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Investigation
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DATE: March 19, 2018

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Carbon and Alloy Steel
Wire Rod from Italy

I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided above the *de minimis* level to producers and exporters of carbon and alloy steel wire rod (wire rod) from Italy, as provided for in section 705 of the Tariff Act of 1930, as amended (the Act).¹ Below is the complete list of issues in this investigation for which we received comments from interested parties.

Issues:

- Comment 1: Whether Commerce Should Countervail SIAT'S Exemptions from General Electricity Network Costs**
- Comment 2: Whether the Energy Interruptibility Contract Is a Countervailable Subsidy**
- Comment 3: Whether the Purchase of Electricity Through Interconnectors Are Countervailable Subsidies**
- Comment 4: Selection of Benchmark to Value Purchases of Electricity Through Interconnectors**
- Comment 5: How to Calculate the Benefit for Electricity Purchased Through Interconnectors**

¹ See also section 701(f) of the Act.

Comment 6: Whether Commerce Should Implement Verification Findings to Make Corrections to Ferriere Nord’s Sales Denominator and the Numerator Used in the Interruptibility Contract Subsidy Calculation

Comment 7: Whether Commerce Should Countervail the Provision of Electricity Interconnector Rights

Comment 8: Whether Commerce Should Countervail Excise Tax Exemptions

Comment 9: Whether Commerce Should Apply AFA to Ferriere Valsider

II. BACKGROUND

A. Case History

On September 5, 2017, we published the *Preliminary Determination* for this investigation.² In the *Preliminary Determination*, we calculated an above *de minimis* rate for Ferriere Nord S.p.A.³ The subsidy rate for Ferriera Valsider S.p.A (Ferriera Valsider) was based entirely on adverse facts available.⁴ We conducted verifications of the questionnaire responses submitted by Ferriere Nord and the Government of Italy between January 11, 2018, and January 18, 2018.⁵ On February 9, 2018, we issued a post-preliminary analysis memorandum for this investigation.⁶

We received case briefs regarding the *Preliminary Determination* from Nucor Corporation (Nucor) and Ferriere Nord on February 20, 2018, and rebuttal briefs from Nucor and Ferriere Nord on February 26, 2018.⁷ On March 6, 2018, we instructed Ferriere Nord to file a revised rebuttal brief redacting information that was not responsive to arguments raised in Nucor’s Case Brief.⁸ On March 8, 2018, Ferriere Nord filed a redacted rebuttal brief.⁹ On March 13, 2018, we instructed Ferriere Nord to again file a revised rebuttal brief redacting information that was not

² See *Carbon and Alloy Steel Wire Rod from Italy: Preliminary Affirmative Countervailing Duty Determination*, 82 FR 41931 (September 5, 2017) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

³ Commerce has found the following companies to be cross-owned with Ferriere Nord S.p.A.: Acciaierie di Verona S.p.A. (AdV), FIN FER S.p.A (FIN FER), and SIAT S.p.A. (SIAT). These companies are collectively referred to as Ferriere Nord.

⁴ See PDM at 9-12.

⁵ See Memoranda, “Verification of the Questionnaire Responses of Ferriere Nord S.p.A., Acciaierie di Verona S.p.A. (AdV), SIAT S.p.A. (SIAT) and FIN FER S.p.A. (FIN FER),” (Ferriere Nord Verification Report) and “Verification of the Questionnaire Responses of the Government of Italy,” (Government of Italy Verification Report), both dated February 8, 2018.

⁶ See Memorandum, “Post-Preliminary Analysis Memorandum in the Countervailing Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy,” dated February 9, 2018 (Post-Preliminary Analysis).

⁷ See Nucor’s Case Brief, *Carbon and Alloy Steel Wire Rod from Italy: Case Brief of Nucor Corporation*,” dated February 20, 2018 (Nucor’s Case Brief); Ferriere Nord’s Case Brief, “*Countervailing Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Ferriere Nord’s Case Brief*,” dated February 20, 2018 (Ferriere Nord’s Case Brief); Nucor’s Rebuttal Brief, “*Carbon and Alloy Steel Wire Rod from Italy: Nucor Corporation’s Rebuttal Brief*,” dated February 26, 2018 (Nucor’s Rebuttal Brief); Ferriere Nord’s Rebuttal Brief, “*Countervailing Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Ferriere Nord’s Rebuttal Brief*,” dated February 26, 2018.

⁸ See Commerce Letter, “Re: Countervailing Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Ferriere Nord’s February 26, 2018 Rebuttal Brief,” dated March 6, 2018.

⁹ See Ferriere Nord’s Redacted Rebuttal Brief, “*Countervailing Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Ferriere Nord’s Redacted Rebuttal Brief*,” dated March 8, 2018.

responsive to arguments raised in Nucor’s Case Brief.¹⁰ On March 13, 2018, we held a hearing, pursuant to requests by Ferriere Nord and Nucor.¹¹ On March 15, 2018, Ferriere Nord filed a redacted rebuttal brief.¹²

As explained in the memorandum from the Deputy Assistant Secretary for Enforcement and Compliance, Commerce 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 three business days. The revised deadline for the final determination is now March 19, 2018.¹³

The “Analysis of Programs” and “Subsidies Valuation” sections below describe the subsidy programs and the methodologies used to calculate the subsidy rates for our final determination. Based on our verification findings, we made certain modifications to the *Preliminary Determination*, which are discussed under each program, below. For details of the resulting revisions to Commerce’s rate calculations resulting from those modifications, *see* the final calculation memorandum.¹⁴ We recommend that you approve the positions we describe in this memorandum.

B. Period of Investigation

The period of investigation (POI) for which we are measuring subsidies is January 1, 2016, through December 31, 2016.

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is wire rod from Italy. For a full description of the scope of this investigation, *see* in the accompanying *Federal Register* notice at Appendix I.¹⁵

¹⁰ See Commerce Letter, “Re: Countervailing Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Ferriere Nord’s March 8, 2018 Redacted Rebuttal Brief,” dated March 13, 2018.

¹¹ See Commerce Letter notifying all interested parties of the hearing, dated March 9, 2018. *See also* Ferriere Nord’s Letter, “Re: Countervailing Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Ferriere Nord Request for Hearing,” dated October 5, 2017; Nucor’s Letter, “Re: Carbon and Alloy Steel Wire Rod from Italy: Request for Hearing,” dated October 5, 2017.

¹² See Ferriere Nord’s Redacted Rebuttal Brief, “Countervailing Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Ferriere Nord’s Redacted Rebuttal Brief,” dated March 15, 2018 (Ferriere Nord’s Rebuttal Brief).

¹³ See Memorandum to The Record, from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, “Deadlines Affected by the Shutdown of the Federal Government” (January 23, 2018).

¹⁴ See Memorandum, “Countervailing Duty Investigation of Carbon and Alloy Steel Wire Rod from Italy: Ferriere Nord S.p.A. Final Calculation Memorandum,” dated March 19, 2018 (Ferriere Nord Calculation Memorandum).

¹⁵ See Memorandum, “Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations,” dated August 7, 2017, and filed to ACCESS on August 7, 2017.

IV. SCOPE COMMENTS

We invited parties to comment on Commerce's Preliminary Scope Memorandum.¹⁶ Commerce reviewed the briefs submitted by interested parties, considered the arguments therein, and determined not to make changes to the scope of the investigation. For further discussion, *see* Commerce's Final Scope Decision Memorandum.¹⁷

V. SUBSIDIES VALUATION INFORMATION

A. Allocation Period

Commerce has made no changes to the allocation period and the allocation methodology used in the *Preliminary Determination*, and no issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology. For a description of the allocation period and the methodology used for this final determination, *see* the *Preliminary Determination*.¹⁸

B. Attribution of Subsidies

Commerce has made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies to Ferriere Nord S.p.A. and AdV.¹⁹ For this final determination, we are also treating SIAT as a producer of the subject merchandise. Thus, in accordance with 19 CFR 351.525(b)(6)(ii), we attributed subsidies that these companies received to their combined sales (net of intercompany sales). For discussion concerning attribution of subsidies received by SIAT, *see* Comment 1, below.

C. Denominators

In accordance with 19 CFR 351.525(b), Commerce 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, or portions thereof. The denominators we used to calculate the countervailable subsidy rates for the various subsidy programs described below are explained in the calculation memorandum prepared for this final determination.²⁰

¹⁶ *See* Memorandum, "Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Scope Comments Decision Memorandum for the Preliminary Determinations, dated August 7, 2017, and filed to ACCESS on August 7, 2017.

¹⁷ *See* Memorandum, "Carbon and Alloy Steel Wire Rod from Belarus, Italy, the Republic of Korea, the Russian Federation, South Africa, Spain, the Republic of Turkey, Ukraine, the United Arab Emirates, and the United Kingdom: Final Scope Memorandum" (Final Scope Decision Memorandum), dated November 20, 2017.

¹⁸ *See* PDM at 4.

¹⁹ *Id.* at 6.

²⁰ *See* Ferriere Nord's Calculation Memorandum.

D. Loan Interest Rate Benchmarks and Discount Rates

Interested parties submitted a number of comments regarding the benchmarks used in the Post-Preliminary Analysis in their case and rebuttal briefs.²¹ Commerce has considered these comments and has not made changes to the benchmarks used previously. *See* Comment 4, below.

VI. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

A. Legal Standard

Sections 776(a)(1) and (2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply “facts otherwise available” if necessary information is not on the record or an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act.²²

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

Section 776(b) of the Act provides that Commerce 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 so doing, and under the TPEA, Commerce 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. Furthermore, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the

²¹ *See* Ferriere Nord’s Case Brief and Nucor’s Case Brief.

²² Under the Trade Preferences Extension Act of 2015, numerous amendments to the AD and CVD law were made, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. *See Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362, dated June 29, 2015. *See also 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). The amendments are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.

extent practicable, corroborate that information from independent sources that are reasonably at its disposal.²³ 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.²⁴

Finally, under section 776(d)(1) of the Act, when applying an adverse inference, Commerce may use any countervailable subsidy rate applied for the same or similar program in a countervailing duty (CVD) proceeding involving the same country, or, if there is no same or similar program, Commerce may use a CVD rate for a subsidy program from a proceeding that the administering authority considers reasonable to use. The TPEA also makes clear that, when selecting facts available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.²⁵

Moreover, under our CVD AFA methodology, we strive to assign AFA rates that are the same in terms of the type of benefit, (*e.g.*, grant to grant, loan to loan, indirect tax to indirect tax) because these rates are relevant to the respondent. Additionally, by selecting the highest rate calculated for a cooperative respondent we arrive at a reasonably accurate estimate of the respondent's actual rate, and a rate that also ensures “that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²⁶ Finally, Commerce will not use information where circumstances indicate that the information is not appropriate as AFA.

B. Application of Facts Otherwise Available and Adverse Facts Available

Commerce relied on “facts otherwise available,” including adverse facts available (AFA), for its finding relating to Ferriera Valsider in the *Preliminary Determination*.²⁷ For a description of these decisions, *see* the *Preliminary Determination*. As discussed at Comment 9, Commerce has not made any changes to its decisions in the *Preliminary Determination* to use facts otherwise available and AFA relating to Ferriera Valsider.

VII. ANALYSIS OF PROGRAMS

A. Programs Determined to Be Countervailable

1. Exemptions from General Electricity Network Costs

Nucor and Ferriere Nord submitted comments in either their case and rebuttal briefs regarding this program and the calculation methodology. These are addressed in Comment 1. As discussed in Comment 1, Commerce has made certain changes to the methodology used to

²³ *See also* 19 CFR 351.308(d).

²⁴ *See* SAA at 870 (1994).

²⁵ *See* section 776(d)(1) of the Act; *see also* section 502(3) of the TPEA.

²⁶ *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. I, at 870 (1994), reprinted at 1994 U.S.C.C.A.N. 4040, 4199 (SAA).

²⁷ *See* PDM at 7-12.

calculate SIAT's subsidies under this program since the *Preliminary Determination*. Incorporating these changes, we determine that Ferriere Nord received a net countervailable subsidy rate of 0.02 percent *ad valorem* for this program.

2. Energy Interruptibility Contracts

Nucor and Ferriere Nord submitted comments in either their case and rebuttal briefs regarding this program. These are addressed in Comment 2. As discussed in Comment 2, Commerce has revised the analysis regarding the attribution of subsidies received by SIAT under this program since the *Preliminary Determination*. We determine that Ferriere Nord received a net countervailable subsidy rate of 1.69 percent *ad valorem* for this program.

3. Electricity Purchases Under the Interconnector Program

Nucor and Ferriere Nord submitted comments in either their case and rebuttal briefs regarding this program. These are addressed in Comments 3, 4, and 5. As discussed in Comments 2, 3, 4, and 5, we made corrections to the benefit calculation for this program, as well as the attribution of subsidies received by SIAT since the Post-Preliminary Analysis. We determine that Ferriere Nord received a net countervailable subsidy rate of 1.12 percent *ad valorem* for this program.

4. Reductions on Excise Taxes for Purchases of Electricity

Commerce is examining whether reductions in excise taxes for purchases of electricity received by Ferriere Nord, or its cross-owned affiliates pursuant to Italian law constitute countervailable subsidies. As discussed below at Comment 8, Ferriere Nord's excise tax reductions were discovered pursuant to our review of Ferriere Nord's electricity bills.

The excise tax on electricity is established by Law 504/1995 ("Testo Unico delle Accise"), Article 52.²⁸ According to Annex I of Law 504, the amount of excise tax due is dependent on energy consumption.²⁹ Law 504 establishes three distinct user categories: (1) Households; (2) Enterprises consuming less than 1.2 GWh per month, and (3) Enterprises consuming more than 1.2 GWh per month.³⁰ Enterprises consuming less than 1.2 GWh per month pay a rate of €0.0125 per kWh up to the first 200,000 kWh, and then a rate of €0.0075 kWh on consumption from 200,001 kWh up to 1.2 GWh.³¹ Enterprises consuming more than 1.2 GWh per month pay a rate of €0.0125 per kWh up to 200,000 kWh, and a fixed amount of €4,820 on consumption exceeding 200,000 kWh.³² Effectively, the excise taxes due from enterprises that consume more than 1.2 GWh per month are capped at a lower rate than what enterprises that consume less than 1.2 GWh per month would pay.

²⁸ See Government of Italy's January 8, 2018 Sixth Supplemental Questionnaire Response (Government of Italy January 8, 2018 SQR) at 7.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

The SAA states that the specificity test should be applied “in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those subsidies which truly are broadly available and widely used throughout an economy.”³³ Under this program, certain enterprises that consume more than 1.2 GWh per month pay reduced excise taxes compared to what would otherwise be due under Italian law. The reduced excise tax rate on electricity consumption cannot, therefore, be considered “broadly available and widely used throughout” Italy. On this basis, we determine that these excise tax reductions are *de jure* specific in accordance with section 771(5A)(D)(i)(III) of the Act.

We also determine that the reduced tax revenue otherwise due to the Government of Italy constitutes a financial contribution within the meaning of section 771(5)(D)(ii) of the Act, as revenue forgone that would otherwise be due. A benefit is conferred under section 771(5)(E) of the Act and 19 CFR 351.510(a)(1) in the difference in the amount that Ferriere Nord would have paid in excise taxes absent the excise tax cap under Italian law.

In accordance with 19 CFR 351.524(c), we treat tax reductions as recurring benefits. To calculate a benefit under this program, we calculated the amount of the tax reduction as the amount Ferriere Nord and AdV would have paid were it not for the cap on its excise taxes due, and divided the amount of the tax reduction by the appropriate sales denominator, as described in the above section “Attribution of Subsidies.” Due to the timing of our receipt of information concerning this program, we do not have information about excise tax reductions experienced by SIAT. If Ferriere Nord is selected as a respondent to an administrative review, we intend to solicit the value of the excise tax reduction for SIAT. On this basis, we determine that Ferriere Nord received a net countervailable subsidy rate of 1.32 percent *ad valorem*.

B. Programs Determined to Be Not Used by, or Not to Confer a Measurable Benefit to, Ferriere Nord

1. Industrial Development Grants Under Law 488/92
2. Technological Innovation Grants Under Law 46/82
3. Grants to Revive Industrial Areas Under Law 181/89
4. *Patti Territoriali* Grants Under Law 662/96
5. Technological Innovation Loans Under Law 46/82
6. Preferential Financing Under Law 266/97
7. Industrial Area Revival Loans Under Law 181/89
8. Income Tax Deferral Under Article 42 of Law 78/2010
9. Tax Credits Under Article 1 of Law 296/06
10. Tax Credits Under Article 62 of Law 289/02
11. Export Credit Subsidies

³³ See SAA at 911, 929.

VIII. ANALYSIS OF COMMENTS

Comment 1: Whether Commerce Should Countervail SIAT'S Exemptions from General Electricity Network Costs

Ferriere Nord's Case Brief:

- Record evidence unequivocally demonstrates that SIAT is not an input supplier, thus, Commerce's application of 19 CFR 351.525(b)(6)(iv) is misplaced.³⁴
- Commerce verified that SIAT further processed subject merchandise produced by Ferriere Nord and AdV by treating wire rod with chemical pickling. SIAT then resold this product back to Ferriere Nord and AdV for use by the rolling mills to bend wire rod and rebar bundles. Commerce verified that the pickled wire rod supplied by SIAT to Ferriere Nord and AdV is used as packing material, not an input for production.³⁵
- Assuming, *arguendo*, that Commerce finds the wire rod packing material is an input, SIAT's total sales of wire rod is miniscule.³⁶
- Commerce addressed a similar situation in *Aluminum Extrusions from China; 2010-2011 AR*.³⁷ In that proceeding, Commerce determined that 19 CFR 351.525(b)(6)(iv) did not apply to a cross-owned input supplier that did not itself produce the input.

Nucor's Rebuttal Brief:

- Commerce should reject Ferriere Nord's argument because SIAT is a cross-owned input supplier.³⁸

Commerce Position: We have re-examined SIAT's role in Ferriere Nord's operations. Commerce verified that SIAT further processed subject merchandise that was produced by Ferriere Nord and AdV.³⁹ Ferriere Nord acknowledges that Commerce is "correct in finding that SIAT further processed the subject merchandise that was produced by Ferriere Nord and AdV."⁴⁰ SIAT then resold this further processed merchandise back to Ferriere Nord and AdV for export to the United States during the POI.⁴¹ The merchandise produced by Ferriere Nord, AdV, and SIAT are subject to the scope of this investigation.

Under 19 CFR 351.525(b)(6)(ii), if two (or more) corporations with cross-ownership produce the subject merchandise, then subsidies received by either or both of those corporations will be attributed to the combined sales of the two corporations. Here, Ferriere Nord, AdV, and SIAT

³⁴ See Ferriere Nord's Case Brief at 2-5.

³⁵ *Id.* (citing Ferriere Nord Verification Report at 5).

³⁶ See Ferriere Nord's Case Brief at 4-5 (citing Ferriere Nord Verification Report at Exhibit 3).

³⁷ See *Aluminum Extrusions from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010 and 2011*, 79 FR 106 (January 2, 2014) (*Aluminum Extrusions from China, 2010-2011 AR*), and accompanying Issues and Decision Memorandum (IDM) at Comment 16.

³⁸ See Petitioner's Rebuttal Brief at 3-5.

³⁹ See Ferriere Nord Verification Report at 5.

⁴⁰ See Ferriere Nord's Case Brief at 4 (internal quotations omitted).

⁴¹ See Ferriere Nord Verification Report at 5.

produce subject merchandise. Accordingly, for this final determination, we are attributing subsidies received by SIAT under 19 CFR 351.525(b)(6)(ii).

Ferriere Nord's claim that SIAT's wire rod was used as packing material was not resolved at verification. However, the record is clear that SIAT's wire rod was exported to the United States.⁴² Because we are not treating SIAT as an input producer under 19 CFR 351.525(b)(6)(iv), the *Aluminum Extrusions from China; 2010-2011 AR* is not relevant to our analysis. For the same reason, Ferriere Nord's argument that the miniscule amount of SIAT-produced wire rod leads to this wire rod not being primarily dedicated as an input is also moot.

Comment 2: Whether the Energy Interruptibility Contract is a Countervailable Subsidy

Ferriere Nord's Case Brief:

- In its *Preliminary Determination*, Commerce found this program to be *de facto* specific. Contrary to Commerce's claim, no record evidence supports a specificity finding on either *de jure* or *de facto* basis.⁴³
- Law 99 of 2009 provides that *inter alia*, "any company that meet the minimal capacity of 1 Megawatt power are eligible to participate in this program."⁴⁴ Therefore, as this program is not selective about industries or beneficiaries, it is not *de jure* specific.⁴⁵
- As the 299 recipients of this program from diverse industries, this program is not *de facto* specific.⁴⁶ In *Royal Thai*, Commerce found that a wide range of industries could not fall within the meaning of the term "limited."
- The Government of Italy explained that participation in the Energy Interruptibility program is indiscriminate of industries, and the steel wire industry is not a disproportionate/predominant user of the program. Thus, it is not *de facto* specific.⁴⁷
- Commerce's categorization of the Terna payment as a direct transfer of funds is unsupported by record evidence.⁴⁸ Rather, this program is a service contract of "power network rebalance" provided by Terna in order to secure a reliable electric power grid in Italy.⁴⁹ Thus, this program constitutes a provision of general infrastructure, and is not countervailable.⁵⁰

⁴² See Ferriere Nord Verification Report at 5.

⁴³ See Ferriere Nord's Case Brief at 6-18 (citing PDM at 15-16).

⁴⁴ *Id.*

⁴⁵ *Id.* See also section 771(5A)(D)(i) of the Act.

⁴⁶ *Id.* at 7-8 (citing *Royal Thai Government v. United States*, 341 F. Supp. 2d 1315, 1319 (CIT 2004) (*Royal Thai*)).

⁴⁷ *Id.* at 9.

⁴⁸ *Id.* at 10.

⁴⁹ *Id.* (citing Government of Italy's June 29, 2017 Initial Questionnaire Response (Government of Italy's June 29, 2017 IQR) at 26).

⁵⁰ *Id.* at 9-14 (citing *Bethlehem Steel Corporation v. United States*, 26 CIT 1003, 1010 (2002) (*Bethlehem Steel*), where the Court agreed that roads located in an industry park constitute general infrastructure because the roads were constructed for the use of all companies, are used by the public, and part of the national road and highways system). See also Preamble at 65378. See also *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001) (*Hot-Rolled Carbon Steel Flat Products from Thailand*), and accompanying IDM at Comment 10.

- The benefits of the demand response program are to the society as a whole, including avoided capacity, energy, transmission and distribution, ancillary service, environmental compliance cost, as well as reduced price volatility and improved system reliability.⁵¹ The economic benefits demonstrate further that this program constitutes a general infrastructure created for broad societal welfare within the meaning of 19 CFR 351.511(d). The fact that during the POI, actual shutdown was demanded by Terna for Ferriere Nord and AdV proves that the existing national power grid lacks sufficient capacity.⁵²
- This program is substantially similar to the United States' response demand regime. A finding that the provision of energy interruptibility contract is countervailable would expose many exporting vertically-integrated U.S. manufacturers to CVD investigations abroad.⁵³
- Even if found countervailable, record evidence demonstrates that this contract is not a grant, but a provision of service or goods.⁵⁴ The service that Terna purchased from Ferriere Nord and AdV is their respective available interruptible power capacities. Commerce should revise its calculation to use the proper benchmark to assess the operating cost of "power capacity" to determine the subsidy rate for this program.⁵⁵

Nucor's Rebuttal Brief:

- The SAA states that the specificity test should be applied "in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those subsidies which truly are broadly available and widely used throughout an economy."⁵⁶ Relative to the amount of eligible companies of this program, which according to the respondent, is all Italian companies with 1 MW of medium or high voltage electricity usage, then 299 users is certainly a limited number of companies.⁵⁷
- Commerce has previously found a subsidy specific based on more than 299 users.⁵⁸
- To the extent information regarding the total number of companies that applied for assistance under this program but were denied is not on the record, it is because the Government of Italy refused to provide such information.⁵⁹
- The largest beneficiary of this program is the "manufacture of basic metals" industry, which represents 20.74 percent of program recipients,⁶⁰ which includes the respondent.
- The respondent is not selling a service to the Government of Italy, as these companies are being compensated for being available to be interrupted. The Government of Italy is

⁵¹ See Ferriere Nord's Case Brief at 13 (citing Ferriere Nord's July 26, 2017 Submission of Factual Information at 1-2).

⁵² *Id.* at 15 (citing Ferriere Nord Verification Report at VE-6).

⁵³ *Id.* at 13-14.

⁵⁴ *Id.* at 14-15. See also section 771(5)(E) of the Act. See also 19 CFR 351.511(a).

⁵⁵ *Id.* at 14 (citing Ferriere Nord's June 26, 2017 Initial Questionnaire Response (Ferriere Nord June 26, 2017 IQR) at Exhibit CVD-10 and 11, at Article 6 and 7).

⁵⁶ See Petitioner's Rebuttal Brief at 6 (citing SAA at 929).

⁵⁷ *Id.* at 6.

⁵⁸ *Id.* (citing *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from the Republic of Korea: Final Affirmative Determination*, 81 FR 53439 (August 12, 2016), and accompanying IDM at 18).

⁵⁹ *Id.* at 7-8 (citing Government of Italy Verification Report at 8).

⁶⁰ *Id.* at 8.

transferring funds to a limited number of payments in the form of direct payments. Commerce rejected this same argument in prior cases.⁶¹ Further, the general infrastructure provision of the Act is not applicable when the subsidy at issue is a direct transfer of funds.⁶²

- This subsidy is not a provision of general infrastructure, as Commerce has interpreted the general infrastructure statutory language to encompass “infrastructure that is created for the broad societal welfare of a country, region, state, or municipality.”⁶³ Commerce has consistently found the provision of electricity to be a good, and not general infrastructure.⁶⁴
- The electricity interruptibility contracts are private contracts made between the Government of Italy and large industrial energy user. No actual infrastructure is being provided by either party, as companies are compensated on a monthly basis for being available to be interrupted.⁶⁵

Commerce Position: We agree with Nucor. With respect to Ferriere Nord’s arguments regarding whether the Energy Interruptibility Contracts are specific, we note that in *CTL Plate from Korea 1999* (litigated in *Bethlehem Steel*), Commerce’s negative *de facto* specificity determination was based on an analysis of “disproportionate” and “predominant” use.⁶⁶ The *de facto* specificity analysis Commerce conducted for the same program in *CTL Plate from Korea 2016*, however, was based on the use of the subsidy by a limited number of users. This mirrors the specificity determination we conducted in the *Preliminary Determination*, which was also made based on a limited number of users. In conducting our analysis of whether the program is *de facto* specific within the meaning of section 771(5A)(D)(iii) we followed the specificity test as set forth within the SAA.

The SAA states that “{t}he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy.”⁶⁷ Therefore, in light of the SAA, the specificity provision is intended to capture those subsidies that are not broadly available and widely used throughout an economy. In that regard, we considered the number of recipients of the program based on the responses to our questionnaire. The record demonstrates that there were 299 users of this program. Relative to the amount of eligible companies of this program, which according to the respondent, is all Italian companies with 1 MW of medium or high voltage electricity usage, we determine that this

⁶¹ *Id.* (citing *Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review and Rescission of Countervailing Duty Administrative Review, in Part*, 82 FR 39410 (August 18, 2017) (*CTL Plate from Korea 2016*)).

⁶² *Id.*

⁶³ *Id.* at 11 (citing 19 CFR 351.511(d)).

⁶⁴ *Id.* (citing *Countervailing Duty Investigation of Certain Corrosion-Resistant Steel Products from the People’s Republic of China: Final Affirmative Determination, and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 35308 (June 2, 2016); *Hot-Rolled Carbon Steel Flat Products from Thailand*, and accompanying IDM at Comment 10.

⁶⁵ *Id.* (citing Government of Italy Verification Report at 6).

⁶⁶ See *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea*, 64 FR 73176 (December 29, 1999) (*CTL Plate from Korea 1999*).

⁶⁷ See SAA at 911, 929.

constitutes a limited number of companies. Therefore, for these final results we continue to find this program to be *de facto* specific because the actual users are limited in number consistent with Commerce practice.

Ferriere Nord asserts that this program constitutes general infrastructure and is not a countervailable subsidy. This issue was unequivocally addressed in *Hot-Rolled Carbon Steel Flat Products from Thailand*, and the court affirmed Commerce's determination in *Royal Thai*.⁶⁸ Commerce has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.⁶⁹ Also, Commerce's regulations contemplate that electricity constitutes the provision of countervailable goods and services.⁷⁰

In *CTL Plate from Korea 2016*, Commerce rejected the argument that benefits conferred under programs such as this constitute a government purchase of a service.⁷¹ Ferriere Nord has not supported its claim that the benefits received for being available to have its electricity interrupted are transformed into payments for a service that is being provided at less than adequate remuneration. For this final determination, we continue to find that the payments received by Ferriere Nord constitute direct transfers of funds, or grants from the Government of Italy under section 771(5)(E) of the Act and 19 CFR 351.504(a).

Comment 3: Whether the Purchase of Electricity Through Interconnectors Are Countervailable Subsidies

Ferriere Nord's Case Brief:

- Record evidence demonstrates that the interconnector program is not *de jure* or *de facto* specific.⁷²
- Commerce verified that Law 99 of 2009 does not limit participation in this program to any specific enterprises or industries, thus, this program is not *de jure* specific.⁷³
- Based on a list of companies identified by the GOI that have been selected to import energy from abroad, and the fact that Ferriere Nord and AdV fund the interconnector project through capital investments in a consortium of steel and other energy-intensive sectors, Commerce found this program *de facto* specific.⁷⁴
- Terna selected private companies as funders of the interconnectors program through a series of public tender procedures, which are open to any company from any sector.

⁶⁸ See *Hot-Rolled Carbon Steel Flat Products from Thailand*, and accompanying IDM at Comment 10. See also *Royal Thai* at 1350, 1356.

⁶⁹ See, e.g., *Certain Steel Wheels from the People's Republic of China: Final Affirmative Countervailing Duty Determination, Final Critical Circumstances Determination*, 77 FR 17017 (March 23, 2012), and accompanying IDM at 64 at Comment 20 ("The Department has consistently found the provision of electricity to be the provision of a good, and not to be general infrastructure.").

⁷⁰ See *Preamble*, 63 FR at 65348.

⁷¹ See *CTL Plate from Korea 2016*, and accompanying IDM at 21-22.

⁷² See Ferriere Nord's Case Brief at 15-16 (citing Post-Preliminary Analysis and Government of Italy Verification Report at 14).

⁷³ *Id.*

⁷⁴ *Id.* (citing Post-Preliminary Analysis at 4).

Thus, this program is not specific to any industry.⁷⁵ Further, the interconnector was collectively financed by four consortiums in a wide range of industries.⁷⁶ Similar to the findings as in *Royal Thai*, given the diverse industries and enterprises represented by the financing companies, this program is not specific.⁷⁷

- As Ferriere Nord and AdV's participation in this program is not disproportionate, nor is either company a predominant user, this program is also not *de facto* specific.⁷⁸

Nucor's Rebuttal Brief:

- The record clearly shows that large industrial users were the only companies eligible to participate in this program and that only a select number of such users were awarded benefits.⁷⁹ The steel industry is a predominant user of the program.⁸⁰ Further, only a limited number of companies are eligible to receive benefits under this program.⁸¹

Commerce's Position: In conducting our analysis of whether the program is *de facto* specific within the meaning of section 771(5A)(D)(iii), we followed the specificity test as set forth within the SAA. The SAA states that “{t}he Administration intends to apply the specificity test in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy.”⁸² Therefore, in light of the SAA, the specificity provision in section 771(5A)(D)(iii)(I) of the Act is intended to capture those subsidies that are not broadly available and widely used throughout an economy. Furthermore, we considered the number of recipients of the program based on the responses to our questionnaire, which we determined was limited in number in the *Post-Preliminary Determination* based on the Government of Italy's identification of a limited number of companies that participated in the program.

As reported by the Government of Italy, this program is limited to companies that are “final customers who can withdraw with no less than 10 MW capacity and should have a certain level of average consumption/withdrawal, which is at least 40 percent of capacity on average in the previous three years (2006 to 2008) on an annual basis before the auction in 2009.”⁸³ Also, the other members of the consortium that was organized to fund the interconnector were in “energy-intensive sectors.”⁸⁴ Thus, this program is limited to the actual number of large industrial users selected by Terna to support interconnector projects. For these final results we continue to find

⁷⁵ See Ferriere Nord's Case Brief at 17 (citing, e.g., Ferriere Nord's January 8, 2018 Eighth Supplemental Questionnaire Response (Ferriere Nord's January 8, 2018 SQR) at Exhibit S8-6).

⁷⁶ *Id.* (citing Ferriere Nord's October 26, 2017 Sixth Supplemental Questionnaire Response (Ferriere Nord's October 26, 2017 SQR) at Exhibit S6-4).

⁷⁷ *Id.* at 18-19.

⁷⁸ *Id.* at 19 (citing Ferriere Nord's January 8, 2018 SQR at Exhibits S8-7, S8-12, and S8-14).

⁷⁹ See Petitioner's Rebuttal Brief at 14 (citing Memorandum, “Countervailing Duty Investigation: Carbon and Alloy Steel Wire Rod from Italy: New Subsidy Allegation,” dated October 6, 2017, at 4).

⁸⁰ *Id.* (citing Ferriere Nord's Case Brief at 17-18).

⁸¹ *Id.*

⁸² See SAA at 911, 929.

⁸³ See Government of Italy Verification Report at 14.

⁸⁴ See Ferriere Nord's October 26, 2017 SQR at 3.

that *de facto* specificity based on limited number of users is appropriate and consistent with Commerce practice.

Comment 4: Selection of Benchmark to Value Purchases of Electricity Through Interconnectors

Ferriere Nord's Case Brief:

- If found countervailable, any benefit calculation for electricity purchased through the interconnector program should rely on in-country benchmarks.⁸⁵ Ferriere Nord purchased its regular electricity based on the PUN, a wholesale market price determined by supply and demand.⁸⁶ Accordingly, the PUN rates is the most accurate benchmark to measure the adequacy of the program, as it is the Italian-wide rate Ferriere Nord and AdV would have paid had it not participated in the interconnectors program.

Nucor's Case Brief

- As provided in the regulations, the preferred benchmark is an observed market price for the good at issue based on actual transactions within the country under investigation.⁸⁷
- Commerce used the PUN price to measure the benefit of the subsidized electricity, however, this price is inappropriate because it is a government established price.⁸⁸ Further, Ferriere Nord's "Italian-wide PUN price" is for wholesale electricity, not retail electricity to end users.⁸⁹
- The only record information of actual transaction prices to Italian end users is the "Europe's Energy Portal" data, which should be used as the benchmark.⁹⁰

Ferriere Nord's Rebuttal Brief:

- Nucor misstated the Government of Italy's involvement in the electricity market. Rather, the Government of Italy established the power exchange on which electricity price are determined by market supply and demand.⁹¹
- The Italian-wide PUN price is determined following transactions between market operators on the Italian Power Exchange.⁹²
- There is no record evidence demonstrating that the Government of Italy is an electricity provider, or otherwise provides a majority or substantial portion of electricity to its customers in Italy, and thus, the PUN price is not distorted by the government and is appropriate to be used as the Tier 1 benchmark.⁹³

⁸⁵ See Ferriere Nord's Case Brief at 20-21.

⁸⁶ *Id.* at 21 (citing Ferriere Nord's January 8, 2018 SQR at 5 and Ferriere Nord Verification Report at 16-17).

⁸⁷ See Petitioner's Case Brief at 4 (citing 19 CFR 351.511(a)(2)).

⁸⁸ *Id.* at 5 (citing Ferriere Nord Verification Report at 17).

⁸⁹ *Id.* (citing Ferriere Nord Verification Report at 18).

⁹⁰ *Id.* (citing Nucor's July 26, 2017 Submission of Factual Information – Benchmark Data at Exhibit 2).

⁹¹ See Ferriere Nord's Rebuttal Brief at 3-5.

⁹² *Id.* (citing Ferriere Nord's January 8, 2018 SQR at 1).

⁹³ *Id.* at 5.

- The PUN is the actual price that Ferriere Nord would have paid absent the interconnector program.⁹⁴
- The benchmark proposed by the petitioner is distortive and unsuitable. First, the prices reported by “Europe’s Energy Portal” are inclusive of “market price, distribution charges, taxes and duties.”⁹⁵ Charges and taxes are not countervailable, and using a benchmark that includes charges and taxes would significantly inflate the benchmark.
- The prices reported in “Europe’s Energy portal” are based on 33 commercial respondents in Italy, which include five sub-groups (small-sized, medium-sized, production facility, industrial plant, and industry park). There is no indication that these prices are based on data from steel mills.

Nucor’s Rebuttal Brief:

- PUN is a government established price, and there is no record information to suggest this price is available to all Italian industrial users.⁹⁶
- Ferriere Nord’s claim that the PUN is the rate that it would have paid had it not participated in the interconnector program is contradicted by what Ferriere Nord officials stated to Commerce at verification.⁹⁷ Company officials stated that if Ferriere Nord and AdV enter a contract with an entity other than Enel, the electricity price may change.⁹⁸ The company’s ability to purchase electricity at wholesale prices is a benefit from its contract with Enel. Other large industrial users do not pay the same price for electricity, which renders a benchmark that collects electricity prices from multiple industry users appropriate.⁹⁹
- Given that Ferriere Nord concedes that a monthly benchmark should be compared, the agency should use the only information on the record that contains monthly prices from actual end users – “Europe’s Energy Portal” data.¹⁰⁰

Commerce Position: We agree with Ferriere Nord. Record information supports finding that the Italian-wide PUN price reflects transactions between market operators on the Italian Power Exchange.¹⁰¹ There is no record evidence that the Government of Italy is an electricity provider, provides a majority or substantial portion of electricity to customers in Italy, or otherwise intervenes in the electricity market in Italy to distort the prices. Thus, we continue to find that the PUN price is not distorted by the government and is an appropriate in-country, market determined prices, suitable to be used as the Tier 1 benchmark.¹⁰²

⁹⁴ *Id.* at 5.

⁹⁵ *Id.* at 6.

⁹⁶ See Petitioner’s Rebuttal Brief at 16-17.

⁹⁷ *Id.* (citing Ferriere Nord Verification Report at 16).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ See Government of Italy’s October 26, 2018 Supplemental Questionnaire Response (Government of Italy’s October 26, 2018 SQR) at 14. See also Ferriere Nord’s January 8, 2018 SQR at 1.

¹⁰² To support its argument, Nucor’s Case Brief at 5 cites the Ferriere Nord Verification Report. However, the cited language does not consider the relevant surrounding text, which states that the PUN is established by an energy marketplace and not an Italian government agency. See Ferriere Nord Verification Report at 16.

Further, the rate that Ferriere Nord pays to its electricity supplier for purchases not connected with the Interconnector program is a negotiated rate between Ferriere Nord and its electricity supplier.¹⁰³ The mere fact that this rate is not transferrable if Ferriere Nord contracts with a different electricity supplier is not evidence that this rate is not available to other, similar industrial users in Italy. Rather, it supports our finding that this rate is a result of bilateral, arm's length negotiations by two private entities, and pertains to transactions between those entities. Accordingly, for the final determination, we continue to rely on the PUN prices as benchmarks to measure the adequacy of remuneration connected with Ferriere Nord's purchases of electricity via the Interconnector program.

Comment 5: How to Calculate the Benefit for Electricity Purchased Through Interconnectors

Ferriere Nord's Case Brief:

- The average monthly German price, at which Ferriere Nord and AdV paid for energy acquired through the interconnectors, must be derived using the total interconnector purchased value divided by the total interconnector purchased megawatt hours, as the record demonstrates that the average monthly German price is the same for energy purchased during both peak and off-peak hours.
- The benefit should be calculated by subtracting the average monthly interconnector price from the average monthly PUN price, and multiplying this value by the total monthly purchased interconnector megawatt hours.¹⁰⁴

Nucor's Case Brief

- Commerce should not offset costs related to Ferriere Nord's reported charges for virtual import services.¹⁰⁵
- The purported details of interconnector costs reported by Ferriere Nord is not supported by contemporaneous business documents and were not verified by Commerce.¹⁰⁶

Ferriere Nord's Rebuttal Brief:

- Contrary to Nucor's assertion, substantial record evidence demonstrates that service charges are required by Italian law as a fee for participants to purchase energy under the virtual interconnector regime.¹⁰⁷

¹⁰³ *Id.*

¹⁰⁴ See Ferrier Nord's Case Brief at 22-23 and Exhibit 1.

¹⁰⁵ See Petitioner's Case Brief at 6-7.

¹⁰⁶ *Id.* at 7 (citing Ferriere Nord's January 8, 2018 SQR at Exhibit S8.1.5).

¹⁰⁷ See Ferriere Nord's Rebuttal Brief at 9 (citing Petitioner's September 6, 2017 Comments on Ferriere Nord's 4th Supplemental Questionnaire Response at Exhibit 10; Ferriere Nord's January 8, 2018 SQR at Exhibit S8-8 and Exhibit S8-4.2; Ferriere Nord's October 26, 2017 SQR at Exhibit S6-2.3).

- Commerce must accept the accuracy as submitted of information that was not verified at verification.¹⁰⁸

Commerce Position: We agree with Ferriere Nord. Record information supports finding that Ferriere Nord pays a single monthly rate for the electricity purchased via the Interconnector program.¹⁰⁹ Thus, we have relied on this monthly rate to calculate the benefit associated with this program.

We disagree with Nucor that we should not offset the benefit under this program to account for certain costs Ferriere Nord's reported related to fees incurred to participate in this program. The record demonstrates that service charges are required by Italian law to purchase energy under this program.¹¹⁰ These fees are laid out in Law 179/09, at Article 6, and these fees are specified in the contracts Ferriere Nord signed with Terna with respect to each individual interconnector project.¹¹¹

Finally, we agree with parties that the calculation itself should be corrected to reflect our stated intent in the Post-Preliminary Analysis, which was to calculate the difference in the amount between the electricity price under the Interconnector program and the benchmark rate.¹¹² For details concerning this calculation, *see* Ferriere Nord's Calculation Memorandum.

Comment 6: Whether Commerce Should Implement Verification Findings to Make Corrections to Ferriere Nord's Sales Denominator and the Numerator Used in the Interruptibility Contract Subsidy Calculation

Ferriere Nord's Case Brief:

- Commerce verified 2016 intercompany sales that were corrected by Ferriere Nord. Therefore, the corrected figures should be used in the final determination.¹¹³
- If Commerce determines to countervail the Energy Interruptibility program, it should rely on the verified information of actual POI payments to calculate the subsidy.¹¹⁴

¹⁰⁸ See Ferriere Nord's Rebuttal Brief at 12 (citing *Certain Oil Country Tubular Goods from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination*, 79 FR 41964 (July 18, 2015), and accompanying IDM at Comment 9.

¹⁰⁹ See Ferriere Nord's December 6, 2017 Supplemental Questionnaire Response (Ferriere Nord's December 6, 2017 SQR) at 4.

¹¹⁰ See Ferriere Nord's January 8, 2018 SQR at Exhibit S8-8 and Exhibit S8-4.2; Ferriere Nord's October 26, 2017 SQR at Exhibit S6-2.3.

¹¹¹ *Id.*

¹¹² See Post-Preliminary Analysis at 5.

¹¹³ See Ferriere Nord's Case Brief at 23-24 (citing Ferriere Nord Verification Report at 3, and Exhibit VE1 and VE3).

¹¹⁴ *Id.* at 24 (citing Ferriere Nord Verification Report at Exhibit VE-6).

Nucor's Rebuttal Brief:

- Commerce should correct AdV sales revenue, as this correction was identified at verification.¹¹⁵

Commerce Position: We agree with both parties and have made corrections to the data that were used in the final calculations, according to how these corrections were reported at Ferriere Nord's verification.

Comment 7: Whether Commerce Should Countervail the Provision of Electricity Interconnector Rights

Nucor's Case Brief

- Ferriere Nord's questionnaire response demonstrates that not only is the price at which it purchases electricity subsidized, but the right to purchase subsidized electricity has monetary value, and is essentially another subsidy provided by the Government of Italy.¹¹⁶
- The provision of interconnector rights constitutes a financial contribution under section 771(5)(D)(i) of the Act, as a direct transfer of funds from the Government of Italy. The interconnector rights confer a benefit under section 771 (5)(E) of the Act. The benefit to recipients is equal to the value of the interconnector rights, as defined in 19 CFR 351.504(a). Given that the interconnector rights program is a nonrecurring subsidy, Commerce should allocate the benefit over the 15-year average useful life for steel assets. Finally, the subsidy program is specific consistent with section 771(5A)(D)(iii)(II) because it is limited to the specific companies that were awarded interconnector rights.

Ferriere Nord's Rebuttal Brief:

- 19 CFR 351.301(c)(2)(iv)(A) provides that an allegation must be filed 40 days before the date of the preliminary determination, unless extended by Commerce. Nucor's allegation is untimely.¹¹⁷
- The new subsidy allegation is predicated on erroneous speculations that are not supported by record evidence.¹¹⁸

Commerce Position: We disagree with Nucor that Ferriere Nord's purchase of Interconnector rights constitutes a countervailable subsidy. Nucor has not supported its argument that the purchase or holding of interconnector rights, by itself, provides a distinct subsidy, *i.e.*, financial contribution and benefit. There is also no record evidence that Ferriere Nord received a subsidy from the Government of Italy at the time it purchased its Interconnector rights and which flowed from the acquisition of rights themselves. Rather, we continue to find that the subsidy from the

¹¹⁵ See Petitioner's Rebuttal Brief at 18 (citing Ferriere Nord Verification Report at 4).

¹¹⁶ See Petitioner's Case Brief at 9-10 (citing Ferriere Nord's October 26, 2017 SQR at Exhibit S6-2.3; Ferriere Nord's January 8, 2018 SQR at 7 and 10).

¹¹⁷ See Ferriere Nord's Rebuttal Brief at 14-16.

¹¹⁸ *Id.*

Interconnector program, as reflected by the record facts in this proceeding, occurs as a result of Ferriere Nord's purchases of low cost electricity via the program, which is already being countervailed.

Comment 8: Whether Commerce Should Countervail Excise Tax Exemptions

Nucor's Case Brief

- Commerce verified that the excise tax “cap” was implemented to provide a benefit to large industrial electricity users.¹¹⁹
- The excise tax exemptions for large industrial energy consumers constitute a financial contribution in the form of revenue foregone by the Italian government consistent with section 771(5)(D)(ii) of the Act. Additionally, this program confers a benefit upon recipients in the amount of the tax savings received (*i.e.*, €0.0075 per kWh of electricity consumed over 1,200,000 kWh in each month) by Ferriere Nord per section 771(5)(E)(iv) of the Act. Finally, the subsidy program is specific consistent with section 771(5A)(D)(iii)(II) because it is limited to large industrial energy users. Moreover, Ferriere Nord and the Italian steel industry are likely predominant users of this program. Thus, in the final determination, Commerce should find that electricity excise taxes exemptions provide a countervailable subsidy to the respondents.

Ferriere Nord's Rebuttal Brief:

- 19 CFR 351.301(c)(2)(iv)(A) provides that an allegation must be filed 40 days before the date of the preliminary determination, unless extended by Commerce. Nucor's allegation is untimely.¹²⁰
- Excise tax is not countervailable.¹²¹ Commerce reviewed Ferriere Nord's and AdV's excise tax forms and found that payments are in accordance with the law.¹²²

Commerce Position: We agree with Nucor. As explained in the “Programs Determined To Be Countervailable” section, above, we find that the excise tax reductions that Ferriere Nord received provided a financial contribution within the meaning of section 771(5)(E)(iv) of the Act, and were specific within the meaning of section 771(5A)(D)(i) because the reductions are limited by law to enterprises that consume more than 1.2 GWh of electricity per month. This determination is consistent with our determination in the *Preliminary Determination* to find the program “Exemptions from General Electricity Network Costs” to confer specific subsidies. The SAA states that the specificity test should be applied “in light of its original purpose, which is to function as an initial screening mechanism to winnow out only those subsidies which truly are broadly available and widely used throughout an economy.”¹²³ Under this program, eligibility is limited by law to only the very large consumers of electricity and cannot therefore be considered “broadly available and widely used throughout” Italy. We, therefore,

¹¹⁹ See Petitioner's Case Brief at 11-12 (citing Government of Italy Verification Report at 4).

¹²⁰ See Ferriere Nord's Rebuttal Brief at 17.

¹²¹ *Id.*

¹²² *Id.* (citing Ferriere Nord Verification Report at 20 and VE-7).

¹²³ See Statement of Administrative Action (SAA) accompanying H.R. 5110, H.R. Doc. No. 316, 103d Cong., 2d

determine that it is *de jure* specific.

We disagree with Ferriere Nord that Commerce’s investigation of this subsidy is untimely. Ferriere Nord submitted its electricity bills in response to Commerce’s request for information about the Electricity Interruptibility program.¹²⁴ Based on our review of these electricity bills, we requested full responses to the CVD questionnaire from both the Government of Italy and Ferriere Nord for the excise tax reductions.

Section 775 of the Act requires further analysis by Commerce of practices that appear to be countervailable subsidies that were not originally alleged in a countervailing duty petition. Further, our practice is guided by 19 CFR 351.311(b), which specifies that Commerce will examine an apparent subsidy discovered during the course of an investigation “if the Secretary concludes that sufficient time remains before the scheduled date for the final determination or final results of review.” In this case, Commerce had sufficient time to fully investigate whether the Excise Tax program confers countervailable subsidies.¹²⁵

In accordance with its regulations, Commerce will notify the parties of a subsidy discovered in the course of the proceeding. Here, as in prior proceedings, Commerce’s initial and supplemental questionnaires to the Government of Italy regarding the “Other Subsidies” and excise tax reductions reported by Ferriere Nord, served as notification to the Government of Italy, and to Ferriere Nord, of Commerce’s consideration of the reported subsidies.¹²⁶

Comment 9: Whether Commerce Should Apply AFA to Ferriere Valsider

Nucor’s Case Brief

- Ferriere Valsider failed to respond to Commerce’s CVD questionnaire during this investigation, which renders the application of AFA appropriate.

Commerce’s Position: We agree with Nucor, and have applied AFA to Ferriere Valsider for this final determination.

Sess. 911, 929 (1994).

¹²⁴ See Ferriere Nord’s August 25, 2017 Fourth Supplemental Questionnaire Response at Exhibit S4-2.1 and S4-2.2.

¹²⁵ See e.g., *Certain Softwood Lumber Products from Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances*, 82 FR 51819 (November 8, 2017), and accompanying Issues and Decision Memorandum at Comment 5.

¹²⁶ *Id.*

VIII. RECOMMENDATION

We recommend approving all of the above positions and adjusting all related countervailable subsidy rates accordingly. If these Commerce 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

3/19/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance