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Investigation
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AC/CVD Office I: Team

July 20, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Determination in
the Countervailing Duty Investigation of Certain Cold-Rolled Steel
Flat Products from Brazil

I. SUMMARY

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

Issues

- Comment 1: Whether to Apply AFA to both the GOB and Respondents for the Reduction of IPI for Machines and Equipment Program
- Comment 2: Whether the Reduction of IPI for Machines and Equipment Program is Countervailable
- Comment 3: Whether to Apply AFA for the Ex-Tarifário program
- Comment 4: Whether Ex-Tarifário is *De Facto* Specific
- Comment 5: Whether Ex-Tarifário Provides a Financial Contribution
- Comment 6: Whether the FINAME Loan Program is Specific
- Comment 7: Whether to Apply AFA to Determine the Benefit of the FINAME Program
- Comment 8: Whether to Re-Calculate the FINAME Program for Usiminas
- Comment 9: Whether to Use a Company-Specific Interest Rate Benchmark for the FINAME Loan Program
- Comment 10: Whether the Integrated Drawback Scheme is Countervailable
- Comment 11: Whether Usiminas Received a Benefit from the Integrated Drawback Scheme
- Comment 12: Whether Reintegra is Countervailable



- Comment 13: Whether to Recalculate the Reintegra Subsidy Rate
- Comment 14: Whether CSN Applied For/Used the Reintegra Program During the POI
- Comment 15: Whether the Exemption of Payroll Tax is Countervailable
- Comment 16: Whether Subsidies Provided to UMSA should be Attributed to Usiminas
- Comment 17: Whether the Economic Subvention to National Innovation Program is not Countervailable
- Comment 18: Whether FINEP's Economic Subvention Program has not Conferred a Measurable Benefit
- Comment 19: Whether the Bahia State Industrial Development and Economic Integration Program (Desenvolve) is *De Jure* specific
- Comment 20: Whether the GOB's References to Websites Constitute a Full Response

II. BACKGROUND

A. Case History

The selected mandatory respondents in this investigation are Companhia Siderurgica Nacional (CSN) and Usinas Siderurgicas de Minas Gerais SA (Usiminas). On December 22, 2015, the Department published its *Preliminary Determination*. In the *Preliminary Determination*, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), we aligned the final countervailing duty determination with the final antidumping duty (AD) determination.¹

Since the *Preliminary Determination*, we requested additional information from the Government of Brazil (GOB), CSN, and Usiminas.² The GOB, Usiminas, and CSN timely responded to our requests.³

Between March 14, 2016, and April 1, 2016, we conducted verification of the GOB's, CSN's, and Usiminas' questionnaire responses; we released the verification reports on May 9, 2016.⁴

¹ See *Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 80 FR 79569 (December 22, 2015) (*Preliminary Determination*) and accompanying Preliminary Decision Memorandum (PDM).

² See letters from the Department, "Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Supplemental Questionnaire," dated December 22, 2015; "Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Supplemental Questionnaire for the Government of Brazil," and "Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Supplemental Questionnaire," dated December 23, 2015; and, "Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Supplemental Questionnaire for the Government of Brazil," dated February 1, 2016.

³ See letters from Usiminas, "Cold-Rolled Steel Flat Products from Brazil, Response to Third Supplemental Questionnaire," dated January 12, 2016 (Usiminas SQR January 12, 2016); from CSN, "Cold-Rolled Steel Flat Products From Brazil: Refiling of CSN's Response to the Department's Second Supplemental Questionnaire in Accordance with the Department's February 1 Letter," dated February 3, 2016 (CSN SQR February 3, 2016); and, from the GOB "Cold-Rolled Steel Flat Products from Brazil; Response to the DoC's second supplemental questionnaire for the GOB," dated January 15, 2016 (GOB SQR January 15, 2016) and "Cold-Rolled Steel Flat Products from Brazil; Response to the DoC's third supplemental questionnaire for the Government of Brazil,," dated February 11, 2016 (GOB SQR February 11, 2016).

⁴ See Department Memoranda, "Verification of Questionnaire Responses of the Government of Brazil" (GOB Verification Report); "Verification of the Questionnaire Responses Submitted by Companhia Siderurgica Nacional"

Interested parties timely submitted case briefs concerning case-specific issues on May 18, 2016.⁵ The parties timely submitted rebuttal briefs on June 1, 2016.⁶ At the request of CSN and Usiminas, the Department held a public hearing concerning these case-specific issues on June 10, 2016.⁷

For a summary of the product coverage comments and rebuttal responses submitted to the record of all final determinations, and accompanying discussion and analysis of all comments timely received, *see* the Final Scope Decision Memorandum, which is incorporated by and hereby adopted by this final determination.⁸

B. Period of Investigation

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

III. SCOPE OF THE INVESTIGATION

The product covered by this investigation is cold-rolled steel from Brazil. For a complete description of the scope of this investigation, *see* the “Scope of the Investigation,” in Appendix I of *Federal Register* notice.

IV. USE OF ADVERSE FACTS AVAILABLE

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

(CSN Verification Report); and, “Verification of Questionnaire Responses of Usinas Siderurgicas de Minas Gerais SA” (Usiminas Verification Report), dated May 5, 2016.

⁵ *See* letters dated May 18, 2016, from Nucor, “Certain Cold-Rolled Steel Flat Products from Brazil: Case Brief of Nucor Corporation” (Petitioner’s Case Brief), CSN, “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: CSN’s Case Brief (CSN Case Brief), and Usiminas, “Cold-Rolled Steel Flat Products from Brazil: Case Brief” (Usiminas Case Brief). *See, also*, letter from the GOB, “Cold-Rolled Steel Flat Products and Hot-Rolled Steel Flat Products from Brazil: Case briefs - Resubmission,” dated May 26, 2016.

⁶ *See* letters, dated June 1, 2016, from Nucor, “Certain Cold-Rolled Steel Flat Products from Brazil: Rebuttal Case Brief of Nucor Corporation” (Petitioner’s Rebuttal Brief); from the GOB, “Cold-Rolled Steel Flat Products and Hot-Rolled Steel Flat Products from Brazil: Rebuttal briefs” (GOB Rebuttal Brief); from CSN, “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: CSN’s Rebuttal Brief (CSN Rebuttal Brief); and, from Usiminas, “Cold-Rolled Steel Flat Products from Brazil: Rebuttal Brief” (Usiminas Rebuttal Brief).

⁷ *See* letters, dated January 20, 2016, from CSN, “Cold-Rolled Steel Flat Products from Brazil: Request for Hearing,” and Usiminas, “Cold-Rolled Steel Flat Products from Brazil: Request for Hearing.” *See also*, Department Memorandum, “Countervailing Duty Investigations of Certain Cold-Rolled Steel Flat Products & Certain Hot-Rolled Steel Flat Products from Brazil: Public Hearing,” dated June 3, 2016.

⁸ *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, “Scope Comments Decision Memorandum for the Final Determinations” dated concurrently with this memorandum (Final Scope Decision Memorandum).

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

As noted in the *Preliminary Determination*, on June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015, which made numerous amendments to the AD and CVD law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.⁹ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.¹⁰

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a countervailable subsidy rate based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹¹ 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.¹²

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.¹³ Secondary information is defined in the Statement of Administrative Action (SAA) 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.¹⁴

Finally, under the new section 776(d) of the Act, when applying an adverse inference, the Department may use a countervailable subsidy rate applied for the same or similar program in a

⁹ See Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

¹⁰ *Id.*, 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

¹¹ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

¹² See 19 CFR 351.308(c).

¹³ See also 19 CFR 351.308(d).

¹⁴ See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316 (1994) (SAA) at 870.

CVD proceeding involving the same country, or if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the Department considers reasonable to use.¹⁵ The TPEA also makes clear that, when selecting facts available with an adverse inference, the Department is not required to estimate what the countervailable subsidy rate would have been if the interested party failing to cooperate had cooperated or to demonstrate that the countervailable subsidy rate reflects an “alleged commercial reality” of the interested party.¹⁶

Reduction of Tax on Industrialized Products for Machines and Equipment

For this final determination, the Department continues to find, as we did for the *Preliminary Determination*,¹⁷ that the application of facts available, with adverse inferences, is appropriate for determining that the Reduction of IPI Tax for Machinery and Equipment program is specific and provides a financial contribution and for identifying a countervailable subsidy rate applicable to CSN and Usiminas. For a more detailed discussion, see Comment 1, “Whether to Apply AFA to both the GOB and Respondents for the Reduction of IPI for Machines and Equipment Program.”

BNDES FINAME Loan Program

The BNDES FINAME program provides financing for the purchase or leasing of new domestic and imported machinery and equipment. For this final determination, the Department continues to find, as we did for the *Preliminary Determination*,¹⁸ that the application of facts available, with adverse inferences, is appropriate for determining that the BNDES FINAME loan program is specific. Specifically, the GOB has failed to provide information regarding the distribution or usage of FINAME loans across industry sectors. Therefore, the Department must resort to facts available to determine whether the program is specific. Furthermore, we continue to find that an adverse inference is appropriate for this program because the GOB failed to provide the necessary information in response to our repeated requests despite numerous opportunities to do so. For a more detailed discussion, see Comment 6, “Whether the FINAME Loan Program is Specific.”

CSN and Usiminas – Ex-Tarifário

As discussed in the *Preliminary Determination*, the Department is investigating the Ex-Tarifário program.¹⁹ For the *Preliminary Determination*, Usiminas reported purchases benefiting from the Ex-Tarifário program, for itself and its cross-owned companies Usiminas Mechanica, S.A. (UMSA) and Mineração Usiminas S.A. (MUSA), for the years 2004 through the POI.²⁰ In response to our inquiry, Usiminas reported that it did not make purchases benefiting from the Ex-

¹⁵ See section 776(d)(1) of the Act; TPEA, section 502(3).

¹⁶ See section 776(d)(3) of the Act; TPEA, section 502(3).

¹⁷ See PDM at 8 – 13.

¹⁸ *Id.* at 23 – 26.

¹⁹ *Id.* at 22 – 23.

²⁰ See letter from Usiminas, “Cold-Rolled Steel Flat Products from Brazil; Response to Section III Questionnaire,” dated November 5, 2015 (Usiminas IQR November 5, 2015) at Exhibit 167.

Tarifário program between 2000 and 2003, *i.e.*, the remainder of the 15-year average useful life (AUL) period.²¹ CSN reported purchases benefiting from the Ex-Tarifário program between 2010 and the POI.²² In response to our inquiry, CSN reported that pre-2010 data were not available, and that “{t}he accuracy and completeness of pre-2010 information cannot be confirmed.”²³

However, as discussed in the verification reports, Department officials observed, during the GOB and the company verifications, that both Usiminas and CSN had access to import declarations they had filed in *Siscomex*, an Internet-based system that the GOB requires companies to use to record information about their imports and exports. We determine that both Usiminas and CSN could have used this information source to identify and report purchases benefiting from the Ex-Tarifário program for the unreported years, or to confirm that no such purchases were made.²⁴ Further, as discussed in more detail below at Comment 3, “Whether to Apply AFA for the Ex-Tarifário Program,” the Department was unable to verify the purchases benefiting from that program that were reported by CSN. Thus, we determine that Usiminas and CSN withheld necessary information requested by the Department, and therefore, significantly impeded the investigation. Thus, we must rely on facts otherwise available, in accordance with sections 776(a)(1) and 776(a)(2)(A),(C) and (D) of the Act.

Selection of the AFA Rate

It is the Department’s practice in CVD proceedings to identify an AFA rate for non-cooperating companies using the highest calculated program-specific rates determined for a cooperating respondent in the same investigation, or, if not available, rates calculated in prior CVD cases involving the same country.²⁵ Specifically, the Department applies the highest calculated rate for the identical subsidy program in the investigation if a responding company used the identical program, and the rate is not zero. If there is no identical program match within the investigation, or if the rate is zero, the Department uses the highest non-*de minimis* rate calculated for the identical program in a CVD proceeding involving the same country. If no such rate is available, the Department will use the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Absent an

²¹ See letter from Usiminas, “Cold-Rolled Steel Flat Products from Brazil; Response to Second Supplemental Questionnaire,” dated December 7, 2015, at 9.

²² See letter from CSN, “Cold-Rolled Steel Flat Products from Brazil: Comments in Advance of the Preliminary Determination,” dated December 8, 2015, at Exhibit 1.

²³ See letter from CSN, “Cold-Rolled Steel Flat Products From Brazil: CSN Response to the Department’s First Supplemental Questionnaire,” dated November 30, 2015, at 8.

²⁴ See Usiminas Verification Report at 8; *see also* CSN Verification Report at 7.

²⁵ See, e.g., *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971, 70975 (November 24, 2008) (unchanged in *Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 74 FR 29180 (June 19, 2009), and accompanying Issues and Decision Memorandum at “Application of Facts Available, Including the Application of Adverse Inferences”); *see also* *Aluminum Extrusions from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 76 FR 18521 (April 4, 2011), and accompanying Issues and Decision Memorandum at “Application of Adverse Inferences: Non-Cooperative Companies.”

above-*de minimis* subsidy rate calculated for a similar program, the Department applies the highest calculated subsidy rate for any program otherwise identified in a CVD case involving the same country that could conceivably be used by the non-cooperating companies.²⁶

As discussed in Comment 1, we are continuing to apply as AFA for the IPI program in this investigation the rate calculated for the Funding For Expansion Through IPI Tax Rebates program in the countervailing duty investigation of *Carbon Steel Flat Products From Brazil*.²⁷ Because this information constitutes secondary information pursuant to section 776(c)(1) of the Act and 19 CFR 351.308(c)(1), we have corroborated that information as explained below in “Corroboration of AFA Rate.”

As discussed in Comment 3, we are applying partial AFA to Usiminas and full AFA to CSN for the Ex-Tarifário program. In doing so, we are guided by the Department’s methodology detailed above. Accordingly, for each year for which Usiminas failed to provide verifiable information about whether or not it had received benefits under Ex-Tarifário, we are valuing the benefit allocated to the POI as the amount of benefits allocated to the POI for the benefits received by Usiminas in 2009 (the only year during the AUL for which Usiminas’s benefits pass the 0.5 percent test and are allocated over the AUL). We used the same methodology for valuing the benefits provided directly to UMSA and MUSA for each of the unreported years. Consistent with our methodology, as AFA, we applied to CSN the countervailable subsidy rate we calculated for Usiminas. Because we are not relying on secondary information as defined by section 776(b)(2) and (c)(1) of the Act, the statute does not require further corroboration of this rate.²⁸

Corroboration of AFA Rate

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. Secondary information is defined as “information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.”²⁹ The SAA provides that to “corroborate” secondary information, the Department will satisfy itself that the secondary information to be used has probative value.³⁰ The Department will, to the extent practicable, examine the reliability and relevance of the information to be used. The SAA emphasizes, however, that the Department need not prove that the selected facts available are the best alternative information.³¹

²⁶ See, e.g., *Lightweight Thermal Paper from the People’s Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (October 2, 2008), and accompanying Issues and Decision Memorandum at “Selection of the Adverse Facts Available Rate.”

²⁷ See *Certain Carbon Steel Products From Brazil; Final Affirmative Countervailing Duty Determination*, 49 FR 1798 (April 26, 1984). See also PDM at 22.

²⁸ See *Nan Ya Plastics Corp. v. United States*, 810 F.3d 1333, 1346 (Fed. Cir. 2016).

²⁹ See SAA at 870.

³⁰ *Id.*

³¹ *Id.*, at 869-870.

With regard to the reliability aspect of corroboration, unlike other types of information, such as publicly available data on the national inflation rate of a given country or national average interest rates, there typically are no independent sources for data on company-specific benefits resulting from countervailable subsidy programs. Additionally, as stated above, we are applying a subsidy rate for the IPI program which was calculated in a previous Brazil CVD investigation. Additionally, no information has been presented which calls into question the reliability of this previously calculated subsidy rate that we are applying as AFA. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal in considering the relevance of information used to calculate a countervailable subsidy benefit. The Department will not use information where circumstances indicate that the information is not appropriate as AFA.³²

As noted above, in the absence of record evidence from the respondents concerning their benefits under the IPI program, the Department is relying on the rate calculated for the Funding For Expansion Through IPI Tax Rebates program from a prior investigation of a Brazilian steel product. Because this is a similar program, based on the treatment of the benefit (*i.e.*, a tax reduction), we find that it is relevant to the IPI program in this case. Additionally, the relevance of this rate is that it is an actual calculated CVD rate for a Brazilian program. Thus, in light of the lack of information from Usiminas, CSN, and the GOB concerning the IPI program, the Department has corroborated the rate it selected to use as AFA to the extent practicable for this final determination.³³

SUBSIDIES VALUATION

A. Allocation Period

The Department has made no changes to the allocation period – 15 years - and the allocation methodology used in the *Preliminary Determination*.³⁴ No issues were raised by interested parties in case briefs regarding the allocation period or the allocation methodology.

B. Attribution of Subsidies

The Department has made no changes to the methodologies used in the *Preliminary Determination* for attributing subsidies.³⁵ In its case brief, Usiminas argued that it is not appropriate for the Department to attribute to Usiminas subsidies received by its cross-owned affiliate UMSA. We discuss this issue at Comment 16, “Whether Subsidies Provided to UMSA should be Attributed to Usiminas.”

³² See, e.g., *Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996).

³³ See *Essar Steel Ltd. v. United States*, 753 F.3d 1368, 1373-74 (Fed. Cir. 2014) (affirming the Department’s selection of an AFA rate under its hierarchy and holding that the rate was corroborated to the extent practicable).

³⁴ See PDM at 15.

³⁵ *Id.* at 15 – 18.

C. Denominators

During verification, Usiminas reported adjustments to its POI total sales of subject merchandise, Usiminas' POI total export sales to the United States, and MUSA's total POI sales.³⁶ For the final determination, the Department is using these revised sales figures to calculate the countervailable subsidy rates for Usiminas.³⁷ The Department has made no changes to the sales values used as denominators in the *Preliminary Determination* to calculate the countervailable subsidy rates for CSN.

V. INTEREST RATE BENCHMARKS AND DISCOUNT RATES

The Department has made no changes to the interest rate benchmarks and discount rates used in the *Preliminary Determination*.³⁸ Usiminas commented on the interest rate benchmarks we used in the *Preliminary Determination* to calculate the benefit from Usiminas' FINAME loans. We discuss this issue at Comment 9, "Whether to Use a Company-Specific Interest Rate Benchmark for the FINAME Loan Program."

VI. ANALYSIS OF PROGRAMS

A. Programs Determined To Be Countervailable

We made no changes to our *Preliminary Determination* with respect to the methodology used to calculate the subsidy rates for the following programs, except where noted below, and for the incorporation of revised denominators for Usiminas, where appropriate.³⁹ For descriptions, analyses, and calculation methodologies for these programs, see the *Preliminary Determination*. Except where noted below, no issues were raised regarding these programs in the parties' case briefs. The final program rates are as follows:⁴⁰

1. Reduction of IPI for Machines and Equipment

As discussed in Comment 1, "Whether to Apply AFA to both the GOB and Respondents for the Reduction of IPI for Machines and Equipment Program," the Department is applying AFA for purposes of finding that this program provides a financial contribution that is specific, and for purposes of identifying a countervailable subsidy rate for CSN and Usiminas.

³⁶ See Usiminas Verification Report at 2.

³⁷ See Department memorandum, "Certain Cold-Rolled Steel Flat Products from Brazil: Final Determination Calculations for Usinas Siderurgicas de Minas Gerais SA," (Usiminas Calculation Memorandum) dated concurrently with this memorandum.

³⁸ See PDM at 19 – 20.

³⁹ See Section V.C., above.

⁴⁰ See Department memorandum, "Certain Cold-Rolled Steel Flat Products from Brazil: Final Determination Calculations for Companhia Siderurgica Nacional," (CSN Calculation Memorandum) dated concurrently with this memorandum; see also Usiminas Calculation Memorandum.

CSN: 3.21 percent *ad valorem*
Usiminas: 3.21 percent *ad valorem*

2. *Ex-Tarifário*

As discussed in Comment 3, “Whether to Apply AFA for the Ex-Tarifário Program,” the Department is applying total AFA for purposes of identifying a countervailable subsidy rate for CSN for this program; the Department is applying partial AFA for purposes of calculating the countervailable subsidy rate for Usiminas for this program.

CSN: 3.93 percent *ad valorem*
Usiminas: 3.93 percent *ad valorem*

3. *BNDES FINAME Loans*

As discussed in Comment 8, “Whether to Re-Calculate the FINAME Program for Usiminas,” we have recognized and corrected an error in our calculation for Usiminas.

CSN: 0.01 percent *ad valorem*
Usiminas: 0.13 percent *ad valorem*

4. *Integrated Drawback Scheme*

As discussed in Comment 10, “Whether the Integrated Drawback Scheme is Countervailable,” we have determined that the benefit from the Integrated Drawback Scheme is the amount by which the rebate exceeds the import duties on imported inputs consumed in the production of exports. We have revised our calculations accordingly.

CSN: 1.33 percent *ad valorem*
Usiminas: 0.77 percent *ad valorem*

5. *Reintegra*

We have not changed our determination for this program, however, we respond to the parties’ arguments regarding Reintegra in Comment 12, “Whether Reintegra is Countervailable,” Comment 13, “Whether to Recalculate the Reintegra Subsidy Rate,” and Comment 14, “Whether CSN Applied For/Used the Reintegra Program During the POI.”

CSN: 3.00 percent *ad valorem*
Usiminas: 3.00 percent *ad valorem*

6. *Bahia State Industrial Development and Economic Integration Program (Desenvolve)*

CSN: 0.03 percent *ad valorem*

7. Exemption of Payroll Taxes

In the *Preliminary Determination*, we inadvertently stated that the Exemption of Payroll Taxes program was not used by any respondent company.⁴¹ However, prior to the *Preliminary Determination*, Usiminas had reported that UMSA benefited from this program during the POI.⁴² As noted, after the *Preliminary Determination*, we issued a supplemental questionnaire to the GOB about this program.

Under Law No. 8,212/1991, Article 22, I and III, Brazilian companies are required to pay a tax to finance the social security system. The tax obligation is normally calculated as 20 percent of company payroll.⁴³ However, under Law No. 12,546/2011, Article 8, manufacturers of certain products and certain service providers (identified by tariff codes of the Mercosur Common Nomenclature) calculate their tax obligation using an alternative methodology.⁴⁴ Under the alternative methodology, a company's tax obligation is calculated as one percent of the gross revenue derived from sales of eligible products and services.⁴⁵ Eligible products and services are named in an attachment to the legislation implementing this program (Law 12546/2011), and include those produced and provided by information and technology companies, call centers, hotels, construction firms, and transportation companies.⁴⁶ Companies that manufacture both eligible and ineligible products or provide both eligible and ineligible services must calculate their tax obligation under both methodologies: they are required to pay a total of one percent of gross revenue for eligible products and services and 20 percent of company payroll related to the production of ineligible products or provision of ineligible services.⁴⁷

Usiminas reported that some of UMSA's taxable activities are subject to the alternative tax methodology. Further, Usiminas reported the amount of tax savings UMSA enjoyed during the POI as a result of the application of the alternative methodology.⁴⁸

Based on the information provided by Usiminas and the GOB, the Department determines that the Exemption of Payroll Taxes program is *de jure* specific under section 771(5A)(D)(i) of the Act because only the industries involved in the production of products or the provision of services identified in the attachment to the legislation are eligible for the program.⁴⁹ The eligible industries are, thus, limited by law.

⁴¹ See PDM at 33.

⁴² See letter from Usiminas, "Cold-Rolled Steel Flat Products from Brazil; Response to Section III of CVD Questionnaire," dated December 3, 2015 (Usiminas QR December 3, 2015) at 21.

⁴³ See letter from Usiminas, "Cold-Rolled Steel Flat Products from Brazil; Response to Affiliation Supplemental Questionnaire," dated November 30, 2015 (Usiminas SQR November 30, 2015) at 21.

⁴⁴ *Id.*

⁴⁵ *Id.* at 22.

⁴⁶ *Id.* at 21.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See GOB SQR January 15, 2016 at 9 and GOB SQR February 11, 2016, at 18.

The Department further determines that the alternative tax methodology provides a financial contribution to the extent that it results in revenue foregone under section 771(5)(D)(ii) of the Act. We also determine that it confers a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1) in the amount of tax savings enjoyed by the eligible taxpayer.

To calculate the countervailable subsidy rate for Usiminas, the Department subtracted from the amount of taxes that UMSA would have paid during the POI at the rate of 20 percent of company payroll, pursuant to Article 22 of Law No. 8,212/1991, the amount that UMSA actually paid during the POI under the alternative methodology (*i.e.*, at the rate of one percent of revenue related to production of eligible products or provision of eligible services) under Article 8 of Law No. 12,546/2011. In order to attribute to Usiminas the benefit received by its cross-owned equipment provider UMSA, we then divided the amount of the benefit received by UMSA by the total sales of Usiminas and UMSA, net of intercompany sales, during the POI. On this basis, the countervailable subsidy for Usiminas is 0.05 percent *ad valorem*.

B. Program Determined To Be Not Countervailable

The Department made no changes to its *Preliminary Determination* with regard to this program determined to be not countervailable:⁵⁰

Economic Subvention to National Innovation Program

C. Programs Determined To Be Not Used, or Not to Confer a Measurable Benefit, During the POI

With the exception of the “Exemption of Payroll Taxes” program, discussed above, the Department made no changes to its *Preliminary Determination* with regard to programs determined to be not used, or not to confer a measurable benefit during the POI:⁵¹

1. *Regime Tributário para Incentivo à Modernização e à Ampliação da Estrutura Portuária (REPORTO)*
2. *RIOInvest*
3. *FINEP's Economic Subvention*
4. *Brazil's Export Financing Program (PROEX)*
5. *Special Regime for the Acquisition of Capital Goods for Export Companies (RECAP)*
6. *Export Credit Insurance and Guarantees*
7. *Export Guarantee Fund*
8. *Export Promotion and Marketing Assistance*
9. *Pro-Industria*
10. *Tax Benefits in the State of Espírito Santo (FUNDAP)*
11. *Tax Benefits in the State of Espírito Santo (INVEST-ES)*
12. *Development and Participation of Espírito Santo (FUNDEPAR)*
13. *Northeast Region Development Authority Incentives*

⁵⁰ For the description and analysis of this program, *see* PDM.

⁵¹ *Id.*

14. *Northeast Investment Fund (FINOR)*
15. *Amazon Investment Fund (FINAM)*
16. *Federal District Development Program*
17. *Pernambuco Development Program (PRODEPE)*
18. *Program for the Development of Santa Catarina's Business (PRODEC)*
19. *BNDES PROGEREN*
20. *BNDES EXIM*
21. *BNDESPAR Loans*
22. *Automatic BNDES*
23. *BNDES Funtec*
24. *INOVA Brasil Program*

D. Program Determined Not to Exist

Both the GOB and CSN have reported that this program is a part of BNDES FINAME.⁵² The Department made no changes to its *Preliminary Determination* with regard to this program.⁵³

Investment Maintenance Program

VII. ANALYSIS OF COMMENTS

Comment 1: Whether to Apply AFA to both the GOB and Respondents for the Reduction of IPI for Machines and Equipment Program

The Petitioner's Arguments

The petitioner⁵⁴ explains that the Department applied AFA to “Reduction of IPI for Machines and Equipment” program in the *Preliminary Determination* because neither the GOB nor the respondents provided requested information for this program. Further, the petitioner argues that the GOB failed to provide the industry information to determine whether the program is *de facto* specific. While the GOB provided some additional information regarding the program following the *Preliminary Determination*, the petitioner contends that there is no relevant information regarding industry usage that would cause the Department to deviate from its finding in the *Preliminary Determination*, in which it applied AFA, because the GOB did not provide information requested by the Department.

⁵² See letter from the GOB “Re: Cold-Rolled Steel Flat Products from Brazil; Response to the DoC’s questionnaire for the GOB - Section II,” dated November 18, 2015 (GOB IQR November 18, 2015) at 175; *see also* CSN IQR November 5, 2015 at 53.

⁵³ For the description and analysis of this program, *see* PDM.

⁵⁴ The petitioners in this investigation are AK Steel Corporation, ArcelorMittal USA LLC, Nucor Corporation, Steel Dynamics Inc., and United States Steel Corporation (collectively, the petitioners). Only Nucor Corporation, however, submitted comments concerning the *Preliminary Determination*. Therefore, when addressing those comments, we refer to “the petitioner.”

GOB's Arguments

The GOB argues that it has attempted to cooperate to the best of its abilities with respect to this alleged program. Further, the GOB states, the petitioner's claims regarding IPI have changed three times since the filing of the petition. Additionally, the GOB argues that it is uncertain of "what is actually being considered as a subsidy," and that the Department has made it burdensome for the GOB to present evidence that the IPI reduction is not a countervailable subsidy.

The GOB states that the IPI is a generally applicable tax whose rates apply regardless of the sector or industry using the good. This tax is applied, the GOB explains, according to the government's determination of how essential a product is. Further, the GOB notes that, under to the Brazilian Fiscal Responsibility Law, the impact of the increase or decrease of this rate does not require a budget impact analysis.

The GOB explains that the decision to reduce IPI rates on capital goods began on the basis that most major industrialized countries, including the United States, do not collect sales taxes on the purchase of machines. Further, the GOB argues that 68 percent of capital goods in Brazil have a zero IPI rate. Finally, the GOB states that nothing in the World Trade Organization Agreement on Subsidies and Countervailing Measure (ASCM) prevents a country from charging different tax rates for different products.

CSN's Arguments

CSN contends that applying AFA to the IPI program is unwarranted and unlawful. CSN argues that the information provided by both the company and the GOB indicates that the IPI program is not a countervailable subsidy and that, contrary to the Department's preliminary decision, both the company and the GOB have fully cooperated in this investigation.

Citing 19 CFR 351.308(a), CSN contends that the Department may apply AFA only when a party has failed to cooperate by not acting to their best of their ability to comply with the request for information. CSN argues that both the GOB and the company have cooperated to the best of their abilities in this investigation before and after the *Preliminary Determination*, and the information they have provided indicates that this program is not a countervailable subsidy. Specifically, CSN cites to information provided in its questionnaire responses prior to the *Preliminary Determination* that explains how the IPI tax operates in Brazil, identifies the products subject to the tax, and provides sample invoices for transactions involving IPI.⁵⁵ CSN argues that this information demonstrates that this is not a program.

Further, CSN contends that following the *Preliminary Determination*, both the GOB and the company provided additional information to the Department regarding this program. Specifically, CSN states that it submitted details regarding its machinery and equipment

⁵⁵ See CSN IQR November 5, 2015 at 14, Exhibit 6, 7 and 8; see also letter from CSN, "Cold-Rolled Steel Flat Products From Brazil: CSN Response to the Department's First Supplemental Questionnaire," dated November 30, 2015 (CSN SQR November 30, 2015) at Exhibits 4-6.

purchases during the POI. However, they note that, even though this information was submitted months before verification and this final determination, the Department rejected this information as untimely. Further, CSN states that the Department declined the company's attempt to discuss this program at verification.

Finally, CSN argues that the GOB provided information regarding this alleged program following the *Preliminary Determination*. Specifically, the GOB explained that the reduction of IPI tax is not a program, and that the tax does not apply with "requirements or conditions, requests from interested parties, verification of compliance with requirements and conditions and the monitoring of implementation, including the possibility of exclusion from the program."⁵⁶ As such, CSN argues that many of the questions asked by the Department were not applicable to the IPI tax and this explains why neither company was able to provide direct answers to certain questions.

On this basis, CSN concludes that both the GOB and the company responded to the best of their abilities based on their understanding of the IPI tax, and they have not withheld information in this investigation. For these reasons, CSN contends that there is no basis for applying AFA against the GOB or the company for this alleged program.

Usiminas' Arguments

According to Usiminas, since the *Preliminary Determination*, the GOB has provided information that demonstrates that the IPI reduction does not provide a financial contribution. Usiminas adds that the GOB has acted to the best of its ability to cooperate with the Department regarding this program, including providing relevant legislation and tax rate tables. Further, Usiminas contends that the Department's verification confirms that the GOB did not withhold any information pertaining to the alleged program.

Usiminas further argues that it paid the full amount of IPI owed on all equipment purchased and, therefore, it had no information to provide that would have been responsive to the Department's request to provide information on the IPI rates paid and any amounts not charged on the purchase of machinery and equipment during the AUL. As such, Usiminas disagrees with the Department's preliminary decision that the company substituted its own judgment for the Department's with respect to this program.

The Petitioner's Rebuttal Arguments

The petitioner reiterates that the GOB and the respondent companies withheld necessary information regarding the IPI reduction program and, therefore, it is appropriate for the Department to continue applying AFA. Despite being given numerous opportunities to provide information regarding this program, the GOB failed to provide all the requested information, instead arguing that this alleged program is not an actual program. Citing to the GOB's complaints that the information requested was confusing, the petitioner states the Department's information requests were clear. Specifically, the Department requested information regarding

⁵⁶ See GOB SQR February 11, 2016 at 13.

the amount of IPI that would have been paid had the GOB not reduced IPI rates by industry and year. This information, the petitioner argues, is critical for the Department's specificity analysis. Further, if there was confusion about the data requested, the GOB should have requested clarification.

Finally, the petitioner argues that the GOB did not state that the information requested was not possible to provide; instead the parties failed to provide the information requested. The petitioner contends that while parties may argue that the IPI program is not countervailable, nothing prevented them from doing so while also providing the information requested. Instead, the GOB substituted its own judgment and chose to ignore the Department's request for information.

GOB's Rebuttal Arguments

The GOB argues that, since the petition was filed, the petitioner has changed its allegation regarding this program three times. Further, the information provided by the GOB rebuts the information provided by the petitioner. The GOB reiterates that IPI is a generally applicable tax that is very similar to VAT taxes around the world. Additionally, the GOB contends, when a rate for a product is changed, the new rate applies to all transactions regardless of buyer and, therefore, there is no financial contribution. The GOB states that it applied its best effort to provide all information requested by the Department throughout this investigation.

CSN's Rebuttal Arguments

CSN argues that the GOB has submitted substantial evidence regarding the administration of the IPI tax to assist the Department in understanding the operations and the applicability of the available reductions. Specifically, CSN cites to relevant decrees reducing the IPI rates for certain goods, explanations of NCM codes used in relation to the Table of the Levy of the Tax on Industrialized Products (TIPI), the current TIPI, relevant chapters of the TIPI from 2002, and translated chapters from the current TIPI, as examples of the information that has been provided by the GOB.⁵⁷ CSN further argues that the petitioner's contention that the GOB's failure to provide information regarding IPI reductions by industry is misplaced, because the record evidence shows that the IPI rate reductions were not applied by industry, nor were the reductions industry- or sector-specific.⁵⁸ Further, CSN notes that it has provided evidence regarding the operation of the IPI tax including public reports regarding IPI, excerpts from the TIPI for machinery and equipment, a 2010 decree regarding types of industrialized products subject to the IPI tax, a declaration from the company's tax director, and sample invoices for transactions showing that IPI was applied.⁵⁹ Accordingly, CSN concludes that the application of AFA is inappropriate.

⁵⁷ See letter from the GOB "Cold-Rolled Steel Flat Products from Brazil; Response to the Petitioners' comments on the supplemental questionnaire response of the GOB" dated January 15, 2016 (GOB's January 15, 2016 Response to Petitioners' Comments).

⁵⁸ See GOB SQR February 11, 2016 at 8-10.

⁵⁹ See CSN IQR November 30, 2015 at Exhibits 4-8.

In the alternative, should the Department decide to apply AFA, CSN argues that the Department should not rely on the countervailable subsidy rate from the “Funding for Expansion through IPI Tax Rebates” program from the carbon steel products investigation as it did in the *Preliminary Determination*.⁶⁰ CSN argues that the “Funding for Expansion through IPI Tax Rebates” is significantly different from the IPI reduction at issue. Specifically, the “Funding for Expansion through IPI Tax Rebates” provided rebates on IPI tax applied to steel expansion projects, for which only certain companies were eligible.⁶¹ As such, CSN argues that this program is not similar to the broad adjustment of VAT rates in this alleged program.

Usiminas Rebuttal Arguments

Usiminas reiterates its contention that the information submitted by the GOB following the *Preliminary Determination* demonstrates that an IPI reduction program does not exist. Therefore, since a program does not exist, Usiminas argues, there is no justifiable reason to find the existence of a countervailable subsidy. Usiminas maintains that the GOB has demonstrated that this alleged subsidy is, in fact, the normal periodic changes to IPI rates, and these rates are applied regardless of producer or buyer. Further, because companies pay IPI at the rates specified, the information on usage of IPI reduction by industry does not exist. As such, Usiminas concludes, the failure to provide non-existent information is not grounds to apply AFA.

Department’s Position: For purposes of this final determination, the Department has determined to continue applying AFA with regard to this program for both the GOB and the mandatory respondents.

Based on the petitioners’ allegations, as detailed in the *Preliminary Determination*, the Department initiated and requested information regarding the Reduction in IPI for Machinery and Equipment program.⁶² In its initial questionnaire response, the GOB did not respond to the Department’s request for information for this program, explaining that it was still gathering information.⁶³ In its supplemental questionnaire response, the GOB failed to provide crucial information regarding the program, including agencies responsible for administering this program, respondent companies who benefitted from this program, records maintained for this program, the application and approval process, and information about industries that used this program.⁶⁴ As such, we found the GOB did not provide all of the necessary information requested by the Department to make a determination. Therefore, as AFA, we preliminarily found that the program constituted a financial contribution within the meaning of section 771(5)(D) of the Act and it was specific within the meaning of 771(5A) of the Act.⁶⁵

⁶⁰ See PDM at 22.

⁶¹ See *Certain Carbon Steel Products from Brazil; Final Affirmative Countervailing Duty Determination*, 49 FR 17988, 17991-92 (April 26, 1984).

⁶² See PDM at 20-22.

⁶³ *Id.* at 8-12.

⁶⁴ *Id.*

⁶⁵ *Id.*

Similarly, we found that both respondents, CSN and Usiminas, failed to cooperate to the best of their ability when responding to the Department's requests for information. Specifically, neither company provided the information that would be necessary for the Department to identify and measure the benefit and calculate the countervailable subsidy rate for this program (*e.g.*, the machinery and equipment purchased with the benefit of the IPI savings and the amount of IPI savings).⁶⁶ As such, we found that the CSN and Usiminas failed to act to the best of their abilities to comply with the Department's request for information. Therefore, we found that the selection of an AFA rate was warranted pursuant to section 776(b) of the Act. On this basis, as AFA, we applied a rate of 3.21 percent *ad valorem* to both companies.⁶⁷

Following the *Preliminary Determination*, on December 21 and 22, 2015, the GOB filed two letters containing new factual information in response to the petitioner's December 14, 2015, comments (which were timely filed in response to the GOB's December 4, 2015, questionnaire response). This new factual information provided information for two programs: Reduction of IPI for Machines and Equipment and Integrated Drawback Scheme. Explaining that the petitioner's December 14 comments included timely new factual information on the Reduction of IPI for Machines and Equipment program, but not on the Integrated Drawback Scheme program, we rejected these submissions as they contained untimely information which did not respond to the petitioner's submission.⁶⁸ However, we provided the GOB the opportunity to resubmit these letters after removing the untimely filed information, specifically the information regarding the Integrated Drawback Scheme program. As such, on January 15, 2016, the GOB re-submitted the timely information from both letters, which included information regarding the Reduction of IPI for Machines and Equipment program.⁶⁹ Further, on February 1, 2016, the Department issued a supplemental questionnaire to the GOB, in which we requested additional information regarding this program. The GOB filed timely responses on February 11, 2016. While the information provided in these responses addressed some of the concerns discussed in the *Preliminary Determination*, there was no information regarding the provision of assistance or the breakdown of program usage by industry sector. We conducted verification of the IPI program at the GOB between March 14 and March 17, 2016, and we issued the verification report on May 9, 2016.⁷⁰

Additionally, following the *Preliminary Determination*, CSN submitted a letter in which it reported its purchases of machinery and equipment between 2010 and 2014.⁷¹ However, as explained in detail in our January 8, 2016, rejection letter, the Department rejected this information as untimely.⁷² In its brief, CSN explains that, at the time the company attempted to provide this purchase information, there remained months before verification and this final determination. However, the opportunity to provide this information on a timely basis had

⁶⁶ *Id.* at 12-13.

⁶⁷ *Id.* at 22.

⁶⁸ *See, e.g.*, letter from the Department to the GOB "Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Untimely New Factual Information," dated January 8, 2016.

⁶⁹ *See* GOB January 15, 2016 Response to Petitioners' Comments.

⁷⁰ *See* GOB Verification Report.

⁷¹ *See* letter from the Department to CSN "Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Untimely New Factual Information" dated January 8, 2016 (January 8 Letter to CSN); *see also* CSN Case Brief at page 8.

⁷² *See* January 8 letter to CSN.

passed, and thus, the Department correctly rejected this information as untimely filed pursuant to 19 CFR 351.301(c)(5). As such, for this final determination, we are only considering the additional information regarding this program timely provided by the GOB after the *Preliminary Determination* in response to the petitioner's submission and our supplemental questionnaire. Any additional untimely information submitted by the respondent companies following the *Preliminary Determination* has been rejected.

Despite this additional information from the GOB, however, we are continuing to apply AFA for both the GOB and the respondent companies regarding the Reduction of IPI for Machines and Equipment program.

With regard to the GOB's responses, in order to conduct an analysis of whether a program provides a financial contribution or is specific, it is essential that the government provides a complete response to the Department's questions. We find that the GOB has not provided a complete response to the questions related to this program; the GOB did not provide any verifiable information regarding the process by which companies can obtain the IPI reduction available under this program, specifically, the eligibility criteria, the application and approval processes, the industry sectors and enterprises that benefit, and the distribution of benefits among recipients by industry. As such, we find, in accordance with section 776(b) of the Act, that the GOB failed to cooperate by not acting to the best of its ability to comply with our request for information. Consequently, much of the critical information that is essential for the Department to conduct a full analysis of the program is missing. Further, at verification, the GOB was unable to substantiate the explanations about this program that it had provided to the Department in its factual information submission and questionnaire response provided after the *Preliminary Determination*. Consequently, we find that an adverse inference in selecting from the available facts is warranted pursuant to section 776(b) of the Act.

We recognize that in their respective briefs and rebuttal briefs, the GOB, CSN, and Usiminas have made statements regarding difficulties answering the Department's questions, and further maintain that they have acted to the best of their ability to cooperate with the Department regarding this program. However, the Department finds this argument unavailing. Prior to the *Preliminary Determination*, the Department requested information from parties in both the original and supplemental questionnaires regarding this program. It was not until the Department applied adverse findings in the *Preliminary Determination* that the parties attempted to provide information for this program.

For example, as stated above, despite twice refusing to provide information regarding its purchases of machinery and equipment in both its original and supplemental questionnaire responses, CSN attempted belatedly to submit this information following the issuance of the *Preliminary Determination*.⁷³ With respect to the GOB, in the Department's initial questionnaire, the GOB was asked to provide all relevant laws and regulations regarding this

⁷³ For its part, Usiminas made no such attempts, stating initially "{n}o aspect of the IPI tax program, when correctly understood, confers a countervailable subsidy." See Usiminas IQR at 23. Later, Usiminas stated that "the companies {Usiminas and MUSA} have always paid the IPI at the rate provided in the TIPI. There has never been a purchase of machinery or equipment with the reduction of IPI." See Usiminas SQR at 3.

program.⁷⁴ However, it was only after the *Preliminary Determination* that the GOB provided all relevant decrees regarding this program.⁷⁵ As such, the Department finds that both the GOB and the respondent companies were capable of providing the information requested by the Department and only did so once the *Preliminary Determination* was published. However, because the Department's investigations must be completed within strict statutory timelines, it is imperative to the efficient administration of these proceedings that parties cooperate within the deadlines established. Further, as discussed below, the GOB and the respondents still have not provided all necessary information to perform a meaningful analysis of this program. Thus, we find that the GOB, CSN, and Usiminas not have acted to the best of their ability to provide information requested by the Department.

Finally, at no point during the course of the investigation did the GOB or the respondent companies contact the Department to discuss difficulties they were having in gathering information to respond to the Department's questions for this program, pursuant to section 782(c) of the Act. Consistent with the requirements of that provision, the Department's initial questionnaire specifically instructs respondents to contact the Department if there are any concerns about providing the information requested by the Department.⁷⁶

As discussed below in Comment 2, the GOB, CSN, and Usiminas have argued that this reduction of IPI does not provide a financial contribution. The GOB claimed that IPI reductions amounted to the exercise of government authority to establish tax rates and as such, the reductions did not result in revenue foregone that provides a benefit. However, despite additional opportunities following the *Preliminary Determination* to provide information regarding this program, the GOB failed to provide information crucial for a meaningful analysis. The GOB claimed that IPI reductions amounted to the exercise of government authority to establish tax rates and as such, the reductions did not result in revenue foregone that provides a benefit. However, the GOB did not provide any evidence to support this claim, and to the contrary, indicated that IPI reductions were granted by request.⁷⁷

Next, as detailed in the Department's verification report, during the course of the verification, there were numerous instances in which the GOB was unable to support or substantiate the information and statements provided in these submissions. For example, in regard to its statement that parties may submit requests to have the IPI rate reduced for a particular good,⁷⁸ GOB officials explained that there is no official or established way for a company or entity to make such a request.⁷⁹

⁷⁴ See Department letter, "Countervailing Duty Investigation Certain Cold-Rolled Steel Flat Products from Brazil C-351-844: Countervailing Duty Questionnaire," dated September 15, 2015 (Initial Questionnaire) at Section II Standard Questions Appendix.

⁷⁵ See GOB January 15, 2016 Response to Petitioners Comments at 2.

⁷⁶ See Initial Questionnaire at Section 1 General Instructions and Information.

⁷⁷ See GOB SQR February 11, 2016 at 10.

⁷⁸ *Id.* at 10 ("At the time, the Secretariat of Development and Production, of the Ministry of Development, Industry and Foreign Trade (MDIC) consolidated all the demands made by the productive sectors and presented the result for the Ministry of Finance (MF) for discussion.").

⁷⁹ See GOB Verification Report at page 4.

Additionally, as mentioned above, the Department asked the GOB to elaborate on the guiding criteria that are used to determine whether a product receives a reduced IPI rate.⁸⁰ However, the GOB stated that specific written criteria did not exist, and that the final decision to reduce a product's IPI rate is at the discretion of the Ministry of Finance.⁸¹ Additionally, the GOB was unable to provide any report or study that the GOB conducted regarding the reduction of IPI for a particular good.⁸²

Further, we find that statements made by the GOB at verification contradicted information provided in the GOB's questionnaire responses. Specifically, the GOB reported in its questionnaire response that budgetary restrictions and limitations were factored into decisions regarding the reduction of IPI rates.⁸³ However, at verification, GOB officials were unable to provide any evidence to demonstrate whether and how budgetary matters were considered in this context.⁸⁴ Moreover, GOB officials indicated in discussion at verification that decisions regarding the reductions of IPI are *not* impacted by budgetary concerns.⁸⁵ The GOB reiterated this point, that a budget analysis is not required when determining IPI rates, in its case brief.⁸⁶

For these reasons, we continue to find that the application of AFA is warranted for this program. As such, with regard to financial contribution, we continue to find the Reduction of IPI for Machines and Equipment IPI program constitutes a financial contribution within the meaning of section 771(5)(D) of the Act.

With regard to determining whether a program is specific, the Department finds that GOB has not provided information necessary to analyze whether this program was specific on a *de facto* basis. As detailed in the *Preliminary Determination*, the GOB provided no information in response to the Department's requests for information for this program, in its initial response, and limited information in its December 4, 2015, supplemental response, including no information regarding the provision of assistance or the usage of this program by enterprise or industry.⁸⁷ On this basis, we preliminarily applied AFA regarding specificity for this program. As discussed above, while the GOB provided some information following the *Preliminary Determination*, there is no additional meaningful information regarding the administration of this program, including usage by industry. As such, because there is no information regarding usage, the Department cannot analyze whether this program is *de facto* specific. As such, we continue to find an adverse inference is warranted under section 776(b) of the Act, and we find that the program is *de facto* specific within the meaning of 771(5A)(D)(iii) of the Act.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ See GOB SQR February 11, 2016 at pages 3 (under "Criteria," "Due to budgetary restrictions and the interest in the renewal of productive plants, the following criteria were established . . .") and 12 (. . .there were demands . . . which were not accepted . . . because of budgetary constraints").

⁸⁴ See GOB Verification Report at pages 4 and 5.

⁸⁵ *Id.*

⁸⁶ See GOB Case Brief at 10.

⁸⁷ See letter from the GOB "Re: Cold-Rolled Steel Flat Products from Brazil; Response to the DoC's questionnaire for the GOB - Section II.," dated November 18, 2015 (GOB IQR November 18, 2015) at 14.

With regard to the benefit calculation, we continue find that the respondents failed to act to the best of their ability to comply with the Department's requests for information and that, as AFA, we find that it is appropriate to conclude that they benefited from this subsidy during the POI.

Further, in selecting AFA, we determined that it continues to be appropriate to apply, to both CSN and Usiminas, the rate of 3.21 percent *ad valorem* that was calculated for the Funding For Expansion Through IPI Tax Rebates program in *Carbon Steel Flat Products From Brazil*. CSN has argued that this program is not comparable because it provided rebates on IPI tax applied to steel expansion projects, for which only certain companies were eligible. However, we find this program to have been appropriately selected as the highest non-*de minimis* rate for a similar program (based on treatment of the benefit) in another CVD proceeding involving the same country. Moreover, CSN failed to provide an alternative program that is more comparable to this program under investigation.

Both companies have indicated that they attempted to discuss issues regarding this program at verification. However, in both instances, the Department declined to discuss this program or to accept any information related to the program, stating that the companies would have the opportunity to address these issues in their briefs.⁸⁸ With no information on the record regarding the companies' use of this program prior to verification, the Department did not include Reduction of IPI for Machines and Equipment in the verification outline. Moreover, we specifically stated in the outline that the Department did not intend to collect new information at verification.⁸⁹ Thus, the Department was clear in stating its intent, prior to verification, not to discuss at its verification of CSN and Usiminas information related to their use of the Reduction of IPI for Machines and Equipment program. Consistent with this stated intent, the Department declined to discuss this program at verification.

Comment 2: Whether the Reduction of IPI for Machines and Equipment Program is Countervailable

The Petitioner's Arguments

According to the petitioner, the Reduction in IPI program is countervailable because it is specific, in its exclusion of particular sectors, *i.e.*, those that do not use computing and automation goods. The petitioner also argues that the program does not meet the standards for an exception to finding *de jure* specificity under section 771(5A)(D)(ii) of the Act. Specifically, the GOB has not established objective criteria or conditions governing the eligibility for the program; the criteria and conditions are not strictly followed; and the criteria and conditions are not set out in relevant statute, regulation, or other official document.

⁸⁸ See CSN Verification Report at 12; *see also* Usiminas Verification Report at page 13.

⁸⁹ See, *e.g.*, CSN Verification Outline ("This verification is not intended to be an opportunity for submission of new factual information").

GOB's Arguments

According to the GOB, the WTO Agreement of Subsidies and Countervailing Measures (ASCM) does not prevent a country from charging tax at different rates for different products and, therefore, the reduction in IPI is not countervailable.

Usiminas' Arguments

According to Usiminas, the Reduction in IPI program is not countervailable because there is no financial benefit arising from the application of a different tax rate over time, because there is no revenue foregone or otherwise due. Usiminas adds that the Reduction in IPI program is not *de jure* specific because the reductions in the tax rate apply to items regardless of the sector or activity, and they are not contingent on exporting. Finally, according to Usiminas, the Reduction in IPI program is not *de facto* specific as there is no record evidence that the reductions in IPI rates apply to a limited number of users, or apply disproportionately to the steel industry.

CSN's Arguments

Citing the WTO Appellate Body Report, *US-FSC*, WT/DS108/AB/R (the Appellate Body Report), according to CSN, the IPI program does not provide a financial contribution because there is no revenue foregone or otherwise due. CSN adds that the IPI is a generally applicable tax and that there is no “regular” tax rate for a given product in any sector or industry. CSN submits that the Department verified that the GOB has discretion to change the IPI tax rates by taking into account budgetary and policy considerations and sovereign governments have the authority to make changes to tax policy and rates without conferring countervailable subsidies.

CSN also argues that the program is not specific as it is a generally applicable excise tax and the tax applies to items used in almost all industries and sectors. In response to the petitioner's arguments that the program benefits large industrial companies, according to CSN, the record demonstrates that the GOB applies IPI tax to importers and manufactures across many Brazilian industries and sectors. Further, Decree 7212/2010 demonstrates that IPI tax encompasses a broad set of items used in the production of other goods and that the GOB explained that the reduced rates were indiscriminately used by all sectors of activity.

Finally, according to CSN, the record demonstrates that the applicable IPI rates do not depend on export performance.

The Petitioner's Arguments

In its Rebuttal Brief, the petitioner argues that CSN's cited support, *i.e.*, *US-FSC* the Appellate Body Report, when read in full, does not support its argument that a financial contribution does not exist. Namely, according to the petitioner, the Appellate Body found that a financial contribution can be established by comparing what would have been “but for” the program in question. According to the petitioner, the GOB and the respondent companies did not provide the necessary information to conduct such an analysis. The petitioner adds that the GOB did not provide this information at verification.

With respect to the GOB's and the respondents' arguments that the reduction in IPI is not specific, the petitioner, citing 19 CFR 351.502(a), argues that neither the GOB nor respondents provided the usage data needed to support their arguments.

Usiminas' and CSN's Arguments

With respect to the petitioner's argument that the explicit exclusion of particular sectors from a program provides a basis for the Department to find that a program is *de jure* specific, CSN argues that there is no qualifying set of industries or sectors that are specifically excluded and the Act requires express limitations for a *de jure* specificity determination. Further, CSN argues that the IPI tax is applied to products, not industries, and IPI tax rates are assigned to products regardless of the sector or industry. According to CSN, section 771(5A)(D)(i) of the Act limits a finding of *de jure* specificity to circumstances where a law or a decree expressly limits the applicability of a program, which is not the case here. Finally, according to CSN, the record demonstrates that IPI tax rate is changed by Brazil's congress, taking into account various factors, including budgetary priorities, Ministry of Finance policy assessments, and public comments and such an approach is not inconsistent with either U.S. law or WTO rules.

Department's Position: In light of the Department's final determination, on the basis of AFA, that the Reduction in IPI for Machines and Equipment program is specific on a *de facto* basis and provides a financial contribution, as discussed in Comment 1, "Whether to Apply AFA to both the GOB and Respondents for the Reduction of IPI for Machines and Equipment Program," we need not address the arguments presented above.

Comment 3: Whether to apply AFA for the Ex-Tarifário program

The Petitioner's Arguments

Citing *Nippon*,⁹⁰ the petitioner argues that the Department should apply AFA to CSN and Usiminas because neither respondent reported all AUL purchases of imported capital goods benefitting from the reduced tariff rates available under Ex-Tarifário. According to the petitioner, during verification, the Department observed that CSN and Usiminas had the resources to report all of the capital goods imported during the AUL that may have benefited from the program, *i.e.*, *Siscomex*; the GOB's web-based system that houses and processes Brazilian companies' import declarations which, in turn, indicate which imports benefited from the program.

The petitioner adds that CSN did not report imports prior to 2010, stating that it was unable to provide the information, and Usiminas did not report imports prior to 2004, stating that it had reported all of the imports that benefited from the program during the entire AUL. Furthermore, the petitioner notes that the Department was unable to confirm the completeness for the Ex-Tarifário purchases CSN did report. Company officials explained at verification that they "just know" how many Ex-Tarifário purchases were made and therefore they also "just know" that

⁹⁰ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1383 (Fed. Cir. 2003) (*Nippon*).

they have accounted for the entire universe of Ex-Tarifário purchases.⁹¹ Additionally, the petitioner contends that the Department was also unable to verify the completeness of Usiminas' reporting, as Usiminas admits that it only maintained records regarding Ex-Tarifário as far back as 2004 and merely consulted with an employee familiar with the program for the remaining years of the AUL. Thus, the petitioner contends that the Department was unable to verify the completeness of the respondent companies' reporting for this program and the Department should apply AFA to this program for both companies for the entire period, consistent with sections 776(a) and (b) of the Act. As an AFA rate, the petitioner argues that the Department should use the rate of 3.68 percent, a rate calculated for a similar program in *Wire Rod from Brazil*.⁹²

Usiminas' Rebuttal Arguments

Usiminas maintains that Usiminas "put forth maximum effort" to report accurate usage of the program by providing the most reliable source to report its usage and that its decision to not use *Siscomex* cannot be equated to failure to act to the best of its ability. Therefore, according to Usiminas, the application of AFA for this program is unwarranted.

According to Usiminas, the Department verified Usiminas' program usage in the years 2004 through 2014. Usiminas adds that a Usiminas employee, in discussion with the Department at verification, confirmed that it did not use the program in the years 2000 through 2003. With respect to the petitioner's arguments that the Department was able to access import declarations prior to 2004, Usiminas argues that the Department inspected pre-2004 data and found no evidence that Usiminas received benefits during that period. Usiminas adds that while the *Siscomex* system allows one to search import declarations on a monthly basis, it is not a system that allows one to identify usage under the program. Further, as explained previously, Usiminas did verify the company's non-use during this time through the interview of a company official who was responsible for imports during the relevant time period. Moreover, Usiminas argues, unlike the *Siscomex* system, the system established by the company allows the identification of usage under this program, and that the Department verified the reported usage in this internal system. For these reasons, Usiminas argues that it has put forth its best effort to respond to the Department's request for information regarding this program, and as such, the use of AFA is unwarranted.

Finally, with respect to the petitioner's argument for using the rate of 3.68 percent as an AFA rate, Usiminas argues that the petitioner has not demonstrated that using this rate is in accordance with the Act and the Department's methodology for selecting AFA rates.

⁹¹ See CSN Verification Report at 6.

⁹² See *Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55805 (August 30, 2002) and accompanying Issues and Decision Memorandum at 16-17 (*Wire Rod from Brazil*).

CSN's Rebuttal Arguments

In its rebuttal brief, CSN argues that the Department should not apply AFA because, consistent with *Nippon*, the company took reasonable steps to keep and maintain company records. Company officials stated that the program applies to specific purchases of imported equipment/machinery and that its specific use of the Ex-Tarifário program is not contained in, identified in, or calculable from CSN's tax return or financial statements. As such, CSN argues, the basis for reporting this benefit between 2010 and 2014 was the application documents, fiscal notes and import declarations for the qualifying purchases, which are maintained by the company in accordance with Brazilian law.

Further, CSN argues, the company has familiarity with all the records it maintains in its possession, custody, or control. According to CSN, all purchases under the program are managed as investment projects and, thus, the relevant officials are aware of these purchases as the decision to import this equipment ties into the company strategic plans. Thus at verification, the Department met with CSN employees who just know how many projects were supported by the Ex-Tarifário program.

Finally, CSN explains, the company conducted prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of its ability to do so. According to CSN, it properly maintained its records in accordance with Brazilian tax law, which requires record-keeping for five years. Further, the company explains, it was not obligated to keep records from earlier years, nor were officials who compiled the data during those earlier years available at CSN and, thus, CSN could not accurately report investments for the entire AUL under the program.

With regard to the argument that the Department discovered information at verification that contradicted CSN's claim that information was not available prior to 2010, the company states that the petitioner has misunderstood the *Siscomex* system. CSN argues that *Siscomex* does not provide a means for CSN to review its import transactions and identify those transactions benefiting from Ex-Tarifário. Instead, consistent with information provided at verification, the system is limited to the search of import declarations. Thus, the company argues, it is not possible for a company to locate benefits under the program without additional information. Further, CSN argues the fact that information regarding import declarations prior to 2010 is available to the company is irrelevant as to the whether the *Siscomex* system may be used to find an Ex-Tarifário transaction. CSN argues that the Ex-Tarifário tariff code is not required to be listed in the import declaration; rather, it is only identified by the vendor in the fiscal note. CSN states that, therefore, even if it had combed through all of its import declarations for the period, it would not have been able to assemble a complete list of purchases. CSN argues that this is consistent with information provided in the questionnaire responses, as well as the information provided by CSN at that company's verification. Finally, CSN explains that during the course of reviewing 2009 documents from *Siscomex*, the Department found no Ex-Tarifário benefits.

Department's Position: As discussed above, under section 776(a) of the Act, the Department shall apply "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person (A) withholds information that has been requested, (B)

fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Further, section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

For the reasons discussed below, the Department determines that the application of adverse facts available under section 776(b) of the Act is warranted for CSN and Usiminas in this final determination. Specifically, with regards to CSN, we are applying total AFA, as the Department was unable to rely on information provided by the company because it withheld the provision of necessary information under sections 776(a)(1) and 776(a)(2)(A), impeded the conduct of the investigation by not providing that information under section 776(a)(2)(C), and the missing information was not verifiable as required by section 776(a)(2)(D) of the Act. For Usiminas, we are applying AFA for the unreported years (2000 to 2003) of the AUL because the company failed to provide verifiable information demonstrating that it did not use the program in those years as required by section 776(a)(2)(D) of the Act.

As noted by the petitioner, in *Nippon*, the U.S. Court of Appeals for the Federal Circuit explained that, for a party to comply with the Department's request to the best of its ability, it must:

. . . put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) takes reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer 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 relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so.⁹³

With respect to the years for which Usiminas did not provide information that was complete, accurate, and verifiable, we determine that Usiminas did not put forth "maximum effort." At verification, we learned that resources were available to Usiminas to report subject purchases, or the lack of subject purchases, for the years 2000 through 2003. It was evident at verification that Usiminas had not conducted a search of all of the records available to it, *i.e.*, *Siscomex*, and relied instead on the representation by a Usiminas company official that there were no subject purchases during those years. Such representation is not verifiable as required by section 776(a)(2)(D) of the Act. The Department does not consider oral statements self-verifying, especially when there are, as here, records available for the company to use when preparing its

⁹³ See *Nippon*, 337 F.3d at 1373, 1382.

response, and for the Department to examine when verifying the company's response. Department officials inquired whether Usiminas attempted to use the import declarations to ensure that Usiminas' reporting was complete and accurate, and verifiable; Usiminas officials responded that they had not.⁹⁴

Therefore, in accordance with the principles articulated in *Nippon*, we find that with respect to the years 2000 through 2003, Usiminas did not take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce, and Usiminas did not conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of Usiminas' ability, *i.e.*, the records created by Usiminas in *Siscomex* and maintained by the GOB. Finally, Usiminas has not demonstrated the unreliability of the records maintained by the GOB. Thus, we find that with regards to the purchase data between 2000 and 2003, Usiminas has not cooperated to the best of its ability and that the application of an adverse inference is warranted, pursuant to section 776(b) of the Act, for these years.

Moreover, Usiminas is incorrect in equating the Department's inspection, at verification, of pre-2004 data with a finding by the Department that Usiminas did not receive benefits during this period. The Department inspected pre-2004 data for the purpose of considering Usiminas' claim that there were no records available to it prior to 2004 with which it could confirm no additional use of the program or identify instances of program usage during that period. That exercise confirmed the opposite, and demonstrates that Usiminas did not expend maximum effort to ensure complete, accurate, and verifiable reporting of imported equipment with the benefit of reduced import duty rates under Ex-Tarifário for the entirety of the AUL.⁹⁵

Finally, with respect to Usiminas' argument that the resources available do not allow for the identification of items that benefitted from the program, as discussed in Usiminas Verification Report, Usiminas' import declarations are recorded in the *Siscomex* system, an internet-based system that the GOB requires importers and exporters to use to record information about their imports and exports.⁹⁶ At verification, the Department observed that the import declarations available for review in *Siscomex* include an indication of whether the import, *i.e.*, the purchase, was subject to the Ex-Tarifário program.⁹⁷ Moreover, Usiminas itself reported, in its initial questionnaire response, that, with respect to the Ex-Tarifário program, "{t}he classification is declared in the Import Declaration and this may be an 'Ex-Tarifário' tariff provision. Import Declarations may be accessed electronically by the company's customs broker through an electronic system named 'SISCOMEX'."⁹⁸ As such, there is ample evidence in the record that contradicts Usiminas' claim that there were no resources available to identify all of its purchases of equipment with the benefit of the Ex-Tarifário import duty reduction over the entirety of the

⁹⁴ See Usiminas Verification Report at 8.

⁹⁵ Had the Department observed a pre-2004 subject purchase at verification, the Department could not accept it, as it would amount to new factual information. However, it was not the data itself, but the availability of data which the Department verified in this case.

⁹⁶ See Usiminas Verification Report at 8 and Exhibit 10.

⁹⁷ *Id.*

⁹⁸ See Usiminas IQR November 5, 2015 at 27.

AUL to report accurate usage of the program by reviewing the “most reliable” source to report its usage.

Notwithstanding Usiminas’ failure to cooperate with respect to the years 2000 through 2003, however, the Department was able to confirm the completeness and accuracy of the information provided by Usiminas for the years 2004 through the POI. Therefore, in these circumstances, we have determined not to apply AFA to those years.

With respect to CSN, unlike Usiminas, CSN was unable to demonstrate that it reported all purchases that benefited Ex-Tarifário for the five years for which it reported Ex-Tarifário usage because it could not produce any documentation beyond the assertions of certain company officials to support the completeness and accuracy of its submissions.⁹⁹ It is therefore appropriate to assign a countervailable subsidy rate as facts available, pursuant to sections 776(a)(1) and 776(a)(2)(A), (C) and (D) of the Act to CSN for this program, and to apply an adverse inference, in accordance with section 776(b) of the Act. Concerning CSN’s argument that AFA is unwarranted because CSN follows government-mandated record-retention practices, in light of the availability to CSN, through *Siscomex*, of records prior to 2010, the record demonstrates that CSN also had access to a resource to report subject purchases or confirm the lack thereof for the entirety of the 15-year AUL. Therefore, we disagree that CSN complied with the principles articulated in *Nippon*. For this final determination, we find that CSN has not cooperated to the best of its ability and that the application of an adverse inference is warranted pursuant to section 776(b) of the Act.

Consistent with section 776(b) of the Act, to apply AFA to each of the years for which Usiminas did not report (2000 through 2003), we have allocated to the POI the benefits from the one year during the AUL that the benefits that Usiminas received passed the 0.5 percent test and are allocated into the POI. We are also allocating this benefit amount for each of the unreported years for MUSA and UMSA. We are attributing the benefits to MUSA and UMSA to Usiminas in accordance with 19 CFR 352.525(b)(6)(iv). Thus, we have calculated a countervailable subsidy rate for Usiminas of 3.93 percent *ad valorem*.¹⁰⁰

With respect to CSN, as noted in CSN’s Verification Report, CSN was unable to confirm the full universe of its reported Ex-Tarifário purchases, or to confirm that there were no additional purchases subject to Ex-Tarifário in years prior to 2010.¹⁰¹ As such, for this final determination, the Department is not relying on CSN’s reported purchases under this program for any years during the AUL, and is applying total AFA. When selecting an AFA rate, section 776(d) of the Act provides that the Department may use any countervailable subsidy rate applied for the same or similar program in a countervailing duty proceeding involving the same country, or, if there is no same or similar program, the Department may use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use, including the highest of such rates. Pursuant to our hierarchy, we will apply the highest calculated rate for the identical program in an investigation if a responding company used the

⁹⁹ See CSN Verification Report at 7.

¹⁰⁰ See Usiminas Calculation Memorandum.

¹⁰¹ See CSN’s Verification Report at 6.

identical program and the rate is not *de minimis*.¹⁰² Therefore, consistent with our practice, we are applying to CSN the countervailable subsidy rate calculated for Usiminas of 3.93 percent *ad valorem*.

Comment 4: Whether Ex-Tarifário is *De Facto* Specific

GOB's Arguments

According to the GOB, under Ex-Tarifário, any company in any sector may purchase goods subject to the program. Further, the GOB argues that 80 different economic sectors imported goods under the program during the AUL, and that the metallurgy sector accounted for less than eight percent, by value, of all imports.

Usiminas' Arguments

Usiminas argues that the Department's preliminary finding that Ex-Tarifário is *de facto* specific is not supported by evidence on the record. Specifically, the company states that the finding that the combination of Metalurgia/Siderurgia sector (which includes steel products) and the information technology sector as the basis for finding a predominant user of the program should be reversed.

Usiminas argues that the Brasil Maior Executive Report, which shows that the metallurgy and steel industries imported nearly 2,000 items at a value of \$6 billion under the program, does not address the steel industry but the metallurgy and steel industries together. Further, the company states that these industries are not the primary users of the program. Specifically, Usiminas argues that between July 2001 and May 2013, the combined metallurgy and steel industries account for approximately 12 percent of all the imports that benefitted from Ex-Tarifário and, therefore, the combined metallurgy and steel industries are not predominant users of this program. In addition, Usiminas states that the more recent Brasil Maior Executive Report, covering January 2011 through September 2014, provides a breakdown of the relevant information, separating the metallurgy and steel industries. During this time, Usiminas states, the steel industry represented three percent of the imported items subject to the program.

Further, according to Usiminas, the GOB's questionnaire responses indicate that more than 80 industry sectors benefitted from import duty reductions under the program, of which the steel industry constituted a very small percentage. Specifically, the company argues that "wholesale trade, except of motor vehicles and motorcycles" (15.09 percent of the total imports in 2014) the "manufacture of computer, electronic and optical products" (19.42 percent) and the "manufacture of pharmaceuticals, medicinal chemical and botanical products" (13.18 percent) all accounted for significantly larger import volumes than the steel industry.¹⁰³

¹⁰² See *Lightweight Thermal Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 73 FR 57323 (Oct. 2, 2008) (describing the Department's hierarchy).

¹⁰³ See Usiminas Rebuttal Brief at 12-13.

Additionally, Usiminas states of fifty industry sectors which were approved under the program between 2012 and 2014, the steel industry accounted for only 2.41, 2.75 and 1.87 percent by value, in 2012, 2013 and 2014, respectively. Usiminas adds that a number of other industries, including the automotive (3.71 percent in the POI), the pharmaceutical/chemical industry (8.77 percent), and cement (4.29 percent) were all were larger beneficiaries of the program during the POI. Finally, Usiminas argues, during the POI, 15 other sectors used Ex-Tarifário more than the steel industry.

CSN's Arguments

CSN argues that Ex-Tarifário is neither *de jure* nor *de facto* specific. With regard to *de jure* specificity, CSN explains that eligibility under the program is not contingent upon export performance or import substitution. Additionally, the company explains that, because the program is available to all companies that import eligible products, regardless of industry or sector, it is not *de facto* specific.

CSN explains that a variety of sectors use the Ex-Tarifário program and that more than forty different industries used the program during each year of the AUL (15 years) and that 70 industries used the program during the POI. Further, CSN adds that this program is comparable to other programs involving the Brazilian industry that the Department has not found countervailable. Specifically, CSN cites to *Cold-Rolled Carbon Steel Flat Products from Brazil*, in which the Department found a lack of specificity when a program was available to numerous industries, used by a “wide distribution of industries” and where the steel industry was not a predominant or disproportionate user of the program.¹⁰⁴

Next, CSN argues that industry or sector of an applicant or user is not factored into eligibility under the Ex-Tarifário program, nor is this program sector limited.

According to CSN, the Department’s reliance on import values for the “metalurgia” industry for the years of 2003, 2008, and 2009, as reported by the GOB, is misplaced. CSN argues that the “metalurgia” industry includes industries other than steel and, thus, misrepresents the allocation of benefits to the steel industry under the program. CSN explains the focus on these particular years ignores other periods in the 15-year AUL in which the “metalurgia” industry was not a large recipient of Ex-Tarifário benefits.

CSN argues that the Department’s reliance on the GOB’s information demonstrating that, in 2011, the “siderurgio,” or steel industry, had the largest volume of goods benefiting from the

¹⁰⁴ See *Final Affirmative Countervailing Duty Determination: Cold-Rolled Carbon Steel Flat Products from Brazil*, 67 FR 62128 (October 3, 2002) (*Cold-Rolled Carbon Steel Flat Products from Brazil*) and accompanying Issues and Decision Memorandum at 19 (“Our review of the GOB-provided breakdown of FINEM financing shows that the financing was provided to a wide variety of industries ranging from paper to electricity to farming products...Further, the breakdown of FINEM financing by industry indicates that the steel industry was neither a predominant user nor disproportionate recipient of FINEM financing each year in which respondent companies received approval for loans that were still outstanding during the POI and the three years before each relevant year of loan approval. We therefore find that this program is not *de facto* specific since the loans are widely available to numerous industries in Brazil and are actually used by a wide distribution of industries.”).

program ignores the fact that the same information demonstrates that in 2012 and 2014, the steel industry accounted for 2.41 and 1.87 percent, respectively, ranking 16th and 19th overall for those years. With respect to the 2011 volumes, according to CSN, more than 87 percent of the volume was from 46 industries other than steel.

Regarding import values subject to the program for the years 2001 through 2013, CSN argues that the Department determined that the “metalurgia” and the information technology sectors were the predominant users. CSN argues, however, that the information technology sector, a sector not related to “metalurgia,” imported twice as much as the metalurgia sector.

Finally, according to CSN, the information submitted by the petitioner does not segregate use by the steel industry. CSN argues that the updated Brasil Maior Executive Report, which provides data covering 2011 to 2014, isolates the steel industry and shows that it represents only three percent of imports by value under the program. As such, CSN concludes, the Department should find that the steel industry is not a predominant user of the Ex-Tarifário program.

The Petitioner's Rebuttal Arguments

In its rebuttal brief, the petitioner reiterates that neither the GOB nor respondents provided verifiable information related to CSN's and Usiminas' respective usage of Ex-Tarifário import duty reductions. The petitioner adds that it appears that the parties may have intentionally withheld information and that the Department's findings at verification demonstrate that the parties did not provide the requested information. Therefore, the Department should find these benefits to be specific based on AFA, because the Department does not have the information to conduct a complete *de facto* analysis. The petitioner elaborates, stating that should the Department not find the program *de facto* specific based on an industry or group of industries, it must analyze whether a company was a predominant use of the benefit. Since the Department could not verify company usage at the GOB or at companies, it should, as AFA, find the program specific for the entire AUL.

If the Department does not apply AFA for specificity, the petitioner argues that the Department should continue to find that the metallurgy industry, as defined by International Standard Industrial Classification, is a predominant user of Ex-Tarifário during the AUL, based on the data provided by the GOB, which follows the standard ISIC classification. During the AUL, the metallurgy industry and the pharmaceutical industry were the two largest beneficiaries of this program, and these two industries accounted for over 27 percent the reductions under Ex-Tarifário during the AUL.

Further, the petitioner states that the Department should reject the respondents' arguments that analysis of the data should not include both the metallurgy and steel industries together. The petitioner argues that the Department's practice is to find a subsidy to be specific if it is limited to a “group” of enterprises or industries and that there is no requirement that the members of a

group share similar characteristics. According to the petitioner, in prior cases, the Department has analyzed broad industry groups such as the “metalurgia” industry.¹⁰⁵

The petitioner further argues that the data for the metallurgy and steel industries for the period 2011 through 2014, provided in the GOB’s December 4, 2015 supplemental response, must be disregarded. First, the petitioner argues that the information requested is not provided in the form requested and “classification used in the table form does not correspond to any relevant classification guideline; rather, it is a free classification made by analysts for internal purposes”.¹⁰⁶ Further, the petitioner states that the data contain numerous deficiencies, including no industrial classification codes or English translation. The petitioner also states that many figures in this dataset do not reconcile to the data provided in the original response, most notably, the total FOB import values under the program for 2011 through 2014 are significantly different in the supplemental response.¹⁰⁷

Finally, the petitioner argues, the information cited in Usiminas’ and CSN’s argument is not appropriately on the record. Specifically, the petitioner states that the more recent Brasil Maior Executive Report was provided only in the form of a website link; the actual report was not submitted. As such, the petitioner contends, this report has not been appropriately placed on the record of this investigation. Further, the petitioner states that the absence of the full report on the record prevents parties from commenting on and rebutting information provided in that report. The petitioner also argues that this new information was untimely filed, in Usiminas’ December 9, 2015, pre-preliminary comments, while the deadline for filing new factual information was November 16, 2015, 30 days before the *Preliminary Determination*.

Department’s Position: Section 771(5A)(D) of the Act describes the ways in which a subsidy may be *de jure* specific (under section 771(5A)(D)(i) of the Act) or *de facto* specific (under section 771(5A)(D)(iii) of the Act). A program may be *de facto* specific where the actual recipients of the subsidy are limited in number, where an enterprise or industry (or group of enterprises or industries, is a predominant user or receives a disproportionately large amount of the subsidy, or where the granting authority exercises discretion in the decision to grant the subsidy. We have determined that Ex-Tarifário is not *de jure* specific pursuant to section 771(5A)(D)(i) of the Act because it does not appear to expressly limit access to the subsidy.

When considering whether the program is *de facto* specific, we have considered the distribution and receipt of the subsidy over the course of the AUL period because benefits under Ex-Tarifário are linked to imports of capital equipment and are non-recurring. Pursuant to that analysis, we continue to determine, as we did in the *Preliminary Determination*, that the Ex-Tarifário

¹⁰⁵ See, e.g., *Citric Acid and Certain Citrate Salts: Final Results of Countervailing Duty Administrative Review*; 2012, 79 FR 78799 (December 31, 2014) and accompanying Issues and Decision Memorandum at Comment 4.

¹⁰⁶ See Petitioner Rebuttal Brief at 22.

¹⁰⁷ For example, the GOB’s original response indicates that the total FOB import value in 2014 was \$8,839,368,333 (see GOB IQR November 18, 2015), but the December 4 supplemental response indicates the value for 2014 to be \$11,458,689,515. See letter from the GOB, “Cold-Rolled Steel Flat Products from Brazil; Response to the DoC’s supplemental questionnaire for the GOB,” dated December 4, 2015 (GOB SQR December 4, 2015) at Exhibit E-3.

program is *de facto* specific under section 771(5A)(D)(iii)(II) to a group of industries (steelmaking and information technology) that are the predominant users of this program.¹⁰⁸

In the *Preliminary Determination*, the Department relied, in part, on information provided in Exhibit II-3 of the GOB's initial questionnaire response.¹⁰⁹ Exhibit II-3 consists of a report that was prepared by Brazilian customs authorities showing imports benefitting from Ex-Tarifário by industry for the AUL.¹¹⁰ This report demonstrates that, for the years 2003, 2008, and 2009, the "metalurgia" industry, which includes steel producers, was the largest recipient of benefits under this program by value of goods imported.¹¹¹

In addition to Exhibit II-3, the Department preliminarily relied on Exhibit E-3, a report of imports under the Ex-Tarifário program by industry from 2011 through 2014.¹¹² Finally, we preliminarily relied on information provided in the petition that shows that during the period May 2001 through July 2013, the "Metalurgia/Siderurgia" and the information technology sectors together were the predominant users of the program.¹¹³ Usiminas and CSN argue that, although the information in Exhibit E-3 shows that "metalúrgico" and the "siderúrgico" industries account for 5.16 percent and 12.56 percent, respectively, for the year 2011, the corresponding percentages for 2012 through 2014 are much smaller.

We have further examined the information provided in Exhibit E-3 and have determined not to rely on that information for this final determination, because we find that the manner in which it was reported does not correspond with the manner in which Exhibit II-3 reports similar information for the years 2011 through 2014 (*e.g.*, total FOB Ex-Tarifário import values). Exhibit II-3 provides the information using standard ISIC codes, which include the steel industry as part of the basic metals industries. With respect to Exhibit E-3, the GOB noted that "{c}lassification used in the table form does not correspond to any relevant classification guideline; rather, it is a free classification made by analysts for internal purposes, since there is no guarantee that import will occur in the same amount as informed in the application. Customs Authorities provide clearer information on sector distribution of Ex-Tarifário."¹¹⁴ Thus, we find that the information in Exhibit E-3 is inconsistent with the information in Exhibit II-3, which the Department verified and with which we found no discrepancies.¹¹⁵

We thus continue to rely on the information provided in Exhibit II-3 to inform our analysis of whether the provision of benefits under Ex-Tarifário is *de facto* specific based on the distribution of benefits.

¹⁰⁸ See PDM at 22-23.

¹⁰⁹ See GOB QR November 18, 2015 at Exhibit II-3.

¹¹⁰ *Id.* at 19.

¹¹¹ See PDM at 22.

¹¹² See GOB SQR December 4, 2015 at Exhibit E-3.

¹¹³ See letter from the petitioners (Nucor, United States Steel Corporation, Steel Dynamics Inc., Arcelor Mittal USA, LLC, and AK Steel Corporation), "Petition for the Imposition of Antidumping and Countervailing Duties Pursuant to Sections 701 and 703 of the Tariff Act of 1930, As Amended," dated July 28, 2015 (Petition) at Exhibit V-13.

¹¹⁴ *Id.* at 23.

¹¹⁵ See GOB Verification Report at 6.

For the final determination, however, we find that the information provided in the petition in the Brasil Maior Executive Report (August 2013), a report of sector distribution and investments linked to Ex-Tarifário for the years 2001 through 2013,¹¹⁶ is the most reliable information for purposes of our specificity analysis. We can confirm the reliability of the information by comparing the total benefits for all industries reported therein for the period with the total benefits reported in Exhibit II-3 for the same period, which we confirmed at verification.¹¹⁷ Because this comparison shows only a small difference in the total value of benefits (less than 3.0 percent), we find the Brasil Maior data reliable bases for our specificity analysis.¹¹⁸

As we stated in the *Preliminary Determination*, the Brasil Maior Executive Report (August 2013), shows that, together, the “Metalurgia/Siderurgia” sector (*i.e.*, steelmaking and metal industries) and the Information Technology sector, are predominant users of this program by value of goods imported (and, therefore, by value of import duty reductions). Specifically, of the 18 sectors listed in this report, the “Metalurgia/Siderurgia” sector and the Information Technology sector are the two sectors that have received the highest amount of the benefits during this period, which together account for more than 37 percent of all of the benefits provided during this period: the Information Technology sector accounts for 24.98 percent of the benefits, and the “Metalurgia/Siderurgia” sector accounts for 12.25 percent of the benefits. There is also a large difference between the second highest recipients (Metalurgia/Siderurgia) and the sector with third highest amount of total benefits, “Bens de Capital,” or Capital Goods, which received 7.8 percent of the total benefits. This uneven distribution of benefits among the 18 recipient sectors demonstrates that the program provides benefits on a *de facto* specific basis to the “Metalurgia/Siderurgia” and Information Technology sectors because they are predominant users of the program, as contemplated by section 771(5A)(D)(iii)(II) of the Act. Moreover, the top four recipient sectors together receive more than 50 percent of the benefits under this program: the Information Technology sector accounts for 24.98 percent of the benefits; the “Metalurgia/Siderurgia” sector accounts for 12.25 percent of the benefits; “Bens de Capital,” or the Capital Goods sector, accounts for 7.8 percent of the total; and “Automotivo,” the automotive sector, accounts for 7.35 percent of the total. This evidence further demonstrates the *de facto* specificity of this program over the course of the AUL period.

Finally, in support of their arguments, both Usiminas and CSN rely on Ex-Tarifário statistics that Usiminas identified in comments prior to the *Preliminary Determination* as available on a Brazilian government website.¹¹⁹ However, as the Department noted prior to the *Preliminary Determination*, reference to an Internet address does not substitute for the actual provision of information for the record of the information that may be found at a web address.¹²⁰

¹¹⁶ See Petition at Exhibit V-13.

¹¹⁷ See GOB Verification report.

¹¹⁸ See Memorandum to the File “Countervailing Duty Investigation of Cold-Rolled Steel Flat Products from Brazil: Ex-Tarifário Data Comparison” dated concurrently with this memorandum.

¹¹⁹ See letter from Usiminas, “Cold-Rolled Steel Flat Products from Brazil: Pre-preliminary Comments,” dated December 9, 2015, at 11.

¹²⁰ See letter from the Department, “Countervailing Duty Investigation of Certain Cold-Rolled Steel Flat Products from Brazil: Supplemental Questionnaire for the Government of Brazil,” dated November 24, 2015, at 2.

Accordingly, for the same reasons articulated in Comment 20, below, the Department has not examined the information that Usiminas referenced, solely by providing an Internet address, in comments prior to the *Preliminary Determination*.

In summary, the Department continues to find that Ex-Tarifário is *de facto* specific under section 771(5A)(D)(iii)(III) of the Act to a group of industries (steelmaking and information technology) which are the predominant users of the program.

Comment 5: Whether Ex-Tarifário Provides a Financial Contribution

GOB's Arguments

According to the GOB, application of a lower rate to a given good does not mean that it is being subsidized when compared to other goods for which tariff rates applied are higher. In addition, according to the GOB, the program is automatic: the reduced tariff rate applies to all imports of the good. The GOB also refers to a similar law that has been passed by the United States to support its argument that there is no financial contribution.

Department's Position: For this final determination, we continue to find that the reduction of import duty rates from the baseline rate of 14 percent to two percent for capital goods available under Ex-Tarifário constitutes a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act. The GOB's argument that the reduction is granted in automatic fashion (to all importers of the particular good) does not overcome our conclusion that in reducing import duty rates applicable to some products, on the basis of requests from importers of those products, the GOB is foregoing revenue that provides a benefit. The GOB has provided no additional information that warrants a departure from the *Preliminary Determination*. The passage of a purportedly similar law in the United States is not relevant to our analysis of whether Brazilian producers of cold-rolled steel are receiving countervailable subsidies.

Comment 6: Whether the FINAME Loan Program is Specific

GOB Arguments

According to the GOB, the GOB has demonstrated that the FINAME program is not *de facto* specific. Specifically, the GOB's questionnaire responses indicated that, in 2014, among 73,462 companies that participated in the program, the number of loans to the steel sector represented less than 0.2 percent of the total.

Department's Position: In the *Preliminary Determination*,¹²¹ in the absence of information necessary to our specificity analysis, we relied on the application of AFA to determine that the FINAME loan program is specific. Although the GOB provided some information about the provision of FINAME loans to the steel sector (the number of total loans and the value of loans provided to the steel sector), the GOB had not provided additional information regarding the distribution or usage of FINAME loans across industry sectors. Moreover, when asked for the

¹²¹ *Id.* at 13 – 14.

second time to provide this information, the GOB responded by stating “{t}he total amount of support approved under FINAME for . . . companies in every other industry sector . . . is beyond the scope of investigation.”¹²² Such information would have enabled us to examine the broader context in which FINAME loans are provided across industry sectors and to analyze whether the distribution of loans (by the value of the loans in addition to the number of loans) is indicative of either *de facto* specificity or non-specificity. Thus, we do not have the information necessary to conduct a complete specificity analysis. The GOB’s arguments do not substitute for the missing and necessary information. Accordingly, there is no basis to change our preliminary determination, on the basis of AFA, pursuant to sections 776(a) and (b) of the Act, that the FINAME loan program is *de facto* specific.

Comment 7: Whether to Apply AFA for Purposes of Determining the Benefit of the FINAME Program

The Petitioner’s Arguments

According to the petitioner, citing *Nippon*, the Department should apply AFA for determining the benefit under the FINAME loan program because, during verification, the GOB did not provide access to the GOB’s records regarding loans reported in this investigation, stating they were prevented from doing so by Brazilian bank secrecy laws.¹²³ Therefore, according to the petitioner, because the Department was unable to tie the information CSN and Usiminas reported to the GOB’s records, it, therefore, could not verify the completeness of either company’s FINAME loan reporting. With respect to an AFA rate, according to the petitioner, although the Department calculated a rate for this program in *Wire Rod from Brazil*, that rate is only slightly higher than the rate calculated in the *Preliminary Determination* (0.15 percent versus 0.13 percent here).¹²⁴ Thus, according to the petitioner, this rate is not sufficiently adverse “as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner,”¹²⁵ and, therefore, the Department should use the rate of 2.14 percent which is a rate calculated in *Cold-Rolled Carbon Steel Flat Products from Brazil*¹²⁶ for a similar loan program administered by BNDES, the agency that administers FINAME.

GOB’s Arguments

In its rebuttal brief, the GOB argues that it did demonstrate, during verification, that it accurately reported the FINAME loans provided to the respondent companies and it has, from the beginning of the investigation, informed the Department that information regarding all its programs is

¹²² See GOB SQR December 4 at 51.

¹²³ See Petitioner’s Case Brief at GOB 11; see also Verification Report at 11; see also *Nippon* at 1383.

¹²⁴ See *Wire Rod from Brazil* at 10-11.

¹²⁵ See *Countervailing Duty Investigation of Certain Polyethylene Terephthalate Resin From India: Final Affirmative Determination and Final Affirmative Critical Circumstances Determination, in Part*, 81 FR 13334 (March 14, 2016) and accompanying Issues and Decision Memorandum at 11, citing *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access memory Semiconductors From Taiwan*, 63 FR 8909 (February 23, 1998).

¹²⁶ See *Cold-Rolled Carbon Steel Flat Products From Brazil* and accompanying IDM at 21.

publicly available online. The GOB adds that it was prevented by Brazilian bank secrecy laws from providing certain data to the Department, and that it provided online information regarding all loans contracted since January 2002.

Usiminas' Arguments

According to Usiminas, the Department verified the accuracy and completeness of its FINAME loans by tying the reported amount of loans to Usiminas' financial statements and to its accounting ledgers. Usiminas adds that the Department was able to confirm the FINAME loan amounts with the GOB.

Moreover, citing 19 CFR 351.508, Usiminas argues that the Department cannot sanction Usiminas for the GOB's failure to cooperate. In this case, it was the GOB that did not provide the information that the Department requested for purposes of considering the *de facto* specificity of this program; Usiminas provided all of the information requested by the Department regarding its use of this loan program.

Finally, with respect to the petitioner's argument for using a rate of 2.14 percent, Usiminas notes that the unfair trade laws are remedial and not punitive and, therefore, should the Department rely on AFA, it should use the rate of 0.15 percent.

CSN's Arguments

In its rebuttal brief, CSN argues that, as reflected in the Department's verification reports, CSN and the GOB fully complied with the Department's requests for information at verification pertaining to CSN's FINAME loans and, therefore, the application of AFA is inappropriate. Moreover, according to CSN, it fully complied with the Department with respect to this program.

CSN adds that, should the Department determine to apply AFA, the Department should apply the rates calculated for FINAME in previous cases, consistent with the Department's AFA hierarchy, rather than rates from a completely different program, as the petitioner has argued.

Department's Position: As reflected in the verification reports for both CSN and Usiminas, we were able to confirm the amount of both companies' use of this loan program.¹²⁷ Thus, there is no need to rely on AFA to identify a rate to apply to this program and we have used the information provided by the companies regarding their outstanding FINAME loans to calculate a subsidy rate for each company.¹²⁸

¹²⁷ See Usiminas Verification Report at 8 – 9; see also CSN Verification Report at 7 – 8.

¹²⁸ See CSN Calculation Memorandum; see also Usiminas Calculation Memorandum.

Comment 8: Whether to Re-Calculate the FINAME Program for Usiminas*The Petitioner's Arguments*

According to the petitioner, in the *Preliminary Determination*, the Department calculated a FINAME benefit for Usiminas, MUSA, and UMSA without necessary information to remove intercompany sales. For the final determination, the Department should eliminate the intercompany sales from the denominator, as provided in 19 CFR 351.525(b)(6)(iv).

According to the petitioner, in the *Preliminary Determination*, the Department inappropriately rounded the *ad valorem* rates calculated for each company before summing the rounded rates for the combined entity. The petitioner argues that, consistent with *Aluminum Extrusions—PRC*¹²⁹ the Department's standard practice is to round benefits at the program-specific level and not at the affiliate-specific level, and the Department should follow that practice for the final determination.

Usiminas' Arguments

According to Usiminas, the precedent cited by the petitioner makes no mention of calculations at the affiliate-specific level and, thus, it contradicts the petitioner's claimed "standard practice" of the Department.

Department's Position: With respect to the petitioner's argument that the Department did not remove intercompany sales from the denominator, since the *Preliminary Determination*, we requested, and Usiminas confirmed, that the sales values reported and used in the *Preliminary Determination* were exclusive of intercompany sales.¹³⁰ The Department examined this information at verification and found no discrepancies.¹³¹

With respect to the petitioner's argument regarding *ad valorem* values, we recognize that we made an error by rounding the individual rates we calculated for Usiminas and MUSA prior to adding them together. With the correction of this error, we have calculated a countervailable subsidy rate for Usiminas of 0.13 percent *ad valorem*.¹³²

¹²⁹ See *Aluminum Extrusions From the People's Republic of China: Final Results, and Partial Rescission of Countervailing Duty Administrative Review*; 2013, 80 FR 77325 (December 14, 2015) and accompanying Issues and Decision Memorandum at Comment 7.

¹³⁰ See Usiminas QR January 12, 2016.

¹³¹ See Usiminas Verification Report at 4 – 6.

¹³² See Usiminas Calculation Memorandum.

Comment 9: Whether to Use a Company-Specific Interest Rate Benchmark to Calculate the FINAME Program Benefit for Usiminas*Usiminas' Arguments*

According to Usiminas, the Department's regulations require the use of company-specific interest rates on the company's comparable commercial loans as benchmarks. Usiminas argues that, although it submitted information on long-term commercial loans for 2010, 2011, 2013, and 2014, the Department did not use this information, and relied, instead, on interest rate information available from the International Monetary Fund (IMF) to identify loan benchmarks. Thus, for the final determination, Usiminas argues that the Department should use a company-specific benchmark. For the years in which the Department does not have company-specific interest rates, it should use Usiminas' 2014 rate, which is the highest reported interest rate paid by Usiminas.

The Petitioner's Arguments

The petitioner argues that Usiminas' suggested benchmark loans are not comparable, the reasons of which are business proprietary, and the Department should, therefore, not use them in lieu of the IMF benchmarks.

Department's Position: For this final determination, and based on business proprietary information provided by Usiminas regarding its commercial loans (and discussed in more detail in the Usiminas Calculation Memorandum), we determine that the structure of Usiminas' commercial loans is not comparable to the structure of the FINAME loans as required by 19 CFR 351.505(a)(2)(i) and (ii). Thus, we have continued to rely on published information from the IMF, pursuant to 19 CFR 351.505(a)(3)(ii).

Comment 10: Whether the Integrated Drawback Scheme is Countervailable*GOB's Arguments*

According to the GOB, the ASCM allows for remission or exemption of import duties and taxes in the context of duty drawback schemes. Specifically, the GOB argues that footnote 1 of the ASCM allows for the exemptions or suspensions of all taxes and duties normally levied on inputs used in the production of goods for export. The GOB adds that the Department did not, in the *Preliminary Determination*, substantiate its determination that the GOB did not have in place a system that is reasonable and effective for the purpose of identifying and rebating the amount of duties assessed on imports. According to the GOB, its drawback system provides a reliable enforcement mechanism.

CSN's Arguments

According to CSN, the integrated drawback scheme is not countervailable because the system is consistent with the Department's regulations and with applicable WTO rules. Moreover, the Department verified that the system did not provide a countervailable subsidy to CSN during the

POI. CSN also argues that the GOB does have a system in place, through *Siscomex*, to enforce drawback according to the Department's regulations. According to CSN, *Siscomex* integrates the registration, monitoring and control of trade operations. Additionally, CSN notes, the GOB also has the ability to audit users of drawback. In light of this and the respective drawback findings as highlighted in both CSN's and the GOB's verification reports, the Department should reverse its decision in the *Preliminary Determination*.

CSN adds that the Department's *Preliminary Determination* that the program provides "excessive" exemption, deferral, or remission of import charges because "companies are entitled to received exemptions or suspensions of domestic taxes on domestic purchases of inputs," is unwarranted because the drawback program operates consistently with U.S. law and WTO standards in its application to both imports and domestic purchases. Specifically, CSN argues that Integrated Drawback for domestic purchases is the same as the substitution drawback as authorized in 19 CFR 351.519(a)(2) which provides for the use of home market inputs. CSN concludes that any drawback received was not in excess of the charges actually levied on inputs consumed in the production of the exported product, with an allowance for waste. Therefore, CSN's use of the Integrated Drawback program during the POI is not a countervailable subsidy.

Usiminas' Arguments

According to Usiminas, the record demonstrates that the GOB has a reasonable and effective system for identifying and rebating the amount of import duties assessed on imported inputs that are consumed in the production of exports. The record evidence includes information concerning the application process, audits, and enforcement. Moreover, at verification, Usiminas provided the technical report that it must submit to the relevant government officials; this report identified the inputs that are used in the production of the exported products and the quantity of each of these inputs. In addition, in the application for drawback, the company must account for all the inputs it has made along with all payments of taxes and for all exports made with such inputs. For the foregoing reasons, Usiminas argues that the GOB has demonstrated that it has an effective tracking system in place and, therefore, it is improper to determine that the entire amount of the exemptions confer a benefit.

The Petitioner's Rebuttal Arguments

The petitioner argues that the GOB and the respondents ignore the Department's *Preliminary Determination* that the program, in general, allows for the exemption, deferral, or remission of domestic taxes on the imported inputs, along with import taxes and, as such, it allows for exemptions and rebates that exceed the amount of import duties alone. According to the petitioner, this was verified with both the GOB and the respondent companies.

Department's Position: For the final determination, we continue to find that the Integrated Drawback Scheme provides excessive rebates and, thus, provides a countervailable benefit. In its initial questionnaire response, the GOB reported that, under this program, exporters that import inputs that are used in the production of exports may receive exemptions, deferrals or rebates of numerous taxes that are incident on the importation of the relevant inputs. In addition to the normal import duties, exporters may receive rebates of the IPI, the Social Integration

Program tax (PIS); the Social Security Financial Contribution (COFINS); the Tax for the Renewal of the Merchant Navy (AFRMM); and the Tax Over Goods Transit, Interstate and Intercity Transportation and Communications (ICMS).¹³³ For the *Preliminary Determination*, we found that “the program provides more than the exemption, deferral, or remission of import charges that would be allowable under 19 CFR 251.519(a) {sic}, and that are levied on inputs consumed in the production of exports.”¹³⁴ Moreover, because “the system is not reasonable and effective for the purpose of identifying and rebating the amount of import duties assessed on imported inputs consumed in the production of exports, we find the entire amount of the exemptions or rebates provided confers a benefit in accordance with 19 CFR 351.519(a)(4)(i).”¹³⁵

We examined this program at the verifications of both the GOB, and the respondent companies. We find that in its operation of this program, the GOB has met the exception provided in 19 CFR 351.519(a), under which the Department may consider whether the entire amount of the exemption of import charges provides a countervailable benefit. Although the rebates are excessive, in that they rebate domestic taxes in addition to the import duties and charges, incident on the importation and the domestic purchase of inputs consumed in the production of exports, the GOB has “in place a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts.”

Prior to granting approval to companies to use the Integrated Drawback Scheme, the GOB requires the companies to prepare a “technical report” that details the inputs and the amounts that are consumed in production of the finished products.¹³⁶ This technical report becomes the basis for tracking the purchases of inputs, whether imported or domestic, and the taxes exempted, deferred, or paid on those purchases, and for determining whether a company has fulfilled its obligation to export finished products such that the exemptions and deferrals can be finalized, or the duties and taxes paid can be rebated. Thus, with regard to import charges alone, the Integrated Drawback Scheme meets the requirements for a duty drawback program. However, because this system also allows for the rebate of domestic taxes otherwise due on imported or domestically sourced inputs, we continue to find that the rebate is excessive. Because we can identify the amount by which the rebate is excessive (*i.e.*, the amount of non-import charges that are rebated upon export), for purposes of this final determination, we are measuring the benefit as the non-import charges that are rebated upon export of finished products.

With regard to CSN’s argument that the program functions as a substitution drawback, provided for in 19 CFR 519(a)(2), there is no evidence on the record to establish that the rebate of domestic taxes on domestically-sourced inputs functions as a substitution drawback. That is, there has been no explanation or documentation that in order to receive a rebate of taxes paid on domestic inputs, an exporter has to demonstrate a concomitant import of the same input and the payment, or deferral, of all of the relevant taxes.

¹³³ See GOB IQR November 18, 2015 at 43.

¹³⁴ See PDM at 27.

¹³⁵ *Id.*

¹³⁶ See GOB Verification Report at 7.

To calculate the countervailable subsidy, for each company we totaled the rebates of PIS, COFINS, ICMS, IPI and AFRMM upon export. We divided this total benefit amount by each company's total exports during the POI and calculated a countervailable subsidy rate of 1.13 percent *ad valorem* for CSN and 0.77 percent *ad valorem* for Usiminas.¹³⁷

Comment 11: Whether Usiminas Received a Benefit Under the Integrated Drawback Scheme

Usiminas' Arguments

Under the Integrated Drawback Scheme, companies are entitled to receive exemptions or suspensions of domestic taxes and import charges on imported inputs. In the *Preliminary Determination*, the Department found that, because the exemptions and rebates include domestic taxes, whether imposed on imported or domestically sourced inputs, the rebates provided exceed the import duties that are assessed on inputs consumed in the production of exports. Usiminas argues that the verified record demonstrates that, during the POI, Usiminas used the exemption program only for imported goods and recovered only duties and taxes paid. Therefore, Usiminas argues that it did not receive excessive rebates under this program and, thus, it received no countervailable subsidy.

Department's Position: Because the integrated drawback program provides rebates of domestic taxes, in addition to import charges, levied on imports of inputs used in the production of exports, and because the GOB did not have in place a system to determine which inputs and in what amounts are consumed in the production of exports, we found in the *Preliminary Determination* that the rebates were excessive, and were countervailable in full. As discussed above, in Comment 10, however, we have now determined that the benefit provided under the Integrated Drawback program is the amount by which the drawback is excessive, *i.e.*, the amount of domestic taxes incident to imported or domestically sourced inputs rebated upon export of finished products. The record demonstrates that Usiminas received such rebates,¹³⁸ and thus, we are measuring the countervailable benefit arising from these excessive rebates.

Comment 12: Whether Reintegra is Countervailable

GOB's Arguments

The GOB explains that Reintegra's purpose is to reintegrate residual indirect taxes pertaining to an exporter's supply chain. Based on the general principle that taxes should not be exported, the GOB argues that the Reintegra program should not be considered a subsidy for purposes of the countervailing duty law.

¹³⁷ See CSN Calculation Memorandum; see also Usiminas Calculation Memorandum.

¹³⁸ See, e.g., Usiminas Verification Report at 9 and 10.

Usiminas' Arguments

According to Usiminas, in the *Preliminary Determination*, the Department did not examine whether the amount of taxes remitted under Reintegra exceed the amount of prior-stage indirect taxes paid on inputs that are consumed in the production of the exported product as the Department is required to do under 19 CFR 351.518(a)(2). Instead, the Department found that the GOB did not have a demonstrated control system for Reintegra as discussed in 19 CFR 351.518(a)(4). However, Usiminas argues, the record demonstrates that the GOB did have a system in place to identify the inputs consumed in the production of the exported products and the indirect taxes imposed on those inputs.¹³⁹ Accordingly, Usiminas argues that Reintegra is not countervailable.

CSN's Arguments

CSN states that the Department incorrectly found that the GOB does not have a reasonable system in place to control Reintegra benefits in the *Preliminary Determination* and thus the requirements for non-countervailability have not been met pursuant to 19 CFR (a)(4)(i) and (ii). CSN states that the GOB has demonstrated that products eligible for Reintegra are limited to those for which imported inputs do not exceed 40 percent of the export price.¹⁴⁰ Further, CSN states that the credit request must be filed at the close of the quarter in which the eligible exports were made¹⁴¹ and that the Brazil tax authority reviews eligibility for this credit.¹⁴²

The Petitioner's Rebuttal Arguments

The petitioner states that neither the GOB nor the respondents have demonstrated that a system is in place that ensures that the level of rebate directly corresponds to the indirect taxes paid on the inputs consumed in the production of the respondents' exported cold-rolled steel. The petitioner further explains that at verification, the Department found that there is no study regarding subject merchandise or the steel industry to determine whether the three percent rate corresponds with indirect tax paid on the inputs.¹⁴³ Stating that the Department made a similar finding in *Honey from Argentina*,¹⁴⁴ the petitioner argues that none of the information cited by Usiminas demonstrates that the GOB system ensures that the level of rebate directly corresponds with the indirect taxes paid on the inputs consumed in the production of exported cold-rolled steel.

Department's Position: We disagree with Usiminas' inference that the Department is under an obligation first to determine whether the amount remitted under Reintegra exceeds the amount of

¹³⁹ See, e.g., Usiminas IQR November 5, 2015 at 32; see also Usiminas SQR November 30, 2015 at 8; see also Usiminas Verification Report at 10.

¹⁴⁰ See GOB SQR January 15, 2016 at 16, Exhibits 8 and 10.

¹⁴¹ *Id.*

¹⁴² *Id.* at 21.

¹⁴³ See GOB Verification Report at 9.

¹⁴⁴ See *Honey from Argentina: Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determination on Honey from the People's Republic of China*, 66 FR 14521, 14525 (March 13, 2001), unchanged in the final determination, *Final Affirmative Countervailing Duty Determination: Honey From Argentina* 66 FR 50613 (October 4, 2001) (*Honey from Argentina*).

prior-stage indirect taxes paid on inputs consumed in production of the exported product. As stated in the *Preliminary Determination*, to determine if the Reintegra program conferred a countervailable benefit, we would normally examine whether the amount remitted or credited to cold-rolled steel exporters exceeds the amount of prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported cold-rolled steel, making normal allowances for waste.¹⁴⁵ However, section 19 CFR 351.518(a)(4)(i)-(ii) provides for an exception. That regulation states that the Department will consider the entire amount of the tax rebate or remission to confer a benefit unless the Department finds that the government in question has in place a system that meets the requirements of the regulation. Thus, the Department attempted to gather information regarding how the GOB established the rate at which the Reintegra rebate is granted to exporters of cold-rolled steel, in order to consider whether, in setting the rate, the GOB itself, in an effort to ensure that Reintegra rebates were not excessive conducted an analysis of or otherwise considered the prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of the exported cold-rolled steel. When the GOB failed to respond, there was no evidence on the record that indicated that the GOB had conducted any such analysis. Instead, the record demonstrated that the GOB implemented the Reintegra program with one rate of rebate across all of the eligible products (essentially, all exports).¹⁴⁶ This was a sufficient basis for the Department to conclude for purposes of the *Preliminary Determination* that there was no relationship between the prior-stage cumulative indirect taxes paid on inputs that are consumed in the production of exported cold-rolled steel and the rate of the rebate.¹⁴⁷

The Department is not itself obligated, as Usiminas contends, to determine whether the rebate exceeds the taxes paid; the Department is, however, obligated to consider whether the government in question has in place a system to ensure that the rebate does not exceed the taxes paid. The record demonstrates that there was no government system in place to confirm which inputs are consumed and in what amounts in the production of cold-rolled steel for export. Therefore, the Department's method of analysis is proper and Usiminas' assertion is misguided.

The Department also disagrees with Usiminas' second point that the GOB had an appropriate system in place. As detailed above, under 19 CFR 351.518(a)(4), the Department will consider the entire amount of the rebate or remission to confer a benefit unless the government in question has in place a system that meets the following requirements:

- (i) The government in question has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs, and the system or procedure is reasonable, effective for the purposes intended, and is based on generally accepted commercial practices in the country of export; or

¹⁴⁵ See PDM at 29.

¹⁴⁶ See letter from the GOB, "Re: Response to the DOC's Questionnaire for the GOB," dated November 5, 2015 (where the GOB did not respond to questions regarding Reintegra, saying instead that information was not yet available); see also GOB SQR December 9, 2015 (where the GOB did not respond to the Income Tax Program Appendix, saying that Brazil's tax secrecy laws prohibited a full response). In fact it was not until verification that the GOB provided information about how the Reintegra rate was chosen. See GOB Verification Report at 9.

¹⁴⁷ See PDM at 28-30.

(ii) If the government in question does not have a system or procedure in place, if the system or procedure is not reasonable, or if the system or procedure is instituted and considered reasonable, but is found to not be applied or not to be applied effectively, the government in question has carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product, in what amounts and which indirect taxes are imposed on the inputs.

In the *Preliminary Determination*, we found that the GOB did not demonstrate that it had in place a system or set of procedures to confirm which inputs are consumed in the production of the exported products and in what amounts, and to confirm which indirect taxes are imposed on these inputs. The quarterly declarations to claim the credits earned, in which exporters detail the FOB value of their exports and request the rebate at three percent of that value, do not substitute for the requirements that otherwise are necessary to meet this standard. These filings with the government provide no linkage between the inputs consumed and the indirect taxes that are imposed.¹⁴⁸ In fact, when specifically asked to describe the system or procedure in place to confirm which inputs are consumed in the production of exported products and in what amounts, the GOB stated “Reintegra is a benefit calculated based on the product export value, and that this product may not exceed 40 percent of directly imported inputs...checking the percentage of imported inputs that are part of the product...only serves to verify the applicability or not of the regime.”¹⁴⁹ The GOB also explained that, under Reintegra, it is *only* necessary to verify that the exported product is not composed of more than 40 percent of imported inputs.¹⁵⁰ Therefore, we continue to find that the requirements set forth in 19 CFR 351.518(a)(4)(i) were not met.

We also found in the *Preliminary Determination* that the GOB failed to provide any evidence that it had carried out an examination of actual inputs involved to confirm which inputs are consumed in the production of the exported product. At verification, GOB officials stated that there were no formal established guidelines or criteria for selecting the Reintegra rate; rather, the decision was primarily a political one.¹⁵¹ The GOB further stated that this decision was informed based on the results of a study by the Brazilian Institute of Geography and Statistics (BIGS). This study was a broad report on residual taxes and focused specifically on three sectors: (1) leather footwear; (2) machines and equipment for the food, beverage and tobacco industries; and (3) automobiles, vans and utility vehicles.¹⁵² The GOB confirmed that no study was conducted concerning subject merchandise or the steel sector in general.¹⁵³ For this final determination, we conclude that the BIGS report does not constitute a reasonable examination of “actual” inputs to confirm which inputs are consumed in the production of exported cold-rolled steel flat products, in what amounts, and which indirect taxes are imposed on those inputs. The study is not relevant to the identification of an appropriate Reintegra rebate rate applicable to

¹⁴⁸ See CSN IQR November 5, 2015 at Exhibit 19; see also Usiminas SQR November 30, 2015 at Exhibits 8 and 9.

¹⁴⁹ See GOB SQR January 15, 2016 at 19.

¹⁵⁰ *Id.* at 20.

¹⁵¹ See GOB Verification Report at 9.

¹⁵² *Id.*

¹⁵³ *Id.*

cold-rolled steel flat products and, thus, does not change our conclusion that the requirements set forth in section 351.518(a)(4)(ii) of the Department's regulations were not met.

Accordingly, there is nothing on the record to warrant a departure from our preliminary determination that Reintegra is countervailable. The GOB does not have a system that meets the requirements set forth in sections 351.518(a)(4)(i) and (ii), and therefore we find the entire amount of the Reintegra for cold-rolled steel flat products to be countervailable. Because we find the entire Reintegra countervailable, we need not address the Reintegra program's countervailability under 19 CFR 351.518(a)(2).

Comment 13: Whether to Recalculate the Reintegra Subsidy Rate

GOB's Arguments

According to the GOB, rather than applying the three percent credit to the entire POI as it did in the *Preliminary Determination*, the Department should, for the final determination, calculate a countervailable subsidy rate using the respondent companies' actual receipt of Reintegra rebates as the numerator and their respective export sales over the entirety of the POI as the denominator.

Usiminas' Arguments

According to Usiminas, in the *Preliminary Determination*, the Department calculated the countervailable subsidy rate applicable to the Reintegra by dividing the amount of Reintegra received by Usiminas by the amount of sales for which the Reintegra was claimed. For the final determination, Usiminas argues the Department should instead use Usiminas' total POI exports as a denominator. Moreover, with respect to the numerator, Usiminas argues that the Department used the amount of Reintegra received in 2014 (credits earned on 2013 exports) for Usiminas, whereas, for CSN, the Department considered the amount of Reintegra earned (but not collected) in 2014. According to Usiminas, for the final determination, the Department must be consistent.

Finally, Usiminas urges the Department to consider, under section 19 CFR 351.526, that a program-wide change has been implemented that reduced the rate of rebate under Reintegra in effect to 0.1 percent. According to Usiminas, this program-wide change occurred subsequent to the POI but prior to the *Preliminary Determination*.

CSN's Arguments

According to CSN, should the Department find CSN applied for and received Reintegra benefits during the POI, it must understand that the benefit amount it reported earning in the fourth quarter of 2014 was earned based on the company's exports during the years 2011 through 2014. The Department should, therefore, calculate the countervailable subsidy rate for Reintegra using as the denominator CSN's exports during those years. Further, CSN argues that the Department should recognize that the program was only in force during the last quarter of 2014. CSN adds

that the company applied only for a portion of the credit it accrued during the fourth quarter of 2014.

Finally, CSN argues that should the Department find that the Reintegra rebate rate is the cash deposit rate applicable to the company, it should recognize that there has been a program wide change. Specifically, CSN explains that the rebate rate for Reintegra has declined since the POI, and it is currently at 0.1 percent. As promulgated in 19 CFR 351.526(b)(1) and (2), CSN argues that the Reintegra rate change is not limited to a firm or firms; and is effectuated by an official act, such as a decree. As such, the Department should adjust the cash deposit rate to 0.1 percent.

The Petitioner's Rebuttal Argument

The petitioner argues that the GOB and the respondents ignore the language in the *Preliminary Determination* describing the methodology for this program. The petitioner explains that the Department's calculations do not show how the benefit was calculated; instead, because a company is allowed to claim a rebate of three percent rate of the FOB value of its exports, the rebate rate simply serves as the *ad valorem* subsidy rate itself. This methodology, the petitioner contends, is consistent with *Honey from Argentina* and with 19 CFR 351.518(b). The petitioner therefore argues that the Department properly determined the countervailable subsidy rate for this program. The petitioner argues that the record shows that the rebate rate during 2014 was three percent, regardless of when the company elected to submit its claim.

With respect to the alleged program-wide change that reduced the Reintegra rebate rate to 0.1 percent, the petitioner argues that the record demonstrates that it would be inappropriate to adjust the cash deposit rate because the 0.1 percent rate constitutes only a temporary reduction that will end at the conclusion of 2016. According to the petitioner, the Department has previously determined that, where governments are able to adjust rates at any time, program-wide changes are not to be recognized for purposes of adjusting the cash deposit rate.¹⁵⁴ The petitioner adds that the final determination in an investigation is typically the last time the cash deposit rates are adjusted until the completion of the first administrative review and, thus, it would be inappropriate, in this case, to adjust the cash deposit rates because the rebate rates may revert to a higher rate at the end of 2016.

The petitioner urges the Department to reject the respondents' argument that the program was in effect for only the last quarter of 2014 and, therefore, the benefit should be adjusted, because no party has suggested a method for this adjustment. However, the petitioner argues that should the Department adjust the cash deposit rate, it should make an upward adjustment to account for the fact that the program will be in effect for 2016, 2017, and 2018; this approach is consistent with the Department's regulations and previous Department determinations, *e.g.*, *Honey from Argentina*.

Department's Position: As discussed above, because we find that the GOB does not meet the requirements set forth in 19 CFR 351.518(a)(4)(i) and (ii), we have determined that the entire

¹⁵⁴ See, *e.g.*, *Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 From India*, 69 FR 67321 (November 17, 2004) and accompanying Issues and Decision Memorandum at Comment 8.

Reintegra rebate for cold-rolled steel flat products provides a countervailable benefit. Furthermore, because the Reintegra benefit is calculated as a percentage of the FOB value of the exports, the percentage rebated serves as the subsidy rate.¹⁵⁵

Usiminas and the GOB are misguided in their assertion that the Department calculated a countervailable subsidy rate for Reintegra, and did so incorrectly. At the time of the *Preliminary Determination*, there was no evidence on the record provided by the GOB that definitively identified the Reintegra rate in effect during the POI. Rather, the GOB had provided Law N. 13,043, which indicates that the credit may range from 0.1 percent to 3.0 percent.¹⁵⁶ In order to determine the rate at which the respondents were receiving Reintegra benefits during the POI, the Department examined the companies' filings to the GOB provided by the respondents.¹⁵⁷ These filings record the FOB value of the export and the amount in reais of the Reintegra rebate provided. In order to determine the rate at which the rebate was granted, the Department divided the amount of the rebate by the FOB value of the export shipment.¹⁵⁸ Thus, this calculation confirmed that the companies were receiving Reintegra at a rate of 3.0 percent.¹⁵⁹

CSN's argument that Reintegra was in force only during the last quarter of 2014 and, therefore, it is inappropriate for the Department to consider that CSN received Reintegra benefits throughout the POI, is unavailing. Because the purpose of a countervailing duty investigation is to establish cash deposit rates of estimated countervailing duties, and because Reintegra benefits are accrued as a percentage of the FOB value of exports, at the time of exportation, it is appropriate for the Department to apply this rate as the countervailable subsidy rate. This approach is consistent with the Department's analysis in *Honey from Argentina*¹⁶⁰ and *Shrimp from Thailand*.¹⁶¹

Finally, with regard to a program-wide change as specified under 19 CFR 351.526, we find that such a change has not occurred. Reintegra, as applicable during the POI, was formulated under Law N. 13,043 of November 13, 2014.¹⁶² Article 22 of that law provides that the percent refunded could range between 0.1 percent and 3 percent. At verification, GOB officials explained that the rate at which Reintegra is granted is set by the Executive Branch.¹⁶³ As a result of this executive power, there have been numerous orders and decrees published since the law went into effect that set Reintegra at various rates for different periods. While the Reintegra

¹⁵⁵ *Id.*; see also *Certain Frozen Warmwater Shrimp From Thailand: Preliminary Countervailing Duty Determination*, 78 FR 33350 (June 4, 2013); *Certain Frozen Warmwater Shrimp from Thailand: Final Negative Countervailing Duty Determination*, 78 FR 50379 (August 19, 2013) and accompanying Issues and Decision Memorandum at Comment 5 (finding that where the government provided tax coupons to exporters equal to a certain percentage of the FOB value of their exports, that percentage served as the subsidy rate) (*Shrimp from Thailand*).

¹⁵⁶ See GOB SQR December 9, 2015 at Exhibit D-1.

¹⁵⁷ See CSN IQR November 5, 2015 at Exhibit 19; see also Usiminas SQR November 30, 2015 at Exhibits 8 and 9..

¹⁵⁸ See Usiminas Preliminary Calculation Memorandum.

¹⁵⁹ We also relied on CSN's IQR at 25 (stating that in order to benefit from Reintegra, the exporting company adds three percent to the revenue received from the export of domestically produced goods and includes it in the tax refund request).

¹⁶⁰ See *Honey from Argentina* at Comment 3.

¹⁶¹ See *Shrimp From Thailand* at Comment 5.

¹⁶² See GOB SQR December 9, 2015 at Exhibit D-1.

¹⁶³ See GOB Verification Report at "Reintegra."

rate in effect in 2014 was 3.0 percent, Reintegra is currently granted at a rate of 0.1 percent.¹⁶⁴ However, several ordinances provided by the GOB indicate that the Reintegra rate may be changed by an act of executive power, subject to macroeconomic developments in the country.¹⁶⁵ Moreover, presidential decree N. 8543, provided by the GOB, shows that Reintegra is scheduled to increase in 2017 and 2018 to 2.0 and 3.0 percent, respectively.¹⁶⁶ In *Carbazole Violet Pigment from India*, we also declined to find a program-wide change when the Department determined that the published government rates did not establish a program-wide change because the government could alter the rates at any time.¹⁶⁷ In addition, the rate reduction from 3.0 percent to 0.1 percent was formulated by executive decrees, rather than by law, which was the basis for the implementation of the program, and the rate can be changed readily by executive decree.¹⁶⁸ Thus, we conclude that the rate reduction does not meet the requirements of a program-wide change described in 19 CFR 351.526, and an adjustment to the cash deposit rate is not warranted.

Comment 14: Whether CSN Applied For/Used the Reintegra Program During the POI

CSN's Arguments

According to CSN, record evidence demonstrates that CSN neither applied for, nor received, any Reintegra benefits during the POI. CSN adds that the Department erroneously found, “[i]nformation provided in CSN’s questionnaire response indicated that the company received the full three percent refund during the POI.”¹⁶⁹ CSN explains that this is not possible because the formal document submitted by the company for the Reintegra credit has a 2015 creation date.¹⁷⁰ As such, the company maintains that it did not receive benefits pursuant to this program during the POI.

Further, CSN argues that in the *Preliminary Determination*, the Department made several misstatements. First, CSN states that the record refutes the Department’s finding that the company did not file its Reintegra refund request until after the POI, although it was eligible to do so at an earlier date.¹⁷¹ Specifically, CSN argues, the only time the program was in place during the POI was the last quarter of 2014¹⁷² and that the only time a company may file for these credits for exports is by quarter.¹⁷³ As such, CSN explains the company could not have filed a Reintegra request prior to January 2015. Next, the Department’s statement that according to Usiminas, this program may be used immediately upon accrual,¹⁷⁴ is incorrect because

¹⁶⁴ See GOB SQR January 15, 2016 at 16 and Exhibits 5-9. See also Decree N. 8543 at Exhibit 9 that changed Reintegra rate schedule previously set forth in Decree N. 8415 at Exhibit 8.

¹⁶⁵ See GOB SQR January 15, 2016 at Exhibits 8 and 9 paragraph 8.

¹⁶⁶ *Id.* at Exhibit 9.

¹⁶⁷ See *Final Affirmative Countervailing Duty Determination: Carbazole Violet Pigment 23 From India*, 69 FR 67321 (November 17, 2004) and accompanying Issues and Decision Memorandum at comment 8.

¹⁶⁸ See e.g., GOB Verification Report at 9.

¹⁶⁹ See CSN Verification Report at 10.

¹⁷⁰ *Id.* at Exhibit 8.

¹⁷¹ See PDM at 30.

¹⁷² See, e.g., GOB Verification Report at 8.

¹⁷³ See GOB SQR January 15, 2016 at Exhibit 5 and 10.

¹⁷⁴ See PDM at 30.

Usiminas never made such statement. Further, CSN states making an accrual in its accounting system does not provide a right to use the government refund, because a Reintegra benefit may not be used until the refund request is submitted.¹⁷⁵

GOB's Arguments

According to the GOB, the GOB has reported that credits accrued under the Reintegra program may only be reimbursed after the closure of the calendar quarter; as such, any credits accrued in 2014 could only be claimed and used in 2015 and, thus, any benefit provided was received outside of the POI.

The Petitioner's Rebuttal Arguments

The petitioner argues that Department's regulations, at 19 CFR 351.518(b), state that the benefit from prior stage cumulative indirect tax exemptions or remissions occurs "as of the date of exportation." The petitioner also argues that CSN reported that it applied for Reintegra credits for exports made by CSN during 2011, 2012, 2013 and 2014 and that, therefore, the Department must reject CSN's argument.

Department's Position: According to 19 CFR 351.518(b)(2), the time of receipt of benefit from prior stage cumulative indirect tax remissions is as of the date of exportation. It is at the time of exportation that the exporter knows the amount of the benefit to be received. Therefore, the timing of the submission to the government of the Reintegra claim is immaterial, especially when the value of the rebate has already been recognized for accounting purposes. Furthermore, CSN is incorrect in its assertion that at verification the company demonstrated that it did not receive any benefit under Reintegra during the POI. Rather, at verification, company officials confirmed that the refund credited for 2014 is reflected in both CSN's 2014 financial statements and the SAP system for 2014.¹⁷⁶ This is because at the time of exportation, based on the Reintegra law in effect, CSN knew that it would receive a rebate and the rate at which the rebate would be granted and, thus, CSN knew the amount of the credit. CSN admits that it accrued an amount during the POI, but contends that this is not an indication that the company applied for Reintegra or could use the benefit/accrual during the POI. However, under the regulations, the time of application for, or use of, the benefit is not relevant when the benefit amount was known on the date of export.

Comment 15: Whether the Exemption of Payroll Tax is Countervailable

The Petitioner's Arguments

According to the petitioner, the record of this investigation regarding the Payroll Tax Exemption program is identical to the record developed in *Certain Hot-Rolled Steel Flat Products--*

¹⁷⁵ See GOB SQR January 15, 2016 at 19-20.

¹⁷⁶ See also CSN SQR November 30, 2015 at 11 (stating "CSN maintains records of its Reintegra credits in its internal accounting SAP system" and the credits are recorded in the company's financial statements).

Brazil.¹⁷⁷ In that investigation, the Department determined that UMSA benefited from this program. Accordingly, the petitioner argues that the Department should countervail the program in this investigation.

GOB's Arguments

According to the GOB, the program alters the tax due with regard to certain eligible products that do not include subject merchandise. The GOB notes that cold-rolled steel manufacturers continue to pay the payroll tax at the normal 20 percent rate. The GOB reasons that, therefore, the program is not countervailable. The GOB also argues that the Department has disregarded 19 CFR 351.525(b)(5), which states that a subsidy tied to the sale of a particular product shall be attributed only to that product. Thus, according to the GOB, because cold-rolled steel was not on the list of products eligible for the alternative tax methodology, the Department cannot attribute any subsidies to subject merchandise.

Usiminas' Arguments

Usiminas argues that the Department's determination, in *Certain Hot-Rolled Steel Flat Products from Brazil*, that this program is *de jure* specific is not supported by the record and is contrary to law. According to Usiminas, the record has established that access to the alleged program is based on the Harmonized System (HS), not on industry sectors. According to Usiminas, the list of HS codes subject to the Exemption of Payroll Tax covers most of the Mercosur Common Nomenclature and applies to more than 50 business sectors.¹⁷⁸ Therefore, Usiminas argues, because the program is not limited to an enterprise or industry, it is not specific as a matter of law.

Usiminas also argues that the tax regime was mandatory during the POI and, therefore, the government collected the proper amount of tax, such that there was no revenue foregone. Usiminas adds that the Department erred in comparing two taxing regimes that are mutually exclusive. When comparing the revenue actually raised and the revenue that would have otherwise been raised, Usiminas contends, the comparison should be made according to the companies subject to each system separately. The amount MUSA paid under the alternative system was the amount that it was required to pay to the government; as such, there was no revenue foregone. In fact, according to Usiminas, under the alternative system, some companies were paying more taxes.

¹⁷⁷ See *Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products From Brazil: Preliminary Affirmative Determination and Alignment of Final Determination With Final Antidumping Duty Determination*, 81 FR 2168 (January 15, 2016) and accompanying Preliminary Decision Memorandum (*Certain Hot-Rolled Steel Flat Products—Brazil*) see also Memorandum to Paul Piquado, "Countervailing Duty Investigation of Certain Hot-Rolled Steel Flat Products from Brazil: Post-Preliminary Analysis" (March 24, 2016).

¹⁷⁸ See Usiminas Case Brief at 17.

The Petitioner's Rebuttal Arguments

In its rebuttal brief, the petitioner contends that Usiminas' argument with respect to *de jure* specificity is misplaced because *de jure* specificity is based on the exclusion of products rather than inclusion. The petitioner rebuts Usiminas' argument that because the applicable law identifies the Payroll Tax beneficiaries as the manufacturers of particular products identified by HS codes and not by industries, that the program is, therefore, not specific. The petitioner also states that no party has placed on the record the annex which identifies the covered products by HS code, nor any documentation to support Usiminas' assertion that the list covers "50 business sectors." In addition, the only potential source of this information is Usiminas' pre-preliminary comments that should be rejected because they were untimely, not accompanied by the necessary counsel and company certifications and, therefore, according to the petitioner, not verified.¹⁷⁹ Despite this, the petitioner asserts that, because the law explicitly excludes certain products from eligibility, this program is *de jure* specific. The petitioner further notes that a *de jure* analysis does not require an examination of the relative size of those who are included compared to those who are excluded. According to the petitioner, the Department has used a similar analysis to make a similar determination in *Circular Welded Carbon-Quality Steel Pipe -- United Arab Emirates*, where the Department confirmed that when certain industries are excluded by law from receiving benefits, the exclusion alone is enough for a finding of *de jure* specificity.¹⁸⁰

The petitioner also rebuts the GOB's argument that, because subject merchandise is not included on the list of covered products, benefits from this program cannot be attributed to Usiminas. According to the petitioner, the GOB ignores 19 CFR 351.525(b)(6)(iv), under which the Department attributes subsidies received by cross-owned companies that provide inputs to companies under investigation.

Usiminas' Rebuttal Arguments

Usiminas reiterates that access to the program is not limited to an enterprise or industry and is rather an alternative taxation system that applies to most of the tariff codes of Mercosur Common Nomenclature that is used by more than 50 business sectors. Usiminas also highlights that the subject merchandise is not among the eligible products identified in the applicable legislation.

Department's Position: As discussed above in the section "Programs Found to be Countervailable," for the final determination, we determine that because only the industries involved in the production of products or the provision of services identified in the attachment to the legislation are eligible for the program,¹⁸¹ the eligible industries are limited by law, and the program is *de jure* specific. Moreover, the alternative tax methodology provides a financial contribution to the extent that it results in revenue foregone under section 771(5)(D)(ii) of the

¹⁷⁹ See Petitioner Rebuttal Brief at note 199, 120.

¹⁸⁰ See *Circular Welded Carbon-Quality Steel Pipe From the United Arab Emirates: Final Affirmative Countervailing Duty Determination*, 77 FR 64465 (October 22, 2012) (*Circular Welded Carbon-Quality Steel Pipe - United Arab Emirates*) and accompanying Issues and Decision Memorandum at Comment 1.

¹⁸¹ See GOB QR January 15, 2016 at 9; see also GOB QR February 11, 2016 at 18.

Act. We also determine that it confers a benefit under section 771(5)(E) of the Act and 19 CFR 351.509(a)(1) in the amount of tax savings enjoyed by the eligible taxpayer.

The GOB argument that, because steel products are not included in the list of eligible industries, the Department cannot find that the program provides benefits to Usiminas, is unavailing. The Department has examined benefits provided to Usiminas' cross-owned iron ore supplier MUSA, and has determined that it is appropriate to attribute those benefits to Usiminas under 19 CFR 351.525(b)(6)(iv).

With respect to the GOB's argument that because the eligibility criteria limit the availability of this program to certain industries, which do not include the steel industry, the benefits are tied to non-subject merchandise and are not countervailable, we note that the GOB has confused the Department's consideration of eligibility criteria for purposes of its specificity analysis with the Department's tying analysis, which seeks to determine whether, at the time of approval of a benefit (bestowal), the government sought to limit the purpose for which the benefit is granted and the recipient was bound by those limitations.¹⁸² There is no evidence on the record that suggests that such limitations apply to the tax savings enjoyed by MUSA such that the Department could find that benefits provided to MUSA are tied to non-subject merchandise. In any case, the Department's analysis for purposes of this issue is not whether or not there exists benefits which are tied, but whether or not this program is *de jure* specific, and we have concluded that it is *de jure* specific.

Comment 16: Whether Subsidies Provided to UMSA should be Attributed to Usiminas

Usiminas' Arguments

According to Usiminas, UMSA provided only steel mill equipment and services to Usiminas and did not provide "inputs" within the meaning of the Department's regulations. Usiminas argues that the language in 19 CFR 351.525(b)(6)(v) intends that an "input" is an upstream product primarily dedicated to produce a downstream product. Equipment and related services to keep a steel mill running are not inputs for the production of steel according to Usiminas. Furthermore, Usiminas contends that the Department provided no legal ground or explanation to support its determination that UMSA provided "inputs" as defined in the regulation. Usiminas notes that it produces a full range of steel products including slabs, heavy plates, electrogalvanized steel and hot-dip galvanized steel; therefore the equipment maintenance parts and services provided by UMSA could not be "primarily dedicated to the production of the downstream product." The goods and services provided by UMSA included parts for Usiminas' plate rolling mill, new technology and structure maintenance – there is nothing on the record, Usiminas argues, to support the Department's conclusion that the equipment and services provided by UMSA are primarily dedicated to the production of subject merchandise. Therefore, Usiminas argues that UMSA cannot be considered an input supplier and, accordingly, the Department should not attribute subsidies allegedly received by UMSA to Usiminas.

¹⁸² See *Countervailing Duties*, 63 FR 65348, 65402-65403 (CVD Preamble).

The Petitioner's Rebuttal Arguments

The petitioner argues that Usiminas has ignored the Department's regulation regarding attribution. The petitioner rebuts Usiminas' argument that the inputs provided by UMSA are not "inputs" as defined by 19 CFR 351.525(b)(6)(iv). The petitioner also claims that Usiminas misinterprets this regulation to require that inputs be primarily dedicated to the production of subject merchandise. According to the petitioner, the Department's regulation instead requires that the inputs be "primarily dedicated to the production of the downstream product." The petitioner argues that to agree with Usiminas would, contrary to prior judicial precedent, require that the Department trace the subsidies provided to UMSA in order to determine whether those subsidies benefit subject merchandise.¹⁸³ The petitioner also notes that in *Softwood Lumber from Canada*, the Department rejected the notion that subsidies to inputs used to manufacture non-subject merchandise should be excluded from a company's subsidy rate.¹⁸⁴

The petitioner further argues that the Department should reject Usiminas' definition of input. The petitioner points to 19 CFR 351.523(a)(iii)(b), that defines input product as any product used in the production of subject merchandise and urges the Department not to narrow the definition of input, especially when it is the Department's longstanding practice that the provision of capital equipment can constitute a subsidy.¹⁸⁵ The petitioner also notes that 19 CFR 351.503 states that the Department "normally will consider a benefit to be conferred where a firm pays less for its inputs (*e.g.*, money, a good, or a service) than it otherwise would pay in the absence of the government program."¹⁸⁶ Furthermore, in the *Preamble*, the Department specifically stated "we intend the term 'input' to extend broadly to any input into a firm that produces subject merchandise."¹⁸⁷ To accept Usiminas' definition of "input" would, according to the petitioner, allow the countervailing duty law to be circumvented by the transfer of highly subsidized equipment and money from a cross-owned entity. Therefore, the petitioner urges the Department to continue to attribute subsidies received by UMSA to Usiminas.

Department's Position: The Department determines it is appropriate to attribute to Usiminas subsidies provided to UMSA under 19 CFR 351.525(b)(6)(iv), which states that the input must be "primarily dedicated to production of the downstream product." First, the Department determines that steelmaking equipment and services are indeed inputs into the downstream production of steel. Second, the regulation does not, as Usiminas argues, equate "downstream product" with "subject merchandise." Application of this subsection of the regulation is not a

¹⁸³ See *Fabrique De Fer De Charleroi v. United States*, 25 CIT 567, 576-577 (Ct. Int'l Trade 2001); see also *Coated Free Sheet Paper from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 72 FR 60645 (October 25, 2007).

¹⁸⁴ See *Final Results and Partial Rescission of Countervailing Duty Expedited Reviews: Certain Softwood Lumber Products From Canada*, 67 FR 67388 (November 5, 2002) and accompanying Issues and Decision Memorandum at comment 8 (*Softwood Lumber from Canada*).

¹⁸⁵ See, *e.g.*, *Can-Am Corp. v. United States*, 11 CIT 424, 432 (1987) (documenting Congressional intent that capital equipment subsidies be subject to countervailing duties); *Countervailing Duty Investigation of Certain Crystalline Silicon Photovoltaic Products from the People's Republic of China: Final Affirmative Countervailing Duty Determination*, 79 FR 76962 (December 23, 2014).

¹⁸⁶ See 19 CFR 351.503.

¹⁸⁷ See *CVD Preamble*, 63 FR at 65348, 65359.

“tying” analysis under 19 CFR 351.525(b)(5), and the Department’s investigation is not limited to whether, subsidies received by UMSA are tied to the production of particular products or subject merchandise, and in fact, the Department has made no such analysis in this case. The *Preamble* states that, “{i}n analyzing whether a benefit exists, we are concerned with what goes into a company, such as enhanced revenues and reduced-cost inputs in the broad sense that we have used the term, not with what the company does with the subsidy.”¹⁸⁸ As noted by the petitioner, the Court of International Trade has ruled that the Department’s practice is consistent with the Act.¹⁸⁹ Here, UMSA provides inputs for the production of “the downstream product,” *i.e.*, steel products. Thus, for the final determination, the Department finds that, given the cross-ownership of UMSA by Usiminas, UMSA’s provision of equipment to Usiminas, and UMSA’s receipt of subsidies under this program, it is appropriate to attribute to Usiminas the subsidies received by UMSA under the Exemption of Payroll Tax program.

Comment 17: Whether the Economic Subvention to National Innovation Program is not Countervailable

Usiminas’ Arguments

According to Usiminas, the Department should continue to find this program to be not countervailable in the final determination.

Department’s Position: We continue to find that the Economic Subvention to National Innovation Program is not specific and, therefore, not countervailable. The Department confirmed the information regarding this program at verification, both with the GOB and with Usiminas.¹⁹⁰

Comment 18: Whether FINEP’s Economic Subvention Program has not Conferred a Measurable Benefit

Usiminas’ Arguments

According to Usiminas, the Department verified the reported information for this program and, therefore, should confirm its preliminary determination with respect to this program.

Department’s Position: We continue to find that the FINEP’s Economic Subvention program provided no measurable benefits during the POI. The Department confirmed the relevant reported information regarding this program at verification of Usiminas.¹⁹¹

¹⁸⁸ See *CVD Preamble*, 63 FR at 65348, 65361.

¹⁸⁹ See *Fabrique*, 25 CIT at 576-577.

¹⁹⁰ See GOB Verification Report at 11 – 12; see also Verification Report at 11 – 12.

¹⁹¹ See Usiminas Verification Report at 12.

Comment 19: Whether the Bahia State Industrial Development and Economic Integration Program (Desenvolve) is *De Jure* specific

GOB's Arguments

According to the GOB, the exclusions listed in the Desenvolve law, which were the basis for the Department's preliminary determination that this program is *de jure* specific, are intended to promote high levels of environmental protection and to guarantee and enforce labor rights. The GOB adds that these goals are consistent with multilateral trade agreements and, therefore, the program is not *de jure* specific.

The Petitioner's Arguments

The petitioner argues that the GOB's alleged goals and the very broad goals referenced in the multilateral trade agreements have no direct link to the application of countervailing duty measures. Furthermore, the petitioner notes that the GOB makes no citation to U.S. law for any of its arguments regarding Desenvolve. Therefore, the Department should continue to find the Desenvolve program *de jure* specific because the law excludes certain enterprises from eligibility.

Department's Position: We continue to find that the Desenvolve program provides benefits that are *de jure* specific. The Department has no basis in the statute for considering the goals of multilateral trade agreements when examining whether the program is specific. Rather, section 771 of the Act directs us to consider whether an authority "expressly limits access to the subsidy{.}" The Desenvolve program explicitly excludes certain industries;¹⁹² thus, it is *de jure* specific.

Comment 20: Whether the GOB's References to Websites Constitute a Full Response

GOB's Arguments

Throughout both its case and rebuttal briefs, the GOB argues that it has cooperated in this investigation. In addition, according to the GOB, the Department could have fully analyzed the allegations in the petition by examining information available on official Brazilian government websites. By not pursuing such an approach, the GOB states, the Department unfairly burdened the GOB by inverting the burden of proof for the investigated programs. The GOB adds that this is at odds with the United States' obligations under the WTO agreements. Finally, the GOB argues that, because the Department did not accept references to official Brazilian websites as evidence on the record, the Department rendered useless the GOB's efforts to promote transparency and accountability.

Department Position's: During the course of this investigation, the Department stated that a reference to information available on the Internet does not constitute the provision of information

¹⁹² See CSN QR November 5, 2015 at Exhibit 29; see also GOB SQR December 4, 2015 at Exhibit I-2.

for the record.¹⁹³ Regardless of whether the Internet reference is to an official government website or any other website, the Department does not consider the provision of such references to equate to the provision of evidence for the record. Because information on the Internet is subject to change at any time, no party can have confidence when using an Internet address provided in a questionnaire response that they will be reviewing the information that the responding party intended to provide. Whether viewed in the days, months, or years (in the event of litigation) after the Internet reference is provided, neither the Department nor any other interested party can be certain that the information available at the Internet address is the information that the submitting party intended the Department to consider. It has been the Department's experience that websites are frequently updated and taken down, so the "assumption" of such citations on the "record," would undermine the two very fundamental purposes of a challengeable administrative record -- transparency and certainty. Thus, the GOB's argument, that provision of references to "official government websites" demonstrates full cooperation, in light of specific guidance from the Department regarding such responses, is unavailing.

VIII. RECOMMENDATION

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

✓
Agree Disagree

Paul Piquado
Paul Piquado
Assistant Secretary
for Enforcement and Compliance

20 July 2016
(Date)

¹⁹³ See e.g., GOB SQR December 4, 2015 at 3 at pages 1 and 2 ("The GOB has substituted references to websites for a narrative description or exhibits throughout the response. We remind the GOB that reference to an internet address does not substitute for the provision for the record of the information requested, that may be found at a web address. The Department cannot rely on references to web addresses because the information found at the web address has not been provided for the record, and the information found at a particular web address is subject to change. As such, we are reiterating our request for a copy of the requested information.").