innovation Grants and Loans Under Law 46/82 is *de facto* specific, in accordance with section 771(5A)(D)(iii) of the Act.[42]

[38] *Id.*
[39] *See Certain Pasta From Italy: Final Results of Countervailing Duty Administrative Review; 2012*, 80 FR 11172 (March 2, 2015) ("*Pasta 2012*"), and accompanying IDM at 4-5 and 12-13.
[40] *Certain Pasta from Italy: Final Results of Tenth (2005) Countervailing Duty Administrative Review*, 73 FR 7251 (February 7, 2008) ("*Pasta 2005*") and accompanying IDM at Section I.F.,
[41] *See PDM* at 8-9.
[42] *See* the *Preliminary Determination* and accompanying PDM at 9-12

c. Equalization Fund

The Equalization Fund is a subsidy program whereby certain companies receive rebates for certain excise tax payments from Cassa Conguaglio Settore Elettico ("CCSE"). CCSE is a government entity subject to the supervision of the Authority to Electricity, Gas and Water System ("AEEGSI") and the Ministry of Economy and Finance.[43] The GOI explained in its questionnaire responses that "CCSE is the entity that regulates the electricity rates and its principal mission is the collection of certain electricity rates of the operators; these rates are collected in management accounts and subsequently granted to enterprises according to rules issued by the {AEEGSI}."[44]

The GOI reported that that the Equalization Fund program is available only to consumers of electricity that are recognized as "Energivore," or, large-scale consumers of electricity that, consequently, pay a very high amount of excise tax.[45] Such large-scale users must have an annual use of electricity or other energy of at least 2.4 gigawatts per year, and, simultaneously, a ratio of cost energy used in the year, compared to revenue, of not less than three percent.[46] The GOI reported that "the ratio between the cost of energy and revenues defines the percentage of discount on the electricity cost."[47] Thus, payments from the Equalization Fund are rebates of the high amount of excise taxes collected from large consumers of electricity.[48] The laws and regulations relating to this program are the Decree of April 5, 2013, pursuant to European Union Directive 2003/96/EC of October 27, 2003; D.M. March 8, 2006, the Minister of Productive Activities Decree; and the Regulation on Supplies and Payments.[49]

In order to receive benefits under this program, companies must be on a specific list designating them as "Energivore." The GOI reports that companies that wish to be placed on this list must provide the quantity of energy used by the company and a code designating its industry.[50] Further, companies must file an application with the CCSE, which provides more detailed company information.[51] The rebate application requires the company's name, the company's location, its industry code, the quantity of electricity used, cost of electricity and the company's annual revenue.[52]

[43] *See* GOI' Supplemental Questionnaire Response, dated December 21, 2015, ("SQR"), at Equalization Fund Appendix at page 1 and Exhibit 20.
[44] *Id.*
[45] *Id.* and Exhibit 17, Decree 5 April 2013, Art. 2.
[46] *See* GOI SQR at Equalization Fund Appendix at 1.
[47] *Id.*
[48] *Id.*
[49] *See* Exhibits 17, 18, 19, and 20.
[50] *See* GOI SQR at Equalization Fund Appendix, and Exhibit 17; *see also,* GOI's Supplemental Questionnaire Response, dated February 4, 2016, at pdf page 6-8.
[51] *See* Marcegaglia's Supplemental Responses dated November 6, 2015, at 10-12 and Exhibits; s*ee also,* Arvedi's Supplemental Questionnaire Response, dated October 9, 2015, at Exhibit 36 and 45.
[52] *See, e.g.,* Arvedi's Supplemental Questionnaire Response, dated November 13, 2015, at Exhibit 70; *see also* GOI's Supplemental Questionnaire Response, dated December 14, 2015, ("SQR"), at Equalization Fund Appendix and Exhibit 17.

In a supplemental questionnaire, the Department reiterated its request that the GOI respond to all questions in the Standard Questions Appendix and other appendices (as applicable).[53] In its December supplemental questionnaire response, the GOI provided a narrative description and decrees and regulations pertaining to the program, and a list of companies the GOI defined as "Energivore."[54] However, the GOI did not provide the requested information regarding assistance provided to each type of industry.[55] In a second supplemental questionnaire, the Department again requested the GOI provide the total amount of assistance approved for the steel industry and the total amount of assistance approved for every industry in which companies were approved for assistance under this program.[56] However, the GOI once again failed to provide the requested information.[57]

In the Post-Preliminary Memo, based upon facts otherwise available pursuant to sections 776(a)(1) of the Act, we preliminarily determined that this program was *de facto* specific under section 711(5A)(D)(iii)(II) of the Act because the GOI has reported that the steel and metallurgical industry consumes a significant quantity of the total electricity consumed by the industrial sector.[58] However, in light of comments made by the Petitioner's and Arvedi during this investigation, we have revisited our analysis of this program, reconsidered the evidence available to the GOI at the time it responded to our questionnaires, and have determined that the GOI did not act to the best of its ability in providing certain requested information. Accordingly, we have determined that AFA is warranted with respect to the Department's specificity determination.

We find that requested information to make a determination with respect to whether this program is specific is not on the record of this investigation. Specifically, although it had access to such information, the GOI did not provide the Department with the requested total amount of assistance approved for the steel industry and the total amount of assistance approved for every industry in which companies were approved for assistance under this program. As noted above, the record demonstrates that companies that wished to be placed on a list designating them as "Energivore" were required to provide the quantity of energy used and a code designating its industry.[59] Further, companies must file an application with the CCSE which contains detailed company information.[60] Hence, the information to provide the total amount of assistance approved for the steel industry and the total amount of assistance approved for every industry in which companies were approved for assistance under this program was available to the GOI at the time the Department requested this information. However, rather than provide the information in the manner required by the Department, the GOI reported only that, while the "process for extracting these data from the available applications and databases has been started," the "data {is} not available for the time being."[61]

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[53] *See* Department's Supplemental Questionnaire to the GOI, dated November 12, 2015, at 6.
[54] *See* GOI SQR at Equalization Fund Appendix.
[55] *Id.*
[56] *See* Department's Supplemental Questionnaire to the GOI, dated January 21, 2016, at 3.
[57] *See* GOI's Supplemental Questionnaire Response, dated February 4, 2016, at pdf page 6.
[58] *See* Post-Preliminary Memo at 3-4.
[59] *See* GOI SQR at Equalization Fund Appendix, and Exhibit 17; *see also*, GOI's Supplemental Questionnaire Response, dated February 4, 2016, at pdf page 6-8.
[60] *See* Marcegaglia's Supplemental Responses dated November 6, 2015, at 10-12 and Exhibits; s*ee also*, Arvedi's Supplemental Questionnaire Response, dated October 9, 2015, at Exhibit 36 and 45.
[61] *See* GOI's Supplemental Questionnaire Response, dated February 4, 2016, at pdf page 6.

We find the GOI did not act to the best of its ability by failing to provide the total amount assistance approved for the steel industry or any other industry. Indeed, the GOI's own submissions indicated that it had access to that information, and even Arvedi acknowledged in the public hearing its belief that the information requested by the Department was available to the GOI and the GOI simply did not provide that information upon request.[62]

Accordingly, we must rely, in part, on facts otherwise available, in accordance with sections 776(a)(1) and (2)(A) and (B) of the Act in determining whether this program is specific. 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 that was in its possession, the GOI did not act to the best of its ability in responding to our requests.

In applying AFA, however, we have determined that it is appropriate only to apply that analysis to a determination as to whether or not this program is specific within the meaning of section 771(5A), as the GOI otherwise provided us with necessary information as to the other elements of this subsidy.

The record shows only a limited pool of potential users of this subsidy -- large-scale consumers of electricity that pay a very high amount of excise tax -- can satisfy the requirements to benefit from the Equalization Fund. We, therefore, determine that it is reasonable to conclude, as partial AFA, that the actual recipients of this subsidy were limited in number, the steel industry is a predominant user of the subsidy, and the steel industry receives a disproportionately large amount of the subsidy. Accordingly, in accordance with sections 776(a) and (b) of the Act, as AFA, that the Equalization Fund is *de facto* specific, pursuant to sections 771(5A)(D)(iii)(I), (II) and (III) of the Act.

B. Ilva

As noted above, Ilva was initially selected as a mandatory respondent but refused to participate in this investigation and did not respond to the Department's initial questionnaire and, therefore, withheld information that has been requested by the Department.[63] We have relied on facts available, in accordance with section 776(a) of the Act, because Ilva withheld necessary information requested by the Department, and refused to participate as a mandatory respondent therefore, significantly impeding the investigation. Thus, we must rely on facts otherwise available in accordance with sections 776(a)(1) and 776(2)(A), (B) and (C) of the Act.

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

[62] *See* Pubic Hearing Transcript in the Matter of the Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from Italy, dated May 10, 2016, at 23 and 24.
[63] *See* Ilva Letter.

Selection of the AFA Rate

It is the Department's practice in CVD proceedings to compute a total AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for a cooperating respondent in the same investigation, or, if not available, rates calculated in prior CVD cases involving the same country.[64] Specifically, the Department applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an above-*de minimis* subsidy rate calculated for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.[65]

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

To calculate the program rate for the alleged income tax program pertaining to either the reduction of income tax paid or the payment of no income tax, we applied an adverse inference that Ilva paid no income tax during the POI. The standard income tax rate for corporations in Italy in effect during the POI was 27.50 percent.[66] Thus, the highest possible benefit for the income tax program is 27.50 percent. Accordingly, we are applying 27.50 percent as an AFA rate for Income Tax Deferral Under Article 42 of Law 78/2010. Consistent with past practice, the 27.50 percent AFA rate does not apply to income tax credit and rebate, accelerated depreciation, or import tariff and value add tax exemption programs because such programs may not affect the tax rate.[67]

Further, we are applying the above-zero rates calculated for either of the other two mandatory respondents in this investigation for the following identical programs:

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[64] *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 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." *See also* section 776(d) of the Act.

[65] *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."

[66] *See Doing Business 2015: Italy* at 60 in Attachment 2 of Prelim Calculation Memo.

[67] *See, e.g., Aluminum Extrusions Investigation* IDM at "Application of Adverse Inferences: Non-Cooperative Companies."

- Technological Innovation Grants Under Law 46/82
- Technological Innovation Loans Under Law 46/82
- Certain Social Security Reductions and Exemptions ("*Sgravi*" Benefits)
- Income Tax Deferral Under Article 42 of Law 78/2010
- Equalization Fund

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

- Industrial Development Grants Under Law 488/92[68]
- *Patti Territoriali* Grants Under Law 662/96[69]
- Tax Credits Under Article 1 of Law 296/06[70]
- Tax Credits Under Article 62 of Law 289/02[71]
- Export Credit Subsidies[72]

For the final determination, we are able to match based on program type and treatment of the benefit, the following programs to the highest rates for similar programs from other Italy CVD proceedings:

- Industrial Area Revival Grants Under Law 181/89[73]
- Industrial Area Revival Loans Under Law 181/89[74]
- Preferential Financing Under Law 266/97[75]

[68] *See Certain Pasta From Italy: Final Results of the 2009 Countervailing Duty Administrative Review*, 77 FR 7129 (February 10, 2012) ("*Pasta 2009*") and accompanying IDM at Section I.B., where we determined the highest countervailable subsidy from the Law 488/92 industrial development grants to be 3.34 percent *ad valorem* for respondent Tomasello.

[69] *See Certain Pasta from Italy: Final Results of Tenth (2005) Countervailing Duty Administrative Review*, 73 FR 7251 (February 7, 2008) ("*Pasta 2005*") and accompanying IDM at Section I.F., where we determined the countervailable subsidy from the *Patti Territoriali* grant to be 0.57 percent *ad valorem* for respondent De Matteis.

[70] *See Pasta 2012* and accompanying IDM at Sections IV.B., and VI.A.3., where we found respondent DeMatteis received a countervailable subsidy rate of 0.75 percent *ad valorem* under program Article 1 of Law 296/06.

[71] *See Pasta 2005* and accompanying IDM at Section I.E.1., where we determined the countervailable subsidy from Law 289/02 Article 62 to be 1.04 percent *ad valorem* for respondent Pallante.

[72] The Export Credit Subsidies, as initiated, pertain to export credits created under Article 2 of Law 227/77 and administered by the GOI. For the highest countervailable subsidy rate found for Law 227/77 in any Italy CVD proceeding, *See Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy*, 63 FR 40474 (July 29, 1998) and accompanying IDM at Section I.E., where we determined the countervailable subsidy to be 0.15 percent *ad valorem* for respondent Valbruna/Bolzano.

[73] *See Pasta 2009*, at Section I.B. Thus, we determine to apply the net subsidy calculated in *Pasta 2009* for grant program "Industrial Development Grants Under Law 488/92" of 3.34 percent *ad valorem* to the initiated program "Industrial Area Revival Grants Under Law 181/89."

[74] *See Certain Pasta From Italy: Final Results of the Second Countervailing Duty Administrative Review*, 64 FR 44489 (August 16, 1999) ("*Pasta 1997*") and accompanying IDM at Section I.B., where we determined the net subsidy for loan program "Industrial Development Loans Under Law 64/86" of 0.65 percent *ad valorem* for respondent Delverde/Tamma.

[75] *Id*. We determine to apply the net subsidy calculated in *Pasta 1997* for loan program "Industrial Development Loans Under Law 64/86" of 0.65 percent *ad valorem* to the initiated program "Preferential Financing Under Law 266/97."

Accordingly, we determine the AFA countervailable subsidy rate for Ilva to be 38.51 percent *ad valorem*.

Corroboration of AFA Rate

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."[76] The SAA provides that to "corroborate" secondary information, the Department will satisfy itself that the secondary information to be used has probative value.[77] The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.[78]
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 in this investigation or previous Italian CVD investigations or administrative reviews. Additionally, no information has been presented which calls into question the reliability of these previously calculated subsidy rates that we are applying as AFA. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.[79]

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

[76] *See* SAA, at 870.
[77] *Id*.
[78] *Id*., at 869-870.
[79] *See, e.g., Fresh Cut Flowers From Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

Program	AFA Rate- Ilva
Technological Innovation Grants Under Law 46/82	0.29 percent
Technological Innovation Loans Under Law 46/82	0.09 percent
Certain Social Security Reductions and Exemptions ("Sgravi" Benefits)	0.04 percent
Income Tax Deferral Under Article 42 of Law 78/2010	27.50 percent
Industrial Development Grants Under Law 488/92	3.34 percent
Patti Territoriali Grants Under Law 662/96	0.57 percent
Tax Credits Under Article 1 of Law 296/06	0.75 percent
Tax Credits Under Article 62 of Law 289/02	1.04 percent
Export Credit Subsidies[80]	0.15 percent
Industrial Area Revival Grants Under Law 181/89	3.34 percent
Industrial Area Revival Loans Under Law 181/89	0.65 percent
Preferential Financing Under Law 266/97	0.65 percent
Equalization Fund	0.10 percent

VIII. ANALYSIS OF PROGRAMS

Based upon our analysis of the record, including parties' comments addressed below, we determine the following:

A. Programs Determined to Be Countervailable

1. Industrial Development Grants Under Law 488/92

Law 488/92 offers incentives for the implementation of a new productive unit, for the expansion, modernization, restructuring, conversion or re-activation of an existing unit or for its transfer. Initiatives must be part of an operational program for each productive unit that is by itself sufficiently structured to pursue production, financial and employment goals. The areas eligible for regional subsidies were classified as Objective 1, Objective 2, and Objective 5(b) areas by the European Union. The new policy was given legislative form in Law 488/92 under which Italian companies in the eligible sectors (manufacturing, mining, and business services) may apply for industrial development grants.[81] Law 488/92 grants are made only after a preliminary examination by a bank authorized by the Ministry of Economic Development ("MiSE"). On the basis of the findings of this preliminary examination, the MiSE ranks the companies applying for grants. The ranking is based on indicators such as the amount of capital the company will contribute from its own funds, the number of jobs created, regional priorities, etc. Grants are then made based on this

[80] This program is the basis for the offset for export subsidies in the companion antidumping duty investigation on CORE from Italy.
[81] *See* GOI PQR at 10.

ranking.[82] Marcegaglia received a grant from the GOI under this program in 2003.[83] The Arvedi Group stated that it did not use this program.

We determine that this grant provided by the GOI constitutes a financial contribution under section 771(5)(D)(i) of the Act. We further determine that this grant confers a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504. As discussed above, as partial AFA, we find that this grant is regionally specific within the meaning of section 771(5A)(iv) of the Act.[84]

Because Marcegaglia did not receive this assistance on an on-going basis, we are treating this subsidy as a non-recurring grant pursuant to 19 CFR 351.524(c)(2). Therefore, we conducted the "0.5 percent test" pursuant to 19 CFR 351.524(b)(2) with respect to the one-time benefit Marcegaglia received under Law 488/92 in 2003. We found that the amount of assistance was less than 0.5 percent of Marcegaglia's sales in the year of approval. Thus, we expensed the benefit to the applicable year, consistent with 19 CFR 351.524(b)(2).[85]

2. Technological Innovation Grants Under Law 46/82

Law 46/82 authorizes the creation of a revolving fund for technology innovation—the Technological Innovation Fund, also known as the "FIT Program." The directives for loan granting were established from the Ministry of Industry, Commerce and Handcraft (now known as Ministery of Economic Development) and subsequently adjusted to the new European guidelines on state aid for research, development and innovation, by decree of 10 July 2008 of the Ministry of Economic Development.[86] Through the fund, the Italian Ministry of Economic Development ("MiSE") provides aid for experimental and industrial research projects in the form of soft loans, grants against interest and capital grants.[87] A company must apply to a bank approved for the program and the proposed project is evaluated by experts on its technical merits. Funds are distributed based on the highest scores from the evaluations until all budgeted funds are exhausted.[88]

We determine that this grant provided by the GOI constitutes a financial contribution under section 771(5)(D)(i) of the Act. We further determine that this grant confers a benefit equal to the amount of the grant provided in accordance with 19 CFR 351.504. As discussed above, as partial AFA, we find that this grant conferred under Law 46/82 is *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act.[89]

To calculate the benefit for the grant that Arvedi received during the POI, we divided the amount of the grant received by Arvedi by the appropriate sales denominator, as described above under the

[82] *Id*.
[83] *See* Marcegaglia's PQR at Exhibit 17.
[84] *See also Preliminary Determination* and accompanying PDM at 9-12.
[85] *See* Marcegaglia's Calculation Memo.
[86] *See* GOI PQR at 20.
[87] *Id*.
[88] *See* Arvedi PQR at Exhibit 20.
[89] *See also Preliminary Determination* and accompanying PDM at 9-12.

"Subsidies Valuation Information" section. On this basis, we determine that the Arvedi received a countervailable subsidy rate of 0.29 percent *ad valorem*.[90]

3. Technological Innovation Loans Under Law 46/82

This program is part of the FIT Program described above. Arvedi and its cross-owned affiliate Tubi, reported that it had a loan under this program that was outstanding during the POI.[91]

We determine that this loan provided by the GOI constitutes a financial contribution under section 771(5)(D)(i) of the Act. We further determine that this loan confers a benefit in the amount of the difference between the interest a company paid on the loan and the interest the company would have paid on a comparable commercial loan. As discussed above, as partial AFA, we find that this loan conferred under Law 46/82 is *de facto* specific within the meaning of section 771(5A)(D)(iii) of the Act. [92]

In accordance with 19 CFR 351.505(c)(2), we calculated the benefit Arvedi received from the loan outstanding under this program in the POI by computing the difference between the interest payments Arvedi and Tubi made on the loan during the POI and the interest payments they would have made on a comparable commercial loan. As our benchmark, we used the long-term interest rate discussed above in the "Benchmarks and Discount Rates" section. To calculate the net countervailable subsidy rate for Arvedi, we divided the benefit by the appropriate sales denominator for Arvedi (less intercompany sales), as described in the "Subsidies Valuation" section, above. On this basis, we determine the net countervailable subsidy rate from Law 46/82 loan to be 0.09 percent *ad valorem* for Arvedi.[93]

4. Certain Social Security Reductions and Exemptions ("Sgravi" Benefits)

Italian law allows companies to use a variety of exemptions from and reductions of payroll contributions that employers make to the Italian social security system for health care benefits, pensions, and other such programs.[94] Arvedi reports that Law 223/91 is designed to increase employment by providing benefits to companies that hire unemployed workers on special mobility lists.[95] The mobility list comprises recently fired workers in certain sectors of the economy, but companies in any sector may hire workers from the mobility list.[96] Law 53/2000 encourages the hiring of individuals with children to participate in training and acquiring new skills.[97] Marcegaglia reports that Law 167/2011 is designed to make the labor market more flexible by providing incentives to companies hiring workers under apprenticeship contracts that combine work and

[90] *See* Arvedi's Prelim Calculation Memo.
[91] *See* Arvedi PQR at Exhibit 20.
[92] *See also Preliminary Determination* and accompanying PDM at 9-12.
[93] *See* Arvedi Prelim Calculation Memo.
[94] *See Final Affirmative Countervailing Duty Determination: Certain Pasta ("Pasta") From Italy*, 61 FR 30288 (June 14, 1996).
[95] *See* Arvedi PQR at Exhibit 24.
[96] *Id*.
[97] *Id*.

training programs.[98]

As discussed above, as AFA, we find that the reduced tax revenue due to the GOI under these provisions constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act as revenue forgone. We also find, as AFA, that Laws 53/2000 and 167/2011 are *de facto* specific in accordance with 771(5A)(iii) of the Act, consistent with our determinations in *Pasta 2012*.[99] Furthermore, in accordance with our determination in *Pasta 2005*, as AFA, we find that Law 223/91 is regionally specific, in accordance with section 771(5A)(D)(iv)[100]

In accordance with 19 CFR 351.524(c), we treat social security reductions and exemptions as recurring benefits. To calculate the countervailable subsidy for Arvedi and Marcegaglia, we first summed the company's monthly contributions under each law. Next, we multiplied the total contributions in the POI by the percentage refunded by the GOI to arrive at a POI benefit. We then divided the total benefit by the appropriate sales denominator during the POI, as discussed in the "Subsidies Valuation Section," above.[101] On this basis, we determine the net countervailable subsidy rate from the Sgravi laws identified above to be 0.00 percent *ad valorem* for Arvedi and 0.04 *ad valorem* for Marcegaglia.[102]

5. Equalization Fund

This is a subsidy program whereby certain companies receive rebates for certain excise tax payments from CCSE, a government entity subject to the supervision of the AEEGSI and the Ministry of Economy and Finance.[103] Both Arvedi and Marcegaglia reported receiving "offsets" from this program.[104] The GOI further stated that "CCSE is the entity that regulates the electricity rates and its principal mission is the collection of certain electricity rates of the operators; these rates are collected in management accounts and subsequently granted to enterprises according to rules issued by the {AEEGSI}."[105] According to the GOI, this program is available only to consumers of electricity that are recognized as "Energivore", or, large-scale consumers[106] of electricity that, consequently, pay a very high amount of excise tax.[107] As the GOI explained, "the ratio between the cost of energy and revenues defines the percentage of discount on the electricity cost." Thus, payments from the Equalization Fund are rebates of the high amount of excise taxes collected from large consumers of electricity.[108] The laws and regulations relating to this program are the Decree of

[98] *See* Marcegaglia PQR at Exhibit 19.
[99] *See Pasta 2012*, and accompanying IDM at 4-5 and 12-13.
[100] *See also Preliminary Determination* and accompanying PDM at 8-9.
[101] *See* the Calculation Memoranda.
[102] *Id*.
[103] *See* GOI' Supplemental Questionnaire Response, dated December 21, 2015, ("SQR"), at Equalization Fund Appendix at page 1 and Exhibit 20.
[104] *See* Marcegaglia's Supplemental Responses dated November 6, 2015, at 10-12 and Exhibits; *see also*, Arvedi's Supplemental Questionnaire Response, dated October 9, 2015, at Exhibit 36 and 45.
[105] *Id*.
[106] The GOI reports that large-scale users, or Energivore, must have an annual use of electricity or other energy of at least of 2.4 gigawatts per hour and, simultaneously, a ratio of cost of total energy used in the year, compared to revenue, of not less than three percent. *See* GOI SQR at Equalization Fund Appendix at 1.
[107] *Id.* and Exhibit 17, Decree 5 April 2013, Art. 2.
[108] *Id.*

April 5, 2013, pursuant to European Union Directive 2003/96/EC of October 27, 2003; D.M. March 8, 2006, the Minister of Productive Activities Decree; and the Regulation on Supplies and Payments.[109]

In order to receive benefits under this program, the GOI reports that companies who wish to be placed on a list designating them as "Energivore," must provide the quantity of energy used and a code designating its industry.[110] Further, companies must provide an application to the CCSE which provides more detailed company information.[111] In order to receive "offsets" under this program, companies must complete an application with the cost of its energy consumption and the revenues for a certain period. The rebate application requires the company's name, the company's location, its industry code, the quantity of electricity used, cost of electricity and the company's annual revenue.[112] The Department determines that the reduced tax revenue due to the GOI constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, as revenue forgone.

As explained above, the Department is relying on partial AFA to determine that the tax program is specific pursuant to section 771(5A)(D)(iii) of the Act because the GOI failed to provide information which was requested of it regarding the details of the government assistance. Furthermore, a benefit is conferred under section 771(5)(E) of the Act and 19 CFR 351.510(a) in the amount of the rebate.

In accordance with 19 CFR 351.524(c), we treat tax rebates as recurring benefits. To calculate a benefit under this program, we divided the amount of tax rebate received by Arvedi and Marcegaglia during the POI by the appropriate sales denominator, as described in the "Subsidies Valuation Information" section of the *Preliminary Determination*. On this basis, we determine that Arvedi received a net countervailable subsidy rate of 0.1 percent *ad valorem* and Marcegaglia received a net countervailable subsidy rate of 0.03 percent *ad valorem*.[113]

B. Programs Determined To Be Not Used

With regard to the following programs, we determine that the following programs were not used by Arvedi or Marcegaglia or their cross-owned affiliates during the POI:

a. Industrial Area Revival Grants Under Law 181/89
b. Industrial Area Revival Loans Under Law 181/89
c. *Patti Territoriali* Grants Under Law 662/96
d. Income Tax Deferral Under Article 42 of Law 78/2010
e. Tax Credits Under Article 1 of Law 296/06
f. Tax Credits Under Article 62 of Law 289/02

[109] *See* Exhibits 17, 18, 19, and 20.
[110] *See* GOI SQR at Equalization Fund Appendix, and Exhibit 17; *see also,* GOI's Supplemental Questionnaire Response, dated February 4, 2016, at pdf page 6-8.
[111] *See* Marcegaglia's Supplemental Responses dated November 6, 2015, at 10-12 and Exhibits; s*ee also,* Arvedi's Supplemental Questionnaire Response, dated October 9, 2015, at Exhibit 36 and 45.
[112] *See, e.g.,* Arvedi's Supplemental Questionnaire Response, dated Novemer 13, 2015, at Exhibit 70; *see also* GOI's Supplemental Questionnaire Response, dated December 14, 2015, ("SQR"), at Equalization Fund Appendix and Exhibit 17.
[113] *See* Calculation Memoranda.

g. Export Credit Subsidies

C. Program Determined To Not Confer a Benefit During the POI

a. Emilia-Romagna Transport Program

The Marcegaglia Group reported that it received a contribution under this program from the Emilia-Romagna regional government authority for using rail transport that either originated in, or was destined to, rail junctions located within the Emilia-Romagna region of Italy.[114] While this program may qualify as a potentially countervailable subsidy, the GOI has reported that the contribution reported by Marcegaglia was not disbursed to Marcegaglia during the POI.[115] Indeed, while Marcegaglia's response contains approval documents from the regional government of Emilia-Romagna, they contain no evidence of a disbursement of funds during the POI.[116] Therefore, we find that because there was no financial contribution from the regional government of Emilia-Romagna to Marcegaglia during the POI and, thus no benefit conferred, there is no countervailable benefit with respect to this program during the POI.

D. Programs Determined Not To Be Countervailable

a. Grant For the Purchase of Ferriera di Servola

Petitioners allege that the GOI provided Arvedi with government assistance in the company's acquisition of Ferriera Di Servola ("Servola"), an Italian pig iron manufacturer. Specifically, Petitioners allege that the GOI extended government funding to Arvedi in the amount of 42 million Euro for the purchase of Servola.[117] In supplemental questionnaire responses, Arvedi points to evidence on the record demonstrating that it received no funds from the GOI for the purchase of this facility.[118] Additionally, the GOI reports that it provided no assistance to Arvedi for this purchase.[119] Rather, according to the GOI, the funds identified in the Petitioners' NSA refers to public investment in the whole Industrial Zone of Trieste, where Servola is located, for the improvement of safety in public areas and a ground water purification plant, which together are estimated to cost 41.5 million Euro.[120] Further, the GOI reports that no funds were disbursed during the POI for the public investment projects.[121]

As explained below under Comment 2, "Whether the Program to Purchase Ferriera Di Servola is Not Countervailable or Not Used During the POI," we continue to find that, because there was no financial contribution to Arvedi for the purchase of Servola, this alleged program is not countervailable. Our examination of Arvedi's and the GOI's records at verification provided no

[114] *See* Marcegaglia's Supplemental Response, dated November 6, 2015, at 14-19, Exhibits 56 and 58.
[115] *See* GOI SQR at Emilia Romagna Appendix at 3.
[116] *See* Marcegaglia's Supplemental Response, dated November 6, 2015, at 14-19, Exhibits 56 and 58; *see also* GOI Verification Report at 6.
[117] *See* Petitioners' New Subsidy Allegation, dated September 23, 2015, at 3 ("NSA").
[118] *See* Arvedi NSA Questionnaire Response, dated October 26, 2015, at 2-4.
[119] *See* GOI NSA Questionnaire Response, dated October 23, 2015, at Section II Standard Question Appendix at 6.
[120] *Id.* at 6 and Exhibit 3.
[121] *See* GOI NSA Supplemental Questionnaire Response, dated November 23, 2015, at 4.

evidence that the firm received assistance under this program during the POI.

b. Carbon Tax Rebate

Marcegaglia reported receiving a partial rebate of carbon tax on diesel fuel used for Marcegaglia's trucks.[122] The GOI reported that this "rebate is available to any operator of trucks in Italy and therefore is generally available on the basis of neutral criteria."[123] Marcegaglia noted that it qualified for this rebate because it owns trucks and is engaged in transporting goods using those trucks. Because this rebate is generally available, we continue to find this program to be not specific under section 771(5A) of the Act. Therefore, we continue to find this program to be not countervailable.

c. White Certificates

In its financial statements, Arvedi reported income generated by the award of energy efficiency credits or "White Certificates."[124] Arvedi and the GOI provided information regarding the White Certificates in response to our supplemental questionnaires.

In 2004, the GOI created the White Certificate system to promote and develop energy efficiency in all energy use sectors; industrial, residential and service.[125] Under this program certain electricity and natural gas distributors ("obligated distributors") must meet annual energy savings targets which are specific to each obligated distributor.[126] The obligated distributors meet their targets by surrendering the number of White Certificates corresponding to its individual annual energy savings target. These targets are measured in White Certificates; one White Certificate equals one ton of oil-equivalent energy savings.[127] If the obligated distributor does not meet its energy savings target, it must pay a penalty, equal to the monetary value of the missing number of White Certificates.[128]

Obligated distributors can earn White Certificates by implementing their own energy savings projects with end energy consumers or purchase White Certificates from other parties who earned the certificates through their own qualifying energy conservation projects.[129] In this way, the obligation on the electricity and natural gas distributors provides an indirect incentive to other types of customers to institute energy efficiency projects in order to earn White Certificates.[130] Parties that may earn White Certificates are: 1) non-obligated electricity and natural gas distributors; 2) energy service companies; 3) companies with appointed energy manager ("SEMs"); 4) private and public companies with voluntary appointed energy managers or ISO 50001 certified; and 5) residential

[122] *See* Marcegaglia's Supplemental Responses dated November 6, 2015, at 6.
[123] *See* GOI SQR at 5.
[124] *See* Arvedi's Supplemental Questionnaire Response, dated October 9, 2015, at Exhibit 34, 35, 36 under "Explanatory Note A5) Other revenue and Income."
[125] *See* GOI SQR at White Certificates Appendix at 1.
[126] *Id.* at Exhibit 11.
[127] *Id.* at 15.
[128] *Id.* at Exhibit 11, at 503.
[129] *Id.* at 13 and Exhibit 11, at 487-488.
[130] *Id.*

sector with regard to energy end use (i.e., appliances, solar panels).[131] The obligated companies can purchase White Certificates through bilateral contracts or via the public market operated by Gestore dei Mercati Energetici ("GME").[132] The value of the White Certificate is established through an auction process or by contractual agreement.[133]

Once an energy efficiency project is reviewed and deemed to qualify for White Certificates, the White Certificates are issued by GME,[134] which is owned by Gestore dei Servizi Energetici ("GSE").[135] The Ministry of Economy and Finance is the sole shareholder of the GSE, which exercises shareholder's rights together with the Ministry of Economic Development.[136] The GME manages and operates the electricity markets, environmental markets (including the White Certificates market), and gas markets.[137] The Ministry of Economic Development, in consultation with the Ministry for the Environment, Land and Sea, and after consulting the AEEGSI, has the task of setting goals in annual savings and to define and update the regulatory framework, and provides for the definition and updated guidelines.[138]

As explained in more detail below under Comment 1, "Whether White Certificates are Countervailable", we continue to find that this program is not countervailable.[139] Specifically, we continue to find this program to be not specific under section 771(5A)(D) of the Act, because there is no basis to find the program is *de jure* specific under section 771(5A)(D)(i) of the Act or *de facto* specific under sections 771(5A)(D)(iii)(II) and (III) of the Act.[140] For this reason, there is no need to analyze whether the White Certificate program provides a financial contribution or a benefit.

IX. CALCULATION OF ALL-OTHERS RATE

Sections 703(d) and 705(c)(5)(A) of the Act state that for companies not individually investigated, in general, we will determine an all-others rate by using the weighted average countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based solely on the facts available. However, where the countervailable subsidy rates for all of the individually investigated respondents are zero or *de minimis* or are based on AFA, the SAA states that "where the countervailable subsidy rates for all exporters and producers examined are zero or *de minimis*, or are determined entirely on the basis of the facts available, section 705(c)(5)(A)(iii) authorizes Commerce to use any reasonable method to establish an all-others rate."[141]

[131] *Id.* at 13 and Exhibit 11, at 504.
[132] *Id.*
[133] *Id.*
[134] *See* GOI SQR at White Certificates Appendix, at 3.
[135] *Id.* at 1 and Exhibit 11.
[136] *Id.* at 12.
[137] *Id.* at Exhibit 11, at 496.
[138] *Id.*
[139] *See* Post Preliminary Memo at 6-8.
[140] *Id.* at 7-8.
[141] *See* SAA at 942.

As "any other reasonable method," the Department's practice, pursuant to 705(c)(5)(A)(ii), is to calculate the all others rate based on a simple average of the zero or *de minimis* margins and the margins based on AFA. [142] Accordingly, we have determined the all others rate using that methodology.

X. ANALYSIS OF COMMENTS

Comment 1: Whether White Certificates are Countervailable

Petitioners' Comments:

- The Department erroneously relied on the fact that energy service companies ("ESCOs") receive the majority of the White Certificates ("WC") to assess specificity because ESCOs operate as intermediaries which assist their clients and customers in evaluating the energy savings necessary to obtain WC, and therefore do not reflect the industries that were the actual beneficiaries of the WC.
- Although the usage data of the WC program by industrial classification is not available for the POI, the data for June-December 2015 indicates that the steel or metallurgical sector received 22 percent of WC, and the GOI conceded that 22 percent is consistent with the size of this sector in terms of electricity consumption.
- Based on facts available, the Department should find that the steel industry benefitted from 22 percent of the WC issued in 2014. Therefore, because the steel industry received 22 percent of certificates and consumes a "significant quantity" of electricity, the Department should find that this program is *de facto* specific.
- The Department found, based on facts available due to a similar lack of industrial usage data that the Equalization Fund is *de facto* specific because the GOI has reported that the steel and metallurgical industry consumes a significant quantity of the total electricity consumed by the industrial sector.
- The WC program is administered by the GSE and the GME. GSE is owned by the Ministry of Economy and Finance, and GME is owned by GSE, and is in charge of the Italian electricity market, including WC. Therefore, GSE and GME are government authorities.
- The benefit conferred by the WC is equal to the difference between the amount charged by the government (nothing) and the amount received by Arvedi from the sale of the certificates.

GOI's Rebuttal Comments:

- The WC program is not specific to the Italian steel industry. Only energy and natural gas distributors are obligated to achieve a quantified target of energy savings yearly, and non-obligated companies (*e.g.*, steel companies) and ESCOs can apply to the program but they do not have any obligation in terms of energy savings.
- WCs are a market-driven commodity, so there can be no financial contribution because the GOI does not intervene in the value determination of the certificates.
- ESCOs are not intermediaries, as characterized by Petitioners; rather, they submit autonomous projects from which they directly benefit.

[142] *See Non-Oriented Electrical Steel From Taiwan: Final Affirmative Countervailing Duty Determination*, 79 FR 61602 (October 14, 2014) and accompanying IDM at VIII, "Calculation of the All Others Rate."

Arvedi's Rebuttal Comments:

- The WC program is not *de facto* specific because the record demonstrates a wide range of industries as well as consumers can participate in the program.
- The WC program cannot be examined in a disproportional use analysis because there is no intrinsic value to the White Certificate, *i.e.*, there is no actual revenue conferred by the GSE with the White Certificate. Therefore, the size of the benefit when the WCs are issued cannot be determined or measured.
- Further, there is no government financial contribution because the certificates have no value when the GSE issues the certificates.
- Information on the record for 2014 demonstrates that ESCOs are the primary recipients of WC, and ESCOs work with many industries and other participants. This variety of projects in the numerous energy use sectors and regions of the country approved in 2014 is testament that no *de facto* specificity exists.
- The Department should reject Petitioners' concept of "ultimate recipient" and "ultimate beneficiaries" because these are concepts that do not exist in U.S. law or the Department's regulations. If the Department did analyze the "ultimate beneficiaries" it would have to base its disproportionality analysis on the WC received by the energy transmission companies because these are the parties that ultimately benefit by the WC program because these companies would be forced to invest and achieve all of the required energy savings on their own.
- There is no statutory basis to use the June-December 2015 data, which indicates that the metallurgical sector received 22 percent of WC, as facts available because the GOI did not withhold the 2014 data, fail to provide that data by a given deadline, impede the proceeding or provide information that could not be verified, or fail to cooperate by not acting to the best of its ability. Accordingly, it is inappropriate to use FA here.

Department's Position: We disagree with Petitioners that the WC program should be considered a countervailable subsidy. The record does not support a finding that this program is *de facto* specific to the steel and metallurgical sector because the record information does not indicate predominant or disproportionate use of this program by that sector, as defined under sections 771(5A)(D)(iii)(II) and (III) of the Act.[143] Additionally, the Department found program is not limited to an enterprise or industry and is not *de jure* specific under section 771(5A)(D)(i) of the Act.

We disagree with Petitioners' contention that the Department erroneously relied on the fact that ESCOs receive the majority of the WCs to assess specificity. As we noted in the Post-Preliminary Memo, the most common type of company to earn White Certificates are ESCOs and companies under an obligation to appoint an energy manager; these obtained 67 and 32 percent of White Certificates in 2014, respectively.[144] While Petitioners are correct that ESCOs can act as intermediaries to help their clients and customers to obtain WCs, ESCOs also undertake independent energy savings projects on their own in order to earn and sell WC.[145] Additionally, the GOI reports that ESCOs typically have agreements with their customers and clients on how to distribute between

[143] *See* Post-Preliminary Memo at 7.
[144] *Id.* at 7; *see also*, GOI SQR at Exhibit 11, at 515.
[145] *See* GOI SQR at pdf page 15, Arvedi's Supplemental Questionnaire Response, dated November 13, 2015, at Exhibit 74; *see also*, GOI Verification Report at VE 8 page 18.

the parties the WCs earned by the energy savings project.[146] Moreover, we note that the GOI reported that a wide range of entities can create energy savings projects which may earn WCs.[147] Additionally, the above information renders the Petitioners' argument that the steel industries are the "ultimate beneficiaries" of the WC program unconvincing. As we explained above, ESCOs and companies that are obligated to appoint an energy savings manger are the significant recipients of the WCs. Thus, we are not persuaded by the Petitioners' argument.

We also disagree with Petitioners' argument that we should find the WC program *de facto* specific in a similar manner as we did for the Equalization Fund in the Post-Preliminary Memo. As an initial matter, and as explained in more detail under the "Use of Facts Available and Adverse Inferences" section above, we have revisited our specificity analysis with respect to the Equalization Fund in light of the record evidence, specifically comments made by the Petitioners in case briefs and statements made by Arvedi during the hearing in this investigation. Specifically, we have reconsidered our analysis from the Post-Preliminary Memo and determined that the GOI did not act to the best of its ability in not providing the requested industry specific information. As outlined above, the GOI had access to the necessary information and elected not to provide the Department with that information. Accordingly, in applying facts available, we have applied an adverse inference and determined, as AFA, that the Equalization Fund is *de facto* specific to the steel industry.

Furthermore, the facts regarding the WC program are distinguishable from the facts used in our AFA determination for the Equalization Fund. Specifically, the GOI reported that the number of WCs granted to each industry, including the metallurgical and steel industry, is not available for the POI because the application for WCs, unlike the application for Equalization Fund, did not require sector specific information.[148] The GOI further reported that they did not begin to collect WC industry specific information until June 2015, six months after the POI.[149] WC industry specific information was therefore simply not available for the POI. For the Equalization Fund, on the other hand, the record demonstrates that POI sector specific information was available to the GOI,[150] and the GOI never claimed it was not available, only that the "process for extracting these data from the available applications and databases has been started," and that the "data {was} not available for the time being."[151] Accordingly, a finding of *de facto* specificity based on AFA to the WC program is simply not warranted in this case, unlike with respect to the Equalization Fund.

In addition, the Equalization Fund is further distinguishable from the WC program because the information on the record indicates that the Equalization Fund is limited to high-energy consuming companies. As explained above, in order to apply for benefits under the Equalization Fund, a company must first be included on the GOI's list of high-energy companies. This is unlike the WC program, under which any enterprise or industry can benefit from the program as long as they participated in a qualifying energy savings project. For this reason, we determine that the WC

[146] *See* GOI Verification Report at VE 8 page 18.
[147] *See* GOI SQR at White Certificates Appendix at 1.
[148] *See* GOI Supplemental Questionnaire Response, dated February 4, 2016, at 9.
[149] *Id*.
[150] *Id.*, at 6 and GOI SQR at Exhibit 17.
[151] *See* GOI Supplemental Questionnaire Response, dated February 4, 2016, at pdf page 6.

program is not *de jure* specific under section 771(5A)(D)(i) of the Act. Further distinguishing the information concerning the two programs with respect to *de facto* specificity, as explained above, is that with respect to the WC program, the GOI reports that the most common type of company to obtain WCs are ESCOs and companies under an obligation to appoint an energy manager. Because record information indicates that ESCOs and SEMs obtained the most significant amount of WCs, we also find that the record evidence does not demonstrate that the steel industry, including Arvedi, is a predominant user of the subsidy, or that the steel industry or Arvedi has received a disproportionately large amount of WCs. Thus, the Department also determines that the WC program is also not *de facto* specific to the steel industry in accordance with section 771(5A)(D)(iii).

Comment 2: Whether the Program to Purchase Servola is Not Countervailable or Not Used During the POI

Petitioners' Comments:

- The Department's analysis does not account for record evidence that indicates that that there is environmental remediation required at Servola and that the GOI has pledged financing.
- The Department should amend its preliminary determination that this program is not countervailable and find that it was not used, so that it is possible to re-examine the program in future proceedings.

GOI's Rebuttal Comments:

- Petitioner has confused the scope of the Extraordinary Receivership of Lucchini S.p.A., which is aimed at continuing the company's operability in view of its sale through a public tender procedure, with the scope of the environmental interventions for the remediation of the Trieste industrial area.
- Because the GOI disbursed no funds during the POI, the Department should disregard Petitioners' request.

Arvedi's Rebuttal Comments:

- The Department properly determined and confirmed there was not a financial contribution to Arvedi for the purchase of Servola and properly determined the purchase was not countervailable.

Department's Position: We disagree with Petitioners that we should find Arvedi's purchase of Servola countervailable. In the Post-Preliminary Memo, we found that Arvedi received no funds from the GOI for the purchase of this facility.[152]

While Petitioners contend that evidence would seem to point to pledges of GOI funding to regional governments for environmental remediation of the Industrial Zone of Trieste, we note that no funds have been disbursed either to the regional governments or Arvedi for environmental remediation efforts.[153] Further, Petitioners contend regional government assistance will provide a financial

[152] *See* Post-Preliminary Memo at 5; *see also*, Arvedi NSA Questionnaire Response, dated October 26, 2015, at 2-4.
[153] *See* GOI NSA Questionnaire Response, dated October 23, 2015, at Section II Standard Question Appendix at 6; *see also*, GOI Verification Report at 7.

contribution to Arvedi through the provision of goods and services, other than general infrastructure, Petitioners have pointed to no evidence on the record which demonstrates this allegation. Nevertheless, despite Petitioners' contentions, as stated above, the evidence on the record demonstrates that no funds have been dispersed either to Arvedi or the regional governments. Accordingly, we find that because no financial contributions have been made to Arvedi for the purchase of Servola or to any of the regional governments, this program is not countervailable.

Comment 3: Whether To Include Countervailable Programs From the Post-Preliminary Memo in Ilva's AFA rate

Petitioner Comments:

- The Department should include the programs which it finds to be countervailable but that were not included in the Preliminary Determination (*e.g.*, Equalization Fund, and WCs), in Ilva's final AFA rate.

No Other Parties Commented on this Issue.

Department's Position: We agree with Petitioners, and as indicated above, have included in the calculation of Ilva's AFA rate the highest rate calculated for the Equalization Fund (*i.e.,* Arvedi's calculated rate), which was the only program from the Post-Preliminary Memo which we found to be countervailable during the POI.

XI. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Department positions are accepted, we will publish the final determination in the *Federal Register* and will notify the U.S. International Trade Commission of our determination.

✓
Agree

Disagree

Paul Piquado
Assistant Secretary
for Enforcement and Compliance

24 MAY 2016
Date