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Investigation
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December 7, 2020

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

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Forged Steel Fluid End Blocks from Italy

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I. SUMMARY

The Department of Commerce (Commerce) determines that countervailable subsidies are being provided to the producers and exporters of forged steel fluid end blocks (FEBs) in Italy, as provided in section 705 of the Tariff Act of 1930, as amended (the Act). Below is a complete list of issues in this investigation for which we received comments from interested parties:

Comment 1: Whether Commerce Should Find the Industrial Exemptions for General Electricity Network Costs Program Specific
Comment 2: Whether the 2016 Electricity Reimbursement Received by Metalcam in the Industrial Exemptions for General Electricity Network Costs Program Should be Counted as a Benefit within the POI
Comment 3: Whether Commerce Should Find European Union Emissions Trading System (ETS) Countervailable
Comment 4: Whether Commerce Should Find Energy Interruptability Contracts Countervailable
Comment 5: Whether Commerce Correctly Applied Adverse Facts Available to Forge Monchieri When It Failed to Respond to Commerce's Quantity and Value Questionnaire
Comment 6: Whether Commerce Should Consider the Government of Italy's Grants for Continuous Training Countervailable
Comment 7: Whether Commerce Should Continue to Apply Adverse Facts Available Due the GOI's Failure to Provide Information Necessary to Assess the De facto Specificity of Various Subsidy Programs

II. BACKGROUND

A. Case History

The mandatory respondents subject to this investigation are Lucchini Mame Forge S.p.A. (Lucchini) and Metalcam S.p.A. (Metalcam). On May 26, 2020, Commerce published the *Preliminary Determination* and, at the FEB Fair Trade Coalition's (petitioner)s request, we aligned the final countervailing duty (CVD) determination with the final determination of the antidumping duty (AD) investigation of forged steel fluid end blocks from Italy.[1] On June 9, 2020, Commerce issued supplemental questionnaires to LMA and the Government of India (GOI) requesting additional information regarding additional subsidy programs reported by LMA in their questionnaire responses prior to the *Preliminary Determination*.[2] On June 24, 2020, LMA timely submitted its response to Commerce's supplemental questionnaire.[3] On June 24, 2020 and July 1, 2020, the GOI timely submitted its response to Commerce's supplemental questionnaire in two parts, after being granted a partial extension by Commerce on June 23, 2020.[4] On August 11, 2020, Commerce issued a Post-Preliminary Analysis Memorandum.[5]

During the course of this investigation, travel restrictions were imposed that prevented Commerce personnel from conducting on-site verification. Pursuant to section 776(a)(2)(D) of the Act, in situations where information has been provided but cannot be verified, Commerce will use "facts otherwise available" in reaching the applicable determination. Accordingly, as we were unable to conduct verification in this investigation for reasons beyond our control, we relied on the information submitted on the record, which we relied on in making our *Preliminary Determination* (and as further developed via response to subsequent supplemental questionnaires and factual information submitted on the record), as facts available in making our final determination. Therefore, on August 31, 2020, Commerce notified interested parties that it was unable to conduct verification and set a deadline for the submission of case and rebuttal briefs.[6] On September 14, 2020, Commerce received case briefs from the European Commission,

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[1] *See Forged Steel Fluid End Blocks from Italy: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination*, 85 FR 31460 (May 26, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Commerce's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from Italy: Supplemental Questionnaire for Lucchini Mamé Forge S.p.A.," dated June 9, 2020; *see also* Commerce's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from Italy: Supplemental Questionnaire for the Government of Italy," dated June 9, 2020.

[3] *See* LMA's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from Italy: Lucchini Mamé Forge S.p.A. Supplemental CVD Questionnaire Response," dated June 24, 2020.

[4] *See* GOI's Letter, "Countervailing Duty Investigation Second Supplemental Questionnaire – Forged Steel Fluid End Blocks from Italy: Submission of a part of the response for the Government of Italy," dated June 24, 2020; *see also* GOI's Letter, "Countervailing Duty Investigation Second Supplemental Questionnaire – Forged Steel Fluid End Blocks from Italy: Submission of final response for the Government of Italy," dated June 29, 2020; and Commerce's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from Italy: Extension Request for Supplemental Questionnaire Response," dated June 23, 2020.

[5] *See* Commerce's Memorandum, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from Italy: Post-Preliminary Analysis," dated August 11, 2020 (Post-Preliminary Analysis).

[6] *See* Commerce's Memorandum, "Cancellation of Verification and Setting of Briefing Schedule," dated August 31, 2020.

Metalcam, LMA, Forge Monchieri, and the GOI.[7] On September 21, 2020, Commerce received a rebuttal brief from the petitioner.[8] On October 28, 2020, LMA, Metalcam and the petitioner, withdrew their requests for a public hearing.[9] Therefore, Commerce did not hold a public hearing for this investigation.

B. Period of Investigation

The period of investigation is January 1, 2018 through December 31, 2018.

III. SUBSIDIES VALUATION

A. Allocation Period

We made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation period used in the *Preliminary Determination*.

B. Attribution of Subsidies

We have made no changes to, and interested parties raised no issues in their case briefs regarding, the attribution methodology used in the *Preliminary Determination.*

C. Denominators

We made no changes to, and interested parties raised no issues in their case briefs regarding, the denominators used in the *Preliminary Determination*.

IV. BENCHMARKS AND INTEREST RATES

We made no changes to, and interested parties raised no issues in their case briefs regarding, the benchmarks and interest rates used in the *Preliminary Determination*.

[7] *See* the European Commission's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from Italy – Case brief," dated September 14, 2020; *see also* Metalcam's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from Italy: Case Brief of Metalcam S.p.A.," dated September 14, 2020; and LMA's Letter, "Antidumping Duty Investigation of Forged Steel Fluid End Blocks from Italy: Lucchini Mame Forge S.p.A. 's Case Brief," dated September 14, 2020; Forge Monchieri's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from Italy: Forge Monchieri Case Brief," dated September 14, 2020; and GOI's Letter, "Countervailing Duty Investigation - Forged Steel Fluid End Blocks from Italy: Government of Italy's case brief in view of Commerce's final determination," dated September 14, 2020.

[8] *See* Petitioner's Letter, "Forged Steel Fluid End Blocks from Italy: Petitioner's Rebuttal Brief," dated September 21, 2020.

[9] *See* Petitioner's Letter "Forged Steel Fluid End Blocks from Italy: Petitioner's Withdrawal ofHearing Request" dated October 28, 2020; *see also* LMA's Letter, "Forged Steel Fluid End Blocks from Italy: Withdraw of Lucchini Hearing Request" dated October 28, 2020; and Metalcam's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from Italy: Metalcam S.p.A. Hearing Request Withdrawal," dated October 28, 2020.

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

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

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

Section 776(b) of the Act provides that Commerce may use an adverse inference in selecting from the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, 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.[10] Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the countervailing duty investigation, a previous administrative review, or other information placed on the record.[11]

Section 776(c) of the Act provides that, in general, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[12] 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.[13]

Finally, under section 776(d) of the Act, when using an adverse inference when selecting from the facts otherwise available, Commerce may use a countervailable subsidy rate applied for the same or similar program in a CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that Commerce considers reasonable to use.[14] The statute also makes clear that, when selecting from the facts otherwise available with an adverse inference, Commerce is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate

[10] *See* section 776(b)(1)(B) of the Act.
[11] *See also* 19 CFR 351.308(c).
[12] *See also* 19 CFR 351.308(d).
[13] *See* Statement of Administrative Action, H.R. Doc. No. 316, 103rd Congress, 2d Session (1994) (SAA) at 870.
[14] *See* section 776(d)(1) of the Act.

had cooperated or to demonstrate that the countervailable subsidy rate reflects an "alleged commercial reality" of the interested party.[15]

In the *Preliminary Determination*, we applied total AFA to calculate a subsidy rate for five companies that did not respond to our quantity and value (Q&V) questionnaire.[16] In accordance with section 776(d) of the Act, we updated this AFA rate to reflect changes to the program rates calculated for the mandatory respondents.[17] Further, in the Post-Preliminary Analysis Memorandum, we applied AFA with respect to the GOI to find specificity for several programs.[18] We made no changes to the underlying decision to apply AFA for this final determination.

VI. ANALYSIS OF PROGRAMS

A. Programs Determined to be Countervailable

We made no changes to our *Preliminary Determination* and our Post-Preliminary Analysis with respect to the methodology used to calculate the subsidy rates for the following programs, except where noted below. For descriptions, analyses, and calculation methodologies for these programs, *see* the *Preliminary Determination* and the Post-Preliminary Analysis. Except where noted below, no issues were raised regarding these programs in the parties' case briefs. The final program rates are as follows:

1. Industrial Exemptions for General Electricity Network Costs

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed in Comment 2. Commerce has not modified its conclusions or the calculation of the subsidy rate for this program from the *Preliminary Determination*. The final subsidy rate for this program is 1.81 percent *ad valorem* for LMA, and 2.52 percent *ad valorem* for Metalcam.

2. Energy Interruptibility Contracts

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed in Comment 4. Commerce has not modified its conclusions or the calculation of the subsidy rate for this program from the *Preliminary Determination*. The final subsidy rate for this program is 0.40 percent *ad valorem* for LMA, and 0.36 percent *ad valorem* for Metalcam.

3. Electricity Purchases Through the Interconnector Program

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed in Comment 7. Commerce has not modified its conclusions or calculation of the subsidy rate from the *Preliminary Determination*. The final subsidy rate for this program is 1.01 percent *ad valorem* for LMA. We found that Metalcam did not use this program.

[15] *See* section 776(d)(3) of the Act.
[16] See PDM at 6 to 14.
[17] *See* Appendix.
[18] *See* Post-Preliminary Analysis at 5.

4. Free Allocation of European Union Emissions Trading System Allowances

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed in Comment 3. Commerce has not modified its conclusions or calculation of the subsidy rate from the *Preliminary Determination*. The final subsidy rate for this program is 0.16 percent *ad valorem* for LMA, and 0.16 percent *ad valorem* for Metalcam.

5. Grants for Continuous Training Under Article 118 of Law 388/2000

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed in Comment 6. Commerce has modified its basis for finding specificity for this program; we now find it *de jure* specific instead of *de facto* specific. We have not modified the calculation of the subsidy rate from the *Preliminary Determination*. The final subsidy rate for this program is 0.01 percent *ad valorem* for LMA, and 0.01 percent *ad valorem* for Metalcam.

6. GSE Reimbursements for Contributions to Solar Energy

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed at Comment 7. Commerce has not modified its conclusions or calculation of the subsidy rate from the Post-Preliminary Analysis. The final subsidy rate for this program is 0.53 percent *ad valorem* for LMA. We found that Metalcam did not use this program.

7. Reimbursement of Excise Duties

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed in Comment 7. Commerce has not modified its conclusions or the calculation of the subsidy rate for this program from the Post-Preliminary Analysis. The final subsidy rate for this program is 0.02 percent ad valorem for LMA. We found that Metalcam did not use this program.

8. Article 1, paras 91 to 94 and para. 97, Law 28/12/2015, n. 208 – Super ammortamento

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed in Comment 7. Commerce has not modified its conclusions or calculation of the subsidy rate from the Post-Preliminary Analysis. The final subsidy rate for this program is 0.09 percent *ad valorem* for LMA, and 0.01 percent *ad valorem* for Metalcam.

9. Patent Box Deductions

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed in Comment 7. Commerce has not modified its conclusions or calculation of the subsidy rate from the Post-Preliminary Analysis. The final subsidy rate for this program is 0.15 percent *ad valorem* for LMA. We found that Metalcam did not use this program.

10. Sgravi Benefits – Law 190/214

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed in Comment 7. Commerce has not modified its conclusions or calculation of the subsidy rate from the Post-Preliminary Analysis. The final subsidy rate for this program is 0.25 percent *ad valorem* for LMA, and 0.05 percent *ad valorem* for Metalcam.

11. Sgravi Benefits – Law 208/2015

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed in Comment 7. Commerce has not modified its conclusions or calculation of the subsidy rate from the Post-Preliminary Analysis. The final subsidy rate for this program is 0.05 percent *ad valorem* for LMA. We found no measurable benefit to Metalcam under this program.

12. Sgravi Benefits – Directorial Decree No. 394 of 02/12/2016

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed in Comment 7. Commerce has not modified its conclusions or calculation of the subsidy rate from the Post-Preliminary Analysis. The final subsidy rate for this program is 0.01 percent *ad valorem* for Metalcam. We found no measurable benefit to LMA under this program.

13. Sgravi Benefits – Article 1, Paragraphs 100-108 and 113-114 of Law 205/2017

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed in Comment 7. Commerce has not modified its conclusions or calculation of the subsidy rate from the Post-Preliminary Analysis. The final subsidy rate for this program is 0.01 percent *ad valorem* for LMA. We found no measurable benefit to Metalcam under this program.

14. Tax Credits under Law 388/2000 for Excise Duties

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed in Comment 7. Commerce has not modified its conclusions or calculation of the subsidy rate from the Post-Preliminary Analysis. The final subsidy rate for this program is 0.17 percent *ad valorem* for LMA. We found that Metalcam did not use this program.

15. Tax Credits under Decree of the President of the Republic 917/1986—ART. 95, C. 4

Interested parties submitted comments in their case and rebuttal briefs regarding this program, which are discussed in Comment 7. Commerce has not modified its conclusions or calculation of the subsidy rate from the Post-Preliminary Analysis. The final subsidy rate for this program is 0.08 percent *ad valorem* for LMA. We found that Metalcam did not use this program.

16. Reimbursements of Euro Motorway Tolls under Law Decree 451/1998

No interested parties submitted comments in case or rebuttal briefs regarding this program. Commerce has not modified its conclusions or calculation of the subsidy rate from the Post-

Preliminary Analysis. The final subsidy rate for this program is 0.02 percent *ad valorem* for LMA. We found that Metalcam did not use this program.

B. Programs Determined Not to Have Conferred a Measurable Benefit

1. Article 2, paragraph 10bis of Law 92/2012

Interested parties submitted comments in case and rebuttal briefs regarding this program, which are discussed at Comment 7. Commerce has not modified its conclusions or calculation of the subsidy rate for this program from the *Preliminary Determination*.

C. Programs Determined Not to be Used during the POI

1. Industrial Technological Innovation Grants Under Law 46/1982 Duty Free Import Authorization Scheme
2. Industrial Technological Innovation Loans Under Law 46/1982
3. Industrial Development Grants Under Law 488/1992
4. *Patti Territoriali* Grants Under Law 662/1996
5. *Contratti di Programma* Grants Under Law 662/1996
6. Industrial Revitalization Grants Under Law 181/1989
7. Industrial Revitalization Loans Under Law 181/1989
8. Preferential Financing Under Law 266/1997
9. Income Tax Deferrals Under Article 42 of Law 78/2010
10. *Sgravi* Benefits Under Law 1089 and Law 407/90
11. IRAP Tax Credits Under Article 1 of Law 296/2006
12. Tax Credits Under Article 62 of Law 289/2002
13. Export Credit Subsidies
14. Framework Law 236/93 (Progetto 236)

VII. ANALYSIS OF COMMENTS

Comment 1: **Whether Commerce Should Find the Industrial Exemptions for General Electricity Network Costs Program Specific**

Respondent Parties Case Briefs

- The Industrial Exemptions for General Electricity Network Costs program is not specific. The program is available to any energy-intensive undertakings, regardless of the sector in which they operate. Moreover, eligibility is automatic and applies to any company which meets the statutory criteria regarding power consumption, not to specific industries.

Petitioners Rebuttal Brief

- Commerce correctly found that the Industrial Exemptions for General Electricity Network Costs program terms establish that "eligibility is limited by law to the very large consumers of electricity," and the program is *de jure* specific within section 771(5A)(D)(i) of the Act.

Commerce Position: In the *Preliminary Determination*, Commerce found the General Electricity Network Costs Program to be *de jure* specific in accordance with section 771(5A)(D)(i) of the Act.[19] Specifically, we found eligibility under this program to be limited by law to very large consumers of electricity, or "energy intensive users" where they: (i) have a yearly electricity consumption of not less than 1 GWh/year; (ii) operate in the sectors listed in Annex 3 to the EC Guidelines; (iii) operate in the sectors listed in Annex 5 to the EC Guidelines and are characterized by a positive electrical intensity index determined on the basis of a three-year average value of Gross Value Added at market prices less any indirect taxes plus any subsidies of not less than 20 percent; or (iv) even if they do not comply with the previous requirements, they are included in the lists of energy-intensive businesses drawn up, for the years 2013 or 2014, by CSEA in implementation of Article 39 of Law Decree 83/2012.

For purposes of this final determination, we continue to find the program to be *de jure* specific under section 771(5A)(D)(i) of the Act, and thus, countervailable. Both the GOI and Metalcam argue that the program is not *de jure* specific. The GOI states that reductions under this program are generally available for all energy-intensive undertakings, regardless of the sector in which they operate. Metalcam adds that Commerce did not analyze the conditions regarding *de jure* specificity as stipulated in the statute,[20] and if Commerce were to analyze these conditions, it would find that the program did not meet the conditions for *de jure* specificity. Finally, Metalcam points to *Alloy Magnesium from Canada* as a comparable example of a program that Commerce found to be not be *de jure* specific on the basis that it was available to all industries and enterprises.[21]

We find these arguments unpersuasive. As discussed in the *Preliminary Determination*, the record evidence demonstrates that eligibility in this program is limited to the large consumers of electricity. In particular, the GOI has specifically stated that eligibility for this program is limited only to consumers of electricity that are considered large-scale consumers of electricity.[22] Further, the GOI stated that the specific purpose of the program is to offset the higher costs paid by energy-intensive users for financing support for renewable energies.[23] In other words, in

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[19] *See* PDM at page 26.

[20] *See* section 771(5A)(D) of the Act ("Domestic subsidy. In determining whether a subsidy (other than a subsidy described in subparagraph (B) or (C)) is a specific subsidy, in law or in fact, to an enterprise or industry within the jurisdiction of the authority providing the subsidy, the following guidelines shall apply: (i) Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry, the subsidy is specific as a matter of law. (ii) Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, the subsidy is not specific as a matter of law, if (I) eligibility is automatic, (II) the criteria or conditions for eligibility are strictly followed, and (III) the criteria or conditions are clearly set forth in the relevant statute, regulation, or other official document so as to be capable of verification. For purposes of this clause, the term 'objective criteria or conditions' means criteria or conditions that are neutral and that do not favor one enterprise or industry over another.")

[21] *See Alloy Magnesium from Canada: Final Results of Countervailing Duty New Shipper Review*, 68 FR 22359 (April 28, 2003) (*Alloy Magnesium from Canada*), and accompanying IDM at Comments 1 and 2.

[22] *See* GOI IQR at 18 ("Under this program, largescale consumers of electricity (hereinafter, energy-intensive users or energy-intensive companies) are granted reductions of certain components of the general charges of the electricity system.")

[23] *Id.* ("As energy-intensive users bear, by definition, significant energy cost, they pay higher excise taxes. Thus, the purpose of the reduction was, and still is, to offset the higher costs paid by energy-intensive users for financing support for renewable energies.")

contrast to the assertions made by the GOI and Metalcam, and consistent with the SAA's stated purpose of the specificity test,[24] this program is not broadly available throughout Italy, but rather is limited to the energy-intensive users in Italy. For example, this program would not be available to small and midsize consumers of electricity in Italy. As such, we find this program to be *de jure* specific on in accordance with section 771(5A)(D)(i) of the Act.

Metalcam contends that the statute provides criteria for determining whether or not a subsidy is *de jure* specific at section 771(5A)(D)(ii) of the Act. Metalcam states that Commerce failed to analyze those conditions; and had Commerce done so, it would have found the program not to be *de jure* specific. Specifically, Metalcam holds that under this program: eligibility is automatic; the criteria for eligibility are strictly followed; and the criteria or conditions are set forth in the applicable law is capable of verification. We disagree with Metalcam. The exception to *de jure* specificity in section 771(5A)(D)(ii) of the Act applies when a program has "objective criteria or conditions" governing eligibility for the subsidy. The Act defines "objective criteria or conditions" as "criteria or conditions that are neutral and that do not favor one enterprise or industry over another." Here, the alleged "objective criteria or conditions" favor enterprises that are very large consumers of electricity over enterprises that do not consume very large amounts of electricity. Accordingly, we find that section 771(5A)(D)(ii) of the Act does not apply.

Finally, we disagree with Metalcam's argument that *Alloy Magnesium from Canada*, necessitates Commerce finding the Industrial Exemptions for General Electricity Network Costs program to not be *de jure* specific in this proceeding. In that proceeding, applicants under the "Emploi-Quebec Manpower Training Measure" program had to meet general policy objectives: job preparation; job integration; job management; job stabilization; and job creation.[25] On that basis, Commerce found no indication that the regulations limited benefits to a specific industry or enterprise, or to a specific group of industries or enterprises.[26] However, as discussed above, we find that the Industrial Exemptions for General Electricity Network Costs program is only available to large-scale consumers of electricity, and thus limited in law to certain industries or companies within a certain industries. As such, we find the fact pattern regarding the "Emploi-Quebec Manpower Training Measure" program in *Alloy Magnesium from Canada* is significantly different from the fact pattern for the Industrial Exemptions for General Electricity Network Costs program in this investigation. Therefore, we find Commerce's determination in *Alloy Magnesium from Canada* does not inform our finding in this investigation. Furthermore, our *de jure* specificity finding in this investigation is consistent with a number of more recent proceedings.[27]

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[24] *See* Statement of Administrative Action at 929 ("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.")

[25] *See Alloy Magnesium from Canada* IDM at Comments 1 and 2.

[26] *Id*.

[27] *See, e.g.*, *Silicon Metal from Australia: Final Affirmative Countervailing Duty Determination*, 83 FR 9834 (March 8, 2018) and accompanying IDM at Comment 3 ("The criteria governing the eligibility on accessing the subsidy must be neutral and must not favor one enterprise or industry over another. With respect to the RET program, the criteria used by the GOA are not neutral because the criteria favor enterprises or industries that conduct 'emission-intensive' activities and are 'trade-exposed' over industries or enterprises that do not conduct such activities and are not trade exposed which thus constitutes an explicit limitation on access to the subsidy.")

Comment 2: **Whether the 2016 Electricity Reimbursement Received by Metalcam in the Industrial Exemptions for General Electricity Network Costs Program Should be Counted as a Benefit within the POI**

Metalcam Case Briefs

- Should Commerce find the Industrial Exemptions for General Electricity Network Costs program countervailable, it should exclude from its benefit calculation the portion of the benefits from a late reimbursement from 2016. The 2016 reimbursement should not be included in calculation of benefit as the compensation relates to the 2016 version of this program and the payment was accounted for in receivables in 2017 when the decision to reimburse Metalcam was made, thus the benefit was received outside of the POI.

Petitioner Rebuttal Brief

- Metalcam received two different benefits under the program during the POI. A grant reimbursement for energy purchased in 2016, and discounts on Metalcam's 2018 electricity bills. Commerce's regulations specify that Commerce will calculate the benefit as the amount of discount received during the POI, and thus, Commerce's *Preliminary Determination* is consistent with its regulations. The receipt of payment for the 2016 bill reimbursement occurred within the POI, and Commerce normally considers a benefit on the date on which the firm received the grant. Thus, both the 2016 reimbursement and the 2018 discount should be counted as benefits under the program.

Commerce Position: Under the current version of the Industrial Exemptions for General Electricity Network Costs program that was in effect during the POI, large-scale consumers of electricity receive discounts on their monthly electricity bills for charges related to energy-intensive activities.[28] On this basis, during the POI, Metalcam received discounts applied on its 2018 monthly electricity bills.[29] However, up until 2017, benefits under this program were provided as annual reimbursements for specific energy intensive undertakings,[30] for which Metalcam received reimbursements during the POI for expenses incurred from 2016.[31]

In the *Preliminary Determination*, we found that benefits under this program are recurring,[32] and as such, included both the discounts in Metalcam's 2018 electricity bills and the delayed compensation for 2016 in its calculation of the overall POI benefit for this program.[33] Metalcam argues that we should not include the reimbursement related to the 2016 energy activities in the final calculations on the basis that these reimbursements were reflected in its 2017 financial statements.

[28] *See, e.g.*, GOI IQR at 19 ("Currently, the program consists of a discount on the bill. The discount is applied on the component of the general charges of the electricity system relating to renewable energy and assimilated resources".)
[29] *See* Metacam IQR at 18.
[30] *See, e.g.*, GOI IQR at 18.
[31] *See* Metacam IQR at 18.
[32] *See* PDM at 20.
[33] *See* Memorandum, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks: Preliminary Determination Calculations for Metalcam S.p.A.," dated May 18, 2020.

As an initial matter, no parties argued that the discounts on Metalcam's 2018 electricity bills should not be included in the benefit. Regarding the benefit stemming from Metalcam's energy intensive undertakings in 2016, Commerce notes that Metalcam's 2017 financial statements refer to this reimbursement as "CSEA 2016 Energy Grant" and listed it under "Other Customer Receivables" that was incurred in 2017.[34] However, these 2017 financial statements also state that this grant was approved by CSEA[35] in May 2018 and disbursed to the company in June 2018.[36] In other words, while the company may have recorded this amount as a receivable in the 2017 financial statements, these same statements indicate that the actual reimbursement funds were not approved by the authority agency, nor were they disbursed to the company until 2018. Commerce's regulations provide that it will usually consider the date on which a company actually receives funding as the date on which the benefit is realized.[37] Considering the grant in question was both approved and received in 2018 (*i.e.*, within the POI), Metalcam provided no basis to depart from this practice. As such, we disagree with Metalcam's argument that this reimbursement should not be included in the POI benefit calculation.

Further, Metalcam's financial statements indicate that, in years prior to 2018, the company received these reimbursement grants under this program on a yearly basis.[38] As such, we will continue to include the benefits received under this program in 2018 and will not treat any of these reimbursements as non-recurring grants.

Comment 3: **Whether Commerce Should Find European Union Emissions Trading System (ETS) Countervailable**

Respondent Parties Case Briefs

- There is no financial contribution as free allowances, allocated to an operator to cover all of its emissions or a part of them, do not compensate or waive any payments or debt otherwise due to the European Union (EU) or any Member State. There is no revenue forgone as the free allowances granted to parties do not represent revenue which the EU or its member states would receive without payment.
- There is no benefit because the operators who are granted free allowances are to surrender them at the moment of reporting their emissions. The amount of free allowances represents the emissions benchmark that a company has to strive for or buy additional allowances on a secondary market in order to compensate for the benchmark.
- The ETS program is not specific, as free allowances are not limited to an enterprise or an industry. Operators on the carbon leakage list account for thousands of enterprises and over 150 industries.

[34] *See* Metalcam IQR at Exhibit GQ-4.2-EN at the Explanatory Notes to the Consolidated Financial Statements for the Year Ended December 2017, at page 16.
[35] As noted in the *Preliminary Determination*, Cassa per I Servizi Energetici e Ambientali or CSEA, is the public company subject to the supervision of the GOI and responsible for managing this program. *See* PDM at page 19.
[36] *See* Metalcam IQR at Exhibit GQ-4.2-EN at the Explanatory Notes to the Consolidated Financial Statements for the Year Ended December 2017, at page 17.
[37] *See* 19 CFR 351.504(b) ("the Secretary normally will consider a benefit as having been received on the date on which the firm received the grant.")
[38] *Id.* at 32.

- Metalcam consistently produces emissions above the yearly ETS standard and due to the program is forced to purchase additional allocations on the secondary market.

Petitioner Rebuttal Brief

- A financial contribution exists where the EU creates an obligation upon certain industries that imposes a cost along with its relief of that obligation. The EU thus forgoes revenue that would otherwise be due to the EU and Member States.
- The benefit conferred is the total cost of acquiring sufficient ETS allowances that the mandatory respondents no longer have to bear as a consequence of being included on a carbon leakage list.
- As certain limited enterprises and industries are included in the list because they are deemed at risk of carbon leakage, listed companies are favored over unlisted companies insofar as they receive free ETS allowances above and beyond other companies subject to the ETS program, making this program *de jure* specific.

Commerce Position: In the *Preliminary Determination*, Commerce found this program to be countervailable.[39] We found that the additional free emissions allowances to companies on the carbon leakage list constituted a financial contribution in the form of revenue forgone that is otherwise due.[40] Further, we found this program was specific under section 771(5A)(D)(i) of the Act and provided a benefit in the value of the additional free allowances each firm would have paid for those allowances had they been required to purchase them from the government.[41]

The respondent parties claim that there is no financial contribution and no benefit under this program. Further, they argue the program is not specific. For the reasons discussed below, we find these arguments to be unpersuasive, and thus, continue to find the ETS program to be countervailable for the final determination.

Regarding financial contribution, the respondent parties argue that free allowances under the ETS system, of any type, cannot be considered as revenue forgone. The respondent parties contend that a government forgoes revenue otherwise due in situations where it gives up its entitlement to collect revenue that is owed. As such, they hold that in the case of the free allowances, regardless of whether the company was on the carbon leakage list or not, the government has not given up its entitlement to collect revenue since there never was such entitlement by the government in the first place. Further, the respondent parties hold that companies on the standard leakage list are not a departure from "standard" allocation levels. Specifically, they hold that installations are obligated to surrender allowances based on the emission produced, and that the ETS allocates free allowances to different operators in different sectors based on the benchmarks of those sectors. As such, they claim that the fact that some operators receive a different level of free allowances than other operators is the basis of the ETS program itself. Commerce disagrees with the respondent parties' characterization of this program.

[39] *See* PDM at 24 – 26.
[40] *Id.*
[41] *Id.*

As detailed in the *Preliminary Determination*, under the ETS program, installations are allocated emissions allowances to cover 44.2 percent of the emissions of the most efficient installations in that sector.[42] However, certain installations, deemed to be at significant risk of carbon leakage, are provided additional free allowances to meet 100 percent of the allowances needed by the benchmark installations during the POI.[43]

On this basis, we find that the ETS program has established a system in which all installations (regardless of whether the installation is on the carbon leakage list) are allocated a certain amount of free standard allowances based on the standards of that industry. In other words, we find that there is a standard amount of allowances that are provided throughout the country on a consistent, equal basis. Therefore, we find that the allowances that cover 44.2 percent of the emissions of the most efficient installations, regardless of whether they are provided to a company on the carbon leakage list, are not countervailable, as there is no revenue forgone that is otherwise due.

The ETS program also provides for additional emissions allowances to specific company installations as a result of those installations being placed on the carbon leakage list. We find that these additional allowances are countervailable. Companies on the carbon leakage list that receive these additional allowances are relieved of the obligation to purchase additional allowances – beyond the standard allocation of free allowances – from the government or other parties. The respondent parties state that an operator only receives what the system has established from the outset that it should receive in order to comply with the obligations set by the system, and, thus, such allowances are not countervailable. However, the regulatory system specifically establishes a distinct set of rules for the companies on the carbon leakage list that is unique from the set of rules for other companies under this program.[44] In other words, the ETS system specifically designates certain companies that do not have to incur the full costs incurred by other companies. In this sense, we find it similar to a tax program in which the taxing authority allows all filers to claim a rebate of – for example – 5 percent, but then allows a certain class of filers on a special list to claim a rebate of 10 percent. In that scenario, as in the ETS program, the government has forgone revenue that would otherwise have been due from the companies on the special list. It is no defense to claim, as the respondents do here, that the system is working as designed. It is not necessary for a government to contravene the relevant laws or system for it to forego revenue within the meaning of section 771(5)(D)(ii) of the Act.

Further, we find it significant that the ETS program, which the EU characterizes as an environmental protection program, provides additional free allowances to pollute to essentially the worst polluters, while installations that are not on the carbon leakage list are not entitled to these additional allowances. By allowing these listed installations to not have to purchase additional emissions from the government, the government has given up its entitlement to collect revenue. Thus, we find that these additional allowances provided to companies on the carbon

[42] *See* EU SQR at 16

[43] *Id*.

[44] *See, e.g.*, EU IQR at 9 ("As explained in Article 10a of the ETS Directive, all industrial installations receive free allowances. Those recognised to be at significant risk of carbon leakage receive upfront an allotment of allowances, based on the benchmark level set at the average of the 10% most efficient installations per product category. Industrial operators not identified at significant risk of carbon leakage also receive upfront allowances, but at a lower level.")

leakage list constitute a financial contribution. As a result, when calculating the benefit for this program, Commerce only included the additional allowances that each company received as a result of being on the carbon leakage list.

We disagree with the respondent parties' argument that the allowances allocated to companies on the carbon leakage list are not a departure from "standard" allocation levels. Under this program, the ETS program has, in fact, established a standard or "norm" for companies by placing a cap on the total free allowances that an installation may receive (*i.e.*, 44.2 percent of the emissions of the most efficient installations in that sector). As a result, by placing specific installations on the carbon leakage list, the ETS has relieved these installations from the obligations that would otherwise be due under this normal standard by providing additional free allowances. As stated above, if these companies would have been required to cover these emissions without *additional* free allowances in addition to the standard free allowances already received, they would have had to purchase allowances either from the government, or from another private party with allowances to sell. By listing such entities on the carbon leakage list, the EU and GOI have recognized that these installations would face additional costs to comply with the ETS program, and as such, have established requirements for these installations that are different and more favorable from other installations subject to the ETS program. Therefore, for purposes of this final determination, we continue to find that the additional allowances provided to installations on the carbon leakage list constitute a financial contribution in form of revenue forgone.

Finally, the respondent parties have argued that the ETS program is not specific, noting that installations on the carbon leakage list account for 97 percent of emissions of the industrial sector in the EU, covering more than 150 sectors and thousands of enterprises. However, while it may be true that the program rewards the biggest polluters by providing them with additional allowances that are not available to other installations and that the biggest polluters may come from different industries, these arguments pertain to a *de facto* specificity analysis as to whether the actual recipients of the subsidy, when considered either on enterprise or industry basis, are limited in number under section 771(5A)(D)(iii)(I) of the Act. However, we find this program is *de jure* specific under section 771(5A)(D)(i) of the Act because eligibility for this subsidy is limited by law to companies on the carbon leakage list.

Comment 4: **Whether Commerce Should Find Energy Interruptability Contracts Countervailable**

Respondent Parties Case Briefs

- The Energy Interruptability Contract Program is a contractual arrangement with mutual consideration and does not provide a financial contribution or benefit. What Commerce characterizes as a subsidy is compensation for the costs and risk of agreeing to have the company's electricity cut. Furthermore, the program includes an initial cost to beneficiaries of the program which companies participating in the program must bear in order to allow interruptions to occur, namely the installation of a remote-control unit system.
- Commerce erroneously found The Energy Interruptability Contract Program to be *de facto* specific because the companies that participated in the program are limited in

number but made no finding regarding whether these companies came from diverse industries. In order to satisfy the *de facto* specificity test described in section 771(5A)(D)(iii)(I) of the Act, Commerce needs to consider the makeup of the limited number of users of the program.
- The purpose of the program is to address a need of the Italian national electricity system. What Commerce characterizes as a benefit is just compensation for additional risk and cost undertaken by companies adhering to the program's requirements.

Petitioner Rebuttal Brief
- The transmission system operator is an "authority" under the statute. Thus, the direct transfer of funds provided to Metalcam is a financial contribution within the meaning of section 771(5)(D)(i) of the Act.
- The direct transfer of funds confers the entire benefit insofar as no party contends that Metalcam paid an amount "in order to qualify for, or to receive, the benefit of" the subsidy as specified by section 771(6) of the Act.
- Finally, the program is specific in fact as required by section 771(5A)(D)(iii)(I) of the Act insofar as only 236 companies, out of all of the companies operating in Italy during the POI, participated in the interruptibility program.

Commerce's Position: In the *Preliminary Determination*, Commerce found the Energy Interruptability Contracts to confer a benefit in the form of a non-recurring grant pursuant to 19 CFR 351.524(c)(2).[45] We preliminarily determined that Terna, the Italian national transmission system operator, acted as an "authority" within the meaning of section 771(5)(B) of the Act in its administration of this program, and that this program provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act because Terna's payments constitute a direct transfer of funds to program participants.[46] As an initial matter, no parties commented on Commerce's preliminary finding that Terna is an "authority" within the meaning of section 771(5)(B) of the Act.

First, the respondent parties argue that the program confers no benefit, and that there is no financial contribution because the program was mischaracterized by Commerce in the *Preliminary Determination*. Further, they maintain the program is a contractual agreement where the inconvenience and potential risk associated with energy interruptability is compensated by Terna.

We continue to find that this program provides a financial contribution because Terna's payments constitute a direct transfer of funds to program participants. Under this program, companies that purchase energy on the Italian energy market will enter into an "energy interruptibility contract" in which they will agree to have their electricity supply interrupted instantaneously when Terna needs to reduce energy consumption in order to rebalance the transmission network. In exchange for agreeing to have their electricity supply interrupted, the companies receive compensation on a monthly basis depending on the number of interruptions. None of the respondent parties have argued that participating companies did not receive payments under this program. In fact, in making its argument, Metalcam acknowledges that

[45] *See* PDM at page 22.
[46] *Id*.

Terna's payments constitute a direct transfer of funds to program participants, including Metalcam.[47]

Further, the respondent parties argue that these contracts are bargained-for contracts between Metalcam and Terna, with a promise and consideration, and, thus, there is no financial contribution or benefit. We disagree. Specifically, the company has entered into an agreement with Terna to have its energy interrupted periodically, and based on the terms of the contract, the company received direct payments from an "authority" within the meaning of section 771(5)(B) of the Act. Had the terms of the contract not been financially beneficial to the company, it would have not entered into this agreement. We do not consider that a contractual arrangement precludes a finding that a company received a financial contribution or benefit. If Congress had intended a contractual arrangement to preclude a finding of a financial contribution or benefit, then it would not have included such things as loans or purchases of goods as financial contributions that may confer benefits, because loans and goods purchases often are provided pursuant to contract.[48] There is no evidence on the record that electricity consumers outside of this arrangement with Terna are entitled to payments, when their electricity supply is interrupted.

Thus, due to the undisputed facts that Terna is an authority that made a direct transfer of funds to Metalcam pursuant to the program, Commerce continues to find that Metalcam was provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act under the Energy Interruptability Contracts program.

Further, Metalcam argues that it incurs significant expenses relating to the installation and maintenance of the equipment and infrastructure necessary in order to participate in the program, referred to as the UPDC system. As such, Metalcam argues that Commerce cannot consider a benefit to be provided under this program.[49] We disagree. While Metalcam has provided expenses that it has incurred for machinery and equipment on the record of this investigation, it is not evident that any of expenses were directly tied to participating and/or receiving benefits under this program. Further, regarding its initial UPDC purchase, the record indicates that this law was passed in July 2009.[50] However, Metalcam's questionnaire responses shows that Metalcam had purchased and installed its UPDC system prior to this date.[51] As such, the record shows that Metalcam acquired its UPDC equipment before the law establishing the program was passed and, thus, the record indicates that Metalcam did not have to purchase additional equipment to participate in this program. Metalcam's questionnaire responses indicate that maintenance costs for this equipment do not exceed the benefits under this program.[52]

Next, the respondent parties argue that the Energy Interruptability Contracts program is not specific. In the *Preliminary Determination*, Commerce found the Energy Interruptability

[47] *See* Metalcam's Case Brief at 9 (citing PDM at 21).
[48] *See* section 771(5)(D)-(E) of the Act.
[49] While LMA has argued that we should not find this program countervailable in its case brief, it has not made any arguments that the incurred expenses result in this program not providing a benefit.
[50] *See, e.g.*, GOI IQR at Exhibit B-1 EN.
[51] *See* Metalcam IQR at Exhibits B-7-EN ("Invoice installation UPDC 2008") and B-8-EN ("Invoice installation UPDC 2009").
[52] *Id.* at 29 and Exhibit B-10-EN.

Contracts to be *de facto* specific in accordance with section 771(5A)(D)(iii)(I) of the Act.[53] Specifically, we found eligibility under this program to be limited to 236 companies in 2018, and 299 companies between 2015 and 2017.[54] For purposes of this final determination, we continue to find the program to be *de facto* specific, and thus, countervailable.

Metalcam argues that Commerce erred in its determination that the Energy Interruptability Contracts program is specific under section 771(5A)(D)(iii)(I) of the Act because Commerce did not consider the makeup of users, alleging that even if the number of enterprises is limited, the program is not specific if the enterprises represent a diverse group of industries.[55] Metalcam, however, misinterprets the statute, which does not impose a requirement that a subsidy must be specific on *both* enterprise and industry basis. To the contrary, section 771(5A)(D)(iii)(I) of the Act provides in relevant part that the subsidy is *de facto* specific if, among other things: "The actual recipients of the subsidy, whether considered on an enterprise *or* industry basis, are limited in number." (emphasis added). The use of the term "or" indicates that Commerce may find that a subsidy is specific to either an enterprise *or* an industry. Therefore, under section 771(5A)(D)(iii)(I) of the Act, Commerce can base a finding of de facto specificity on the fact that the enterprises receiving the subsidy are limited in number.

Metalcam further argues that the *Preamble*[56] indicates that Commerce must consider the makeup of the enterprises receiving the subsidy, and the industries to which they belong, before making an affirmative finding under section 771(5A)(D)(iii)(I) of the Act. However, Metalcam mischaracterizes the *Preamble*. In fact, the *Preamble* says the opposite: "There is no basis for adding the further requirement that subsidies that are not widely distributed are also confined to a group of enterprises or industries that share similar characteristics."[57] This basic principle is also reflected in 19 CFR 351.502(b), which the *Preamble* characterizes as follows: "Accordingly, 351.502(b) provides that {Commerce} is not required to determine whether there are shared characteristics among enterprises or industries that are eligible for, or actually receive, a subsidy in determining whether that subsidy is specific."[58] For these reasons, Metalcam is incorrect that the *Preamble* contemplates a consideration of the makeup of the enterprises that are "limited in number" under section 771(5A)(D)(iii)(I) of the Act. The recipients of a subsidy, on an enterprise basis, can be "limited in number" within the meaning of the Act even when they come from a diverse set of industries and even when they share no common characteristics.

Similarly, Metalcam's citation to the Court of International Trade (CIT) decision in *Changzhou Trina Solar Energy Co., Ltd. v. United States* is misplaced.[59] In *Changzhou Trina*, Commerce had made an affirmative finding under section 771(5A)(D)(iii)(I) of the Act that the industries receiving the subsidy were limited in number, but the CIT found that Commerce failed to consider the scope of the named industries – which were very broad in nature – against the

[53] *See* PDM at page 22.
[54] *Id*. at 22.
[55] *See* Metalcam's Case Brief at 11.
[56] *See Countervailing Duties; Final Rule*, 63 FR 65348, 65357 (November 25, 1998 (*Preamble*).
[57] *Id.*
[58] *Id.*
[59] *See* Metalcam's Case Brief at 12-13 (citing *Changzhou Trina Solar Energy Co. Ltd. v. United States*, 352 F. Supp. 2d 1316, 1330-31 (CIT 2018).

economy as a whole.[60] In the present case, we are making our finding on an enterprise basis, and there is no risk that the couple hundred enterprises at issue here account for a large portion of the total enterprises in Italy.

Comment 5: **Whether Commerce Correctly Applied Adverse Facts Available to Forge Monchieri When It Failed to Respond to Commerce's Quantity and Value Questionnaire**

Forge Monchieri S.p.A.'s Brief

- Commerce should not apply AFA to Forge Monchieri because Forge Monchieri has shown that it did not receive a CVD Q&V questionnaire based on the evidence that the package it received did not weigh the same amount as other companies. If Forge Monchieri had received the Q&V questionnaire, it would have participated in the investigation.

Petitioner's Rebuttal Comments

- Commerce's application of AFA to Forge Monchieri is reasonable and consistent with past practice. Forge Monchieri's argument that it would have participated in the investigation had it received the Q&V questionnaire does not invalidate Commerce's reasonable application of AFA. Commerce has the authority to apply AFA to companies that do not submit timely information pursuant to 19 CFR 351.301(a) and there is no contention that Forge Monchieri did not submit a timely response.
- Further, the evidence Forge Monchieri uses to show that it did not receive a CVD Q&V questionnaire does not prove that Forge Monchieri did not receive the questionnaire where Commerce's own tracking system shows that Forge Monchieri received the questionnaire. The tracking system also shows that Forge Monchieri received the same package as the other six parties receiving Q&V questionnaires.
- Even assuming that Forge Monchieri did not receive a CVD Q&V questionnaire, the failure to serve the company is harmless where the company had actual or constructive knowledge of the relevant information by the publication of the *Federal Register* notice, along with receipt of the quantity and value questionnaire.

Commerce Position: In the *Preliminary Determination*, Commerce applied total AFA to Forge Monchieri because the company failed to respond to the Q&V questionnaire by the applicable deadline.[61] We continue to find that the facts of this case, as described below, sufficiently warrant the application of an adverse inference in selecting from the facts available.

Forge Monchieri states that it has demonstrated that if it had received the CVD Q&V questionnaire, the company would have participated in the investigation. Forge Monchieri's speculative argument does not invalidate Commerce's reasonable application of AFA for failure to timely file a Q&V questionnaire in this investigation.

First, there no dispute that Forge Monchieri did not timely file a Q&V questionnaire response. Instead, Forge Monchieri's argument rests on its unsupported assertion that Commerce failed to

[60] *See Changzhou Trina*, 352 F. Supp. 2d at 1330-31.
[61] *See* PDM at 8.

include the same documents in all of the packages when sending them to respondents.[62] To substantiate its assertion, Forge Monchieri primarily relies on the weight of its package, arguing that because the recorded weight was 0.5 pounds it did not include both the CVD Q&V and the AD Q&V questionnaire. However, as Commerce explained, the record evidence refutes this assertion:

> We have examined the records regarding the weights of packages mailed to various respondents and find your argument unpersuasive. Six other companies were mailed packages with both AD and CVD Q&V questionnaires all of which weighed 0.5 lbs., the same weight as the package that Monchieri received. All six of these companies were able to successfully submit their responses on this CVD record as well as on the record of the parallel AD investigation.[63]

There is no further information on the record which refutes the tracking information from the mail carrier. We do not find Forge Monchieri's assertion that its package only contained the AD Q&V questionnaire persuasive, where the record evidence demonstrates that it had an identical weight to six other packages, which included both the AD and CVD Q&V questionnaires. Moreover, Forge Monchieri received notice of the AD and CVD investigations through publication of the *Federal Register* initiation notices.[64] Accordingly, even if for the sake of argument we were to accept Forge Monchieri's unsubstantiated assertion that it only received the AD Q&V questionnaire (which we do not), Forge Monchieri should have contacted Commerce to inquire as to why it only received an AD Q&V questionnaire from the companion AD investigation.

Accordingly, Commerce continues to determine that an adverse inference is warranted, pursuant to section 776(b) of the Act, because, by not timely responding to the Q&V questionnaire, Forge Monchieri failed to cooperate to the best of its ability to comply with the request for information in this investigation.

Comment 6: **Whether Commerce Should Consider the Government of Italy's Grants for Continuous Training Countervailable**

Respondent Parties Case Briefs

- Commerce should not countervail grants for continuous training under Law 388/2000 as the program is not specific. The program is open to any company registered in one of the 19 interprofessional funds in Italy, which is open to all companies, regardless of sector, industry or size. The finite amount of interprofessional funds is irrelevant to the fact that any company may register for the interprofessional fund and reap the benefits of the program.

[62] *See* Forge Monchieri Case Brief at 2.
[63] *See* Commerce's Letter "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from Italy: Rejection of the Forge Monchieri S.p.A.'s Quantity and Value Questionnaire Request," dated August 5, 2020 at 1.
[64] *See Forged Steel Fluid End Blocks From the Federal Republic of Germany, India, Italy and the People's Republic of China: Initiation of Countervailing Duty Investigations*, 85 FR 2385 (January 15, 2020); *see also Forged Steel Fluid End Blocks From the Federal Republic of Germany, India, and Italy: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 2394 (January 15, 2020).

Petitioner Rebuttal Brief

- Metalcam contends that the interprofessional fund that Metalcam uses is not specific in fact because there are a large number of companies registered with the fund. However, Metalcam notes in a footnote that Commerce lacks complete information concerning the total number of companies and total amounts of assistance provided under this program. As such, the limited number of funds indicates that the program is limited in fact. Accordingly, Commerce should not revise its preliminary findings.

Commerce Position: In the *Preliminary Determination*, Commerce found the Grants for Continuous Training to be *de facto* specific in accordance with section 771(5A)(D)(iii)(I) of the Act.[65] Specifically, we found receipt of funds under this program to be limited to companies participating in one of the 19 active interprofessional funds, and therefore, not broadly available throughout Italy and specific to a limited number of enterprises.[66]

The respondent parties argue that the program is not *de facto* specific. In particular, the GOI states that benefits under this program are available to all companies, regardless of their sector, industry, size, or location, and is, thus, not limited to any enterprise. Metalcam adds that registration with Fondimpresa, the interprofessional fund through which Metalcam gains the program benefit, is open to all companies regardless of the above-mentioned factors.

For purposes of this final determination, we find this program to be *de jure* specific under section 771(5A)(D)(i) of the Act. The respondent parties have argued that admission into these funds is generally open to all enterprises who wish to join. While these funds may be open to all parties, the fact is that, by law, in order to receive benefits under this program, companies are required to join these interprofessional funds. This fits squarely within section 771(5A)(D)(i) of the Act, which states that a subsidy is specific as a matter of law when the "authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry."[67] By expressly limiting access to this subsidy to enterprises that join the interprofessional funds, the GOI limited access within the meaning of section 771(5A)(D)(i) of the Act, and the subsidy is *de jure* specific.

Comment 7: **Whether Commerce Should Continue to Apply Adverse Facts Available Due the GOI's Failure to Provide Information Necessary to Assess the *De facto* Specificity of Various Subsidy Programs**

Respondent Parties Case Briefs

- The application of adverse facts available is not warranted for GSE Reimbursements for Contributions to Solar Energy, Super Ammortamento, Patent Box Deductions, Sgravi benefits, Tax Credits Under Law 388/2000 for Excise Duties, and Tax Credits Under Decree of the President of the Republic 917/1986 – ART. 95, C. 4 programs, as the GOI provided questionnaire responses for these programs to the best of its ability.
- Commerce's reasons are insufficient for it to reach an AFA finding against GOI. The

[65] *See* PDM at 27.
[66] *Id*.
[67] The term "enterprise or industry" includes a group of enterprises or industries. *See* section 771(5A)(D) of the Act.

GOI provided Commerce with an explanation that it was unable to recover and verify the existence of information concerning *de facto* specificity due to logistical constraints caused by the COVID pandemic. Commerce should follow precedent in which Commerce decided not to apply AFA in similar circumstances.
- It was improper for Commerce to note that the GOI should have asked for an extension to Commerce's questionnaires as the GOI asked for an extension to the Second Supplemental Questionnaire and was granted a partial extension, not the full extension that the GOI requested.

Petitioner Rebuttal Brief
- The record supports the use of facts otherwise available in assessing *de facto* specificity of various subsidy programs because requested information is missing from the record, as the GOI concedes. Commerce reasonably applied facts otherwise available pursuant to section 776(a) of the Act.
- The application of AFA is reasonable in that it is applied strictly to *de facto* specificity and is based on the GOI's failure to provide or maintain records relating to various programs, and failure to show that the GOI engaged in maximum efforts to investigate and obtain the requested information.

Commerce Position: In the Post-Preliminary Analysis, we found that the GOI failed to cooperate by not acting to the best of its ability to comply with a request for information, and thus relied on AFA, to find the following programs to be *de facto* specific:

- GSE Reimbursements for Contributions to Solar Energy
- Reimbursement of Excise Duties
- Article 1, paras 91 to 94 and para. 97, Law 28/12/2015, n. 208 – Super ammortamento
- Patent Box Deductions
- Sgravi Benefits
    - *Law 190/2014*
    - *Law 208/2015*
    - *Article 1, Paragraphs 100-108 and 113-114 of Law 205/2017*
- Tax Credits under Law 388/2000 for Excise Duties
- Tax Credits under Decree of the President of the Republic 917/1986—ART. 95, C. 4[68]

During the course of this investigation, Commerce requested information from the GOI regarding specificity for all initiated and self-reported programs, including questions pertaining to actual use of assistance provided under these programs.[69] Such information, which is routinely requested in CVD cases, is necessary to determine whether a program is *de facto* specific. For the programs listed above, Lucchini and/or Metalcam reported receiving measurable benefits under these programs during the POI and/or AUL.[70] As such, full responses regarding these programs were necessary to complete an analysis for purposes of determining whether these programs are *de facto* specific.

[68] *See* Post-Preliminary Analysis at pages 5 to 7.
[69] *See, e.g.*, Initial Questionnaire at Section II, Standard Questions Appendix at 9 and 10.
[70] *See* Metalcam IQR at 64 – 68; *see also* Lucchini IQR at 7 –14.

In our initial questionnaire, we requested the GOI to provide full responses for all programs that were initiated upon,[71] as well as any other programs provided to producers of subject merchandise.[72] In its March 30 initial questionnaire response, the GOI provided limited information on these "other" programs that the mandatory respondents received benefits under during the POI and/or AUL.[73] Specifically, the GOI provided a brief description of these programs, stating that the programs were generally available, and therefore, not specific.[74] On this basis, the GOI did not provide full responses, including all *de facto* specificity information, to the questions asked in the initial questionnaire.[75] However, section 771(5A) of the Act provides that a subsidy may be specific in law or in fact and lists criteria, which Commerce must examine to determine whether the subsidy is *de facto* specific. Accordingly, in the April 9, 2020 supplemental questionnaire, Commerce asked the GOI to provide full responses for these programs, including the information that is necessary for making a determination of whether the programs at issue are *de facto* specific.[76] For example, section 771(5A)(D)(iii)(II) and (III) of the Act provides that a subsidy is specific if an enterprise or industry is a predominant user of the subsidy or if an enterprise or industry receives a disproportionately large amount of the subsidy, which makes it necessary to request information regarding the amounts of subsidies received by companies and industries other than respondents. In its May 14, 2020 supplemental questionnaire, the GOI again failed to provide full responses for these programs; in particular, it failed to provide any responses regarding *de facto* specificity.[77] For example, for the GSE Reimbursements for Contributions to Solar Energy program, in response to questions regarding assistance provided to all companies, the number of companies who received assistance, the amount received in each industry in the program, and companies denied assistance, the GOI stated "{t}he GOI is currently not in possession of this information."[78]

Given the lack of information on these programs, at the time of the *Preliminary Determination*, Commerce listed these programs as "Programs for Which Additional Information is Necessary."[79] Following the *Preliminary Determination*, we issued a second supplemental

[71] *See* Initial Questionnaire at Section II, Standard Questions Appendix at pages at 2 – 6.
[72] *Id*. at 6 ("Does the GOI or entities owned directly, in whole or in part, by the GOI (or any provincial or local government) provide, directly or indirectly, any other forms of assistance to producers or exporters of fluid end blocks? If so, describe such assistance in detail, including the amounts, date of receipt, purpose and terms, and answer all questions in the Standard Questions Appendix, as well as other appropriate appendices attached to this questionnaire.")
[73] *See* GOI IQR at pages 15 to 17.
[74] *Id.* ("The Government of Italy understands that the mandatory respondent Metalcam SpA reported in its response to the CVD questionnaire additional programs which are not listed in the questionnaire. The Government of Italy wishes to highlight in that regard that those additional programs are generally available to all the companies, regardless of their location, sector of activity or size. As such, those programs cannot be considered as specific for the purpose of the present investigation. Nevertheless, in a spirit of full cooperation, the Government of Italy will provide below a general description of those programs.")
[75] *Id.*
[76] *See* Commerce's April 9, 2020 GOI Supplemental Questionnaire ("Both respondents reported participating in several programs, listed below, for which GOI did not provide full responses. For these programs, please submit full responses, including responses to the appropriate appendices, in accordance with the requirements set out in Commerce's initial questionnaire dated February 6, 2020.")
[77] *See* GOI SQR.
[78] *Id*. at 20.
[79] *See* PDM at 28.

questionnaire to the GOI asking it to provide the *de facto* specificity information for these programs.[80] However, the GOI again responded that it was not in possession of this information.[81] Thus, despite providing the GOI multiple opportunities to answer questions regarding specificity for these programs, which Commerce routinely asks for in countervailing duty investigations, as a result of the GOI's failure to provide such information, Commerce did not have the necessary information to perform a *de facto* specificity analysis as required by section 771(5A)(D)(iii) of the Act.

As a result, in our Post-Preliminary Analysis, we found that the GOI withheld information that was requested of it, and significantly impeded this proceeding.[82] We also found that the GOI failed to cooperate to the best of its ability in responding to Commerce's requests for information.[83] Accordingly, we relied on AFA pursuant to sections 776(a)(1), (a)(2)(A) and (a)(2)(C) of the Act, as well as section 776(b) of the Act, to preliminarily find these programs to be *de facto* specific pursuant to section 771(5A)(D)(iii) of the Act.[84]

The respondent parties and the GOI argued that Commerce should not apply AFA in this final determination when evaluating the specificity of these programs. Specifically, they argue that: (1) Commerce requested extensive information that GOI does not compile and maintain in its normal records; (2) the only way the information could be obtained is by requesting and obtaining it from hundreds of thousands of Italian companies that potentially could benefit from the programs in question; and (3) it was impossible accomplish such undertaking due to the COVID shutdown and restrictions that were in place in Italy at that time. However, we find these arguments to be unpersuasive and will continue to find these programs to be *de facto* specific, based on AFA, for this final determination.

As noted above, these specificity questions are asked in virtually all CVD cases. This information is crucial for Commerce to determine whether a program is countervailable under section 771(5A)(D)(iii) of the Act. As discussed in the SAA, the purposes of the specificity test 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."[85] Commerce routinely requests information from the foreign governments, which subsidize companies and industries, regarding the programs they administer, including eligibility criteria, information on which industries, sectors or companies benefitted from the program or the subsidy amounts paid out to each recipient. To the extent that the GOI claims that it administers certain subsidy programs, which pay millions of euros in subsidies to hundreds of thousands of companies but does not maintain a record of the usage and amounts paid to each recipient, we find that the GOI's argument to be unpersuasive. Furthermore, the GOI does not explain what, if any, efforts it undertook to obtain this information from other recipients of these subsidies or provide an

[80] *See* Commerce's June 9, 2020 GOI Supplemental Questionnaire ("Please provide the program usage information for all of the following programs as requested in the Standard Questions Appendix at question L(2), sub sections (a) through (e), for the year in which the mandatory respondent company was approved for assistance, as well as for each of the three previous years.")
[81] *See* June 24 supp questionnaire at 4 – 8.
[82] *See* Post-Preliminary Analysis at pages 5 – 7.
[83] *Id*. at 7.
[84] *Id*.
[85] *See* Statement of Administrative Action at 929.

alternative method of collecting the information. The Court of Appeals for the Federal Circuit has held that "the {best of ability} standard does not condone . . . inadequate record keeping."[86] The standard assumes that a party that responds to Commerce's questionnaires is familiar with Commerce's rules and regulations and requires parties that respond to Commerce's questionnaires to: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable responding party should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all such relevant records to the full extent of its ability to do so.[87] Because Commerce routinely requests *de facto* specificity information in countervailing duty cases, the GOI's failure to maintain records, which reflect the amount of subsidy the GOI paid to each recipient, constitutes inadequate record keeping, which demonstrates a failure to cooperate to the best of its ability for purposes of the Act. Thus, we find that the GOI's argument that it could not provide any *de facto* specificity information for/ these programs under investigation (beyond the information pertaining to the mandatory respondents) to be unpersuasive. The GOI's failure to provide any meaningful *de facto* specificity information for any of these programs is contrasted by the EU's ability to provide *de facto* specificity information for the ETS program which involved usage throughout a number of countries, including Italy[88]

Further, as noted in the Post-Preliminary Analysis, the GOI provided vague and insufficient reasons for why it is unable to provide this information.[89]

In particular, upon receiving our April 9 supplemental questionnaire requesting full responses regarding these programs, the GOI requested an extension request.[90] In its request, the GOI noted the complexity of the questionnaire and the coronavirus pandemic as reasons that it needed additional time to respond.[91] After receiving this extension, the GOI then subsequently requested another extension, on April 30, to respond to this supplemental questionnaire.[92] In this second request, the GOI again noted these same issues as the basis for needing additional time to respond to the supplemental questionnaire.[93] As a result of these extension requests, the GOI's deadline to respond to this supplemental questionnaire response was ultimately extended to May 14, 2020, 35 days after the supplemental questionnaire was issued. Despite this significant time period to provide the requested information, the GOI did not provide any substantive information regarding *de facto* specificity for these programs, aside from the amounts paid to the two mandatory respondents. Moreover, the GOI did not explain what, if any, efforts it undertook to obtain this information from other recipients of these subsidies. Additionally, during this

[86] *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).
[87] *Id.*
[88] *See, e.g.*, EU IQR at Annex I at 12 – 14.
[89] *See* Post-Preliminary Analysis at 7.
[90] *See* GOI's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from Italy: Extension Request for Supplemental Questionnaire Response," dated April 10, 2020.
[91] *Id*. ("The reason for this request is due to both the complexity of the questionnaire and the extended lockdown of Italy because of the coronavirus epidemic, which makes it very difficult to collect and organize the required information from the Public Administrations and companies involved in the investigation. The available time for the response is moreover made shorter due to the Easter Holiday.")
[92] *See* GOI's Letter, "Countervailing Duty Investigation Questionnaire - Forged Steel Fluid End Blocks from Italy: Request for an additional extension of time to respond to Supplemental Questionnaire," dated April 30, 2020.
[93] *Id*.

time, the GOI did not provide any indication that it would ultimately be unable to provide this information.

Further, following the *Preliminary Determination*, despite the GOI's lack of cooperation, we provided the GOI with another opportunity to provide information for these programs, when we issued another supplemental questionnaire on June 9, 2020.[94] Additionally, in this supplemental questionnaire, we asked that, in the event that the GOI should be unable to provide certain information in its entirety, the GOI should please explain why it was unable to provide this information.[95] In its response, the GOI stated it was unable to provide this information, but did not provide any support or explanation.[96] In fact, it was not until an August 10, 2020, letter to Commerce that the GOI provided any substantive discussion regarding the difficulties in providing this *de facto* specify information.[97] However, even in that submission, the GOI did not explain what, if any, efforts it undertook to obtain the necessary information regarding the required information for a *de facto* specificity analysis.

Thus, to summarize, Commerce issued our initial questionnaire to the GOI on February 6, 2020. In this questionnaire, among other things, we requested the GOI to provide information regarding *de facto* specificity pertaining to self-reported programs. It was not until the GOI's August 10, 2020 letter, 186 days after the initial questionnaire was issued, that Commerce was informed as to why the GOI was unable to provide the *de facto* specificity information for these programs, which contained no explanation regarding the efforts, if any, that the GOI undertook to obtain the requested information. Commerce recognizes difficulties presented by the COVID-19 pandemic and, thus, provided GOI with 186 days after the initial questionnaire was issued to provide the necessary information regarding *de facto* specificity. However, even though Commerce provided it with multiple generous extensions of time, the GOI has failed to provide an adequate response with respect to *de facto* specificity information, whereas in the same investigation the EU provided full and complete *de facto* specificity information with respect to ETS program, which involved usage in multiple countries, *including Italy*. Therefore, we find that the GOI has failed to act to the best of its ability to respond to Commerce's request for *de facto* specificity information for these self-reported programs, and, in-turn, significantly impeded this proceeding.

Finally, more generally, we find the fact that GOI has failed to provide any *de facto* specificity information for these programs to be concerning. A review of Lucchini and Metalcam's responses for these programs shows that the GOI has paid millions of Euros in subsidies under these programs to these two companies.[98] Given the GOI's lack of cooperation in providing the necessary information for determining whether these programs are *de facto* specific, it is impossible for Commerce to complete a *de facto* specificity analysis based on the reported data

[94] *See* Commerce's June 9, 2020 GOI Supplemental Questionnaire.
[95] *Id*. ("If the government of Italy is unable to provide this information in its entirety, please explain why.")
[96] *See* GOI SQR2 ("information relating to the total amount of assistance approved for all companies, the number of companies receiving, and which were denied assistance under the program, the amount approved for the industry in which the mandatory respondents operate is not available").
[97] *See* GOI's Letter, "Countervailing Duty Investigation of Forged Steel Fluid End Blocks from Italy: comments from the GOI on its Rebuttal to Petitioners' Comments on July 15th" dated August 10, 2020 (GOI August 10 Letter).
[98] *See, e.g.*, LMA IQR; *see also* Metalcam IQR. The exact figures that the respondents received are proprietary.

to determine whether these programs are *de facto* specific. The GOI only reported information regarding the amounts of these subsidies received by the two respondents. However, the GOI has indicated that it is not in possession of such information for any other recipient of these subsidies, and in order to provide the information requested, it would need to request information from thousands of companies throughout the country.[99] Based on the GOI's arguments and responses, it appears that the GOI likely provided hundreds of millions in Euros in subsidies under these programs to companies throughout Italy without maintaining any record of how much it paid to (or subsidized) each company. Distributing significant amounts of money in this manner (*i.e.*, without maintaining a record of how much and to whom the money was paid) is not a good excuse for failing to provide the necessary information regarding *de facto* specificity that Commerce routinely requests in countervailing duty investigations.

For these reasons, we find that these programs to be *de facto* specific under section 771(5A)(D)(iii)(I)-(IV) of the Act, based on AFA, for purposes of this final determination.

VIII. RECOMMENDATION

We recommend that you approve the findings described above. If these 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

12/7/2020

X

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[99] *See* GOI August 10 Letter ("it was simply impossible for the GOI to contact tens or hundreds of thousands of companies and request them to provide the requested information.").

Appendix

Program Name	Rate	Basis
Industrial Exemptions for General Electricity Network Costs	2.52%	Identical Program this Investigation
Energy Interruptibility Contracts	0.40%	Identical Program this Investigation
Electricity Purchases Through the Interconnector Program	1.01%	Identical Program this Investigation
Free Allocation of European Union Emissions Trading System Allowances	0.16%	Identical Program this Investigation
Industrial Technological Innovation Grants Under Law 46/1982	3.34%	Similar Program
Industrial Technological Innovation Loans Under Law 46/1982	0.65%	Similar Program
Industrial Development Grants Under Law 488/1992	3.34%	Identical Program Other Proceeding
Patti Territoriali Grants Under Law 662/1996	0.57%	Identical Program Other Proceeding
Contratti di Programma Grants Under Law 662/1996	0.40%	Identical Program Other Proceeding
Industrial Revitalization Grants Under Law 181/1989	3.34%	Similar Program
Industrial Revitalization Loans Under Law 181/1989	0.65%	Similar Program
Preferential Financing Under Law 266/1997	0.65%	Similar Program
Income Tax Deferrals Under Article 42 of Law 78/2010	24.00 %	Italian Income Tax Rate During POI
IRAP Tax Credits Under Article 1 of Law 296/2006	0.75%	Identical Program Other Proceeding
Tax Credits Under Article 62 of Law 289/2002	1.04%	Identical Program Other Proceeding
Export Credit Subsidies	0.65%	Similar Program
Grants for Continuous Training Under Article 118 of Law 388/2000	0.01%	Identical Program this Investigation
GSE Reimbursements for Contributions to Solar Energy	0.53%	Identical Program this Investigation
Reimbursement of Excise Duties	0.02%	Identical Program this Investigation
Article 1, paras 91 to 94 and para. 97, Law 28/12/2015, n. 208 – Super ammortamento	0.09%	Identical Program this Investigation
Patent Box Deductions	0.15%	Identical Program this Investigation
Sgravi - Law 190/2014	0.25%	Identical Program this Investigation
Sgravi - Law 208/2015	0.05%	Identical Program this Investigation

Sgravi - Law 205/2017	0.01%	Identical Program this Investigation
Sgravi - Decree 394 of 2/12/2016	0.01%	Identical Program this Investigation
Tax Credits under Decree of the President of the Republic 917/1986—ART. 95, C. 4	0.08%	Identical Program this Investigation
Tax Credits under Law 388/2000 for excise duties	0.17%	Identical Program this Investigation
Reimbursements of Motorway Tolls under Law Decree 451/1998	0.02%	Identical Program this Investigation
Total AFA Rate	**44.86 %**	